REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON STATE DEVELOPMENT

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

At Sydney on Tuesday 25 August 2009

The Committee met at 9.30 a.m.

PRESENT

The Hon. A. Catanzariti (Chair)

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

CHAIR: Welcome to this public hearing of the Standing Committee on State Development's inquiry into the New South Wales planning framework. Before we commence I will make some comments about procedural matters. In accordance with the Legislative Council's guidelines for the broadcast of proceedings, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. The guidelines for the broadcast of proceedings are available on the table by the door. Any messages for Committee members or witnesses must be delivered through the Committee clerks. I remind everyone to turn off their mobile phones.

Mr SAM HADDAD, Director General, New South Wales Department of Planning, 20-22 Bridge Street, Sydney,

Mr MARCUS RAY, Executive Director, New South Wales Department of Planning, PO Box 39, Sydney, and

Ms YOLANDE STONE, Executive Director, New South Wales Department of Planning, PO Box 39, Sydney, on former oath:

CHAIR: I welcome the first witnesses: Mr Sam Haddad, Mr Marcus Ray and Ms Yolande Stone. As all of you appeared before the Committee for this inquiry on 30 March, there is no need for you to take the oath or affirmation. Your evidence today will be given under your former oath. If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today, the Committee would appreciate that the response to those questions could be sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Before the Committee commences with questions would you like to make a brief opening statement?

Mr HADDAD: No.

CHAIR: The Committee notes that we will now have regional plans for all of the State, with the development of the western New South Wales regional plan. The western region is a large area. Your department's website notes that it includes people in 48 local government areas living in diverse environments ranging from dispersed rural villages to larger regional centres. What was the basis for having such a large single region as opposed to a number of smaller regions? Do you think it is or will be necessary for the larger regions to have sub regional strategies as per the Sydney metropolitan strategy?

Mr HADDAD: That is for the western region, the western area of the State?

CHAIR: Yes.

Mr HADDAD: The reason that we do not have a specific regional strategy for the western region is in no way a reflection that the issues are not important or not taken into account. We made the judgement that probably it is better to focus on specific strategies for those areas, strategies like rural areas and the relationship between water and population in some areas, rather than having a single strategy. We are thinking now actually of a specific strategy for the western region. We have done some preliminary work and we are looking into whether we should proceed with a single strategy. I am not sure that we have done enough work to be able to say that we need to divide it into a number of sub regions. I understand that the area is large but we think we should be addressing the issues rather than the areas themselves. I think there are issues where we can focus on probably better than what we did previously. We know better about it. I have put more staff in our Dubbo office and they are starting to do a bit more work in that regard.

CHAIR: So it is possible that it may be even split further than just one western region.

Mr HADDAD: I am not sure that we will split the western region but we will be doing more work on the western region. Depending on the issues, we will look into whether we need two strategies or one strategy, depending on the region.

The Hon. MICHAEL VEITCH: You are talking about the region. In our travels around the State, that is quite a contentious issue as to what is a region. How does the Department of Planning define a region? Do you use water catchment? Is it economic catchment? Is it communities of commonality? What is used—

The Hon. CHRISTINE ROBERTSON: Industrial.

The Hon. MICHAEL VEITCH: Yes, industrial. What is used to define the region?

Mr HADDAD: We have followed, in general, local government boundaries so that is the basis of our definition of, in a sense, regions on the basis of a number of local government areas, following local government boundaries. The reason that we have done that, in a sense, is based on administrative and practical reasons. When we do our local environmental plans to connect the regional strategies, we have to team with local

councils and we need to make sure that we do not cross boundaries in a number of councils. Having said that, I am not sure on what basis the line was drawn exactly whether we should have missed one council to define a region or put another council or not. But we do take into account characteristics such as water management and other issues in terms of the broad strategic planning issues. We do take them into account.

I must say that when we come to translate all of that into statutory outcomes, into provisions in local environmental plans, we have followed the boundaries of local councils for administrative reasons. We want to work probably more with the catchment management authorities. We try to work with them. There are issues which we probably need to do more in terms of addressing cross-regional issues; catchment regions. These things are inevitably—we do not need legislation to do that, by that way. These are things that are often done by administrative practice or whatever. We try to do that as much as we can. We are doing a piece of work on, for example, defining natural resources definitions in our standard template which will reflect better than what we have now the sort of characteristics of water management. Population catchments are another reason that we have used to define that.

We have over the history of planning a number of regions in the metropolitan area. I know that we used to have four regions; now we have two, probably for administrative reasons or to reflect population—I mean greenfield and brownfield areas, land release areas versus infill areas so we try to put it. It may also reflect sometimes the resources that we have to service those regions. We currently have six regions; we have eight regional offices. Once we start creating more regions or less, we will have to think about credibly servicing those regions.

The Hon. MICHAEL VEITCH: So mainly from the Department of Planning's view it is more around resources and administration.

Mr HADDAD: It is an administrative practice but, as I said—and I just want to confirm—when we come to work on regional strategies and policies we do take into account other factors, including catchment-related issues.

The Hon. RICK COLLESS: When you talk about a specific strategy for the western region, what actually is the western region that you talk about?

The Hon. CHRISTINE ROBERTSON: It sounds like that Murray-Darling catchment. It is the Murray-Darling basin, is it not?

Ms STONE: It is most of it, not all of it.

Mr HADDAD: I am happy to give you a map showing the western region. You will find that it is the Murray but I will provide you with a copy of our definition.

The Hon. RICK COLLESS: I would like to have a look at it now because I think it is important for us to have an understanding of what you mean by the western region because if it is all parts of New South Wales other than the metropolitan areas on the coast, then I do not see how you can have a single specific strategy for 95 percent of New South Wales.

Mr HADDAD: We are working now on a strategy for the Murray-Darling and that is basically all the councils around the Murray-Darling as part of a joint exercise with the Victorian Government.

The Hon. RICK COLLESS: So a single strategy for all of the Murray-Darling basin, is that what you are talking about?

Mr HADDAD: Yes.

The Hon. RICK COLLESS: So we are going from Wallangarra to Tibooburra, to Wentworth, right across to Tom Groggin down the Murray, Thredbo. How can you have a single strategy for that?

The Hon. CHRISTINE ROBERTSON: Tenterfield.

The Hon. RICK COLLESS: I have said Wallangarra.

The Hon. MICHAEL VEITCH: About 48 councils.

Mr HADDAD: As I said, we have been addressing separately the regional issues, including various issues. I think we will get the map.

CHAIR: We might come back to that.

The Hon. RICK COLLESS: The New South Wales State Plan is currently under review, is that correct?

Mr HADDAD: That is correct.

The Hon. RICK COLLESS: And as part of that process you are conducting a series of community consultative meetings around New South Wales.

Mr HADDAD: That is correct.

The Hon. RICK COLLESS: How many of those meetings have been held to date?

Mr HADDAD: I will have to take this on notice. I am not sure that I would say probably about four or five, but to be credible I would like to get this on notice.

The Hon. CHRISTINE ROBERTSON: The Premier's, is it not?

The Hon. RICK COLLESS: The Premier's Department is involved in it.

Mr HADDAD: It is being coordinated through the—

The Hon. RICK COLLESS: What is your input into that State planning process?

Mr HADDAD: Our input relates to providing planning advice to the State Plan and I have my regional directors participating at the committee meetings to provide support in relation to the planning-related aspects of the State Plan.

The Hon. RICK COLLESS: I have had a report from one that was held at Cooma—it might have been last night but certainly this week—and it is less than complimentary, I have to say, as to the way it was conducted and the timeframe that it was conducted in. This person told me that there were 100 people there who were seated in tables of 10 with facilitators and the question they were asked was: What works well in your community? One of the comments was, "Finally a worn-out general manager muttered, 'This is a difficult question, there isn't much that works well in regional communities at the moment.'" Is that not a bit of a blight on the planning process in New South Wales if things are going so badly, particularly in regional communities? Are you aware of how regional communities are suffering?

Mr HADDAD: I cannot really comment about this particularly. I was not present there and these meetings are being coordinated not by my department so I cannot comment on the specifics. We try to support regional communities through the planning processes as much as we can, but I am unable to credibly give any comments in relation to what happened last night or at any other meetings that I was not present at.

The Hon. RICK COLLESS: Many people we have spoken to in this Committee process have said that a new Planning Act is long overdue. The former planning Minister, Frank Sartor, also gave evidence to this Committee along those lines. Do you agree that we need a new Act?

Mr HADDAD: I do not agree with that. I do not agree that we need a new Act right now. I do respect the views of others and the submissions that have been made in that regard. I can understand that—

The Hon. RICK COLLESS: But in your view we do not need it at the moment.

Mr HADDAD: No, I do not. If you like, I am happy, in a sense, to reflect also the original submissions, the government submissions that emphasised that we should be focussing on making sure that the recent planning reforms work well, that we deliver on what we have done in terms of the recent planning

reforms, the importance in terms of them working, that we monitor their implementation and make sure that they deliver to the community, particularly at times of economic downturn, what they were supposed to do, and that we put our resources, not only the department's resources but the whole-of-government's resources in making sure with local government and others that they work. Then we should evaluate how they operate in the community, whether they deliver up.

I looked at most of the submissions and I just mention now the Government's position. As a practitioner I could not find the causal relationship between the new Act or the need for a new Act and the planning outcomes. Maybe that is in the minds of others, but I could not. I am happy to expand on that if necessary, but that is a view.

The Hon. MICHAEL VEITCH: That is the Environment Planning and Assessment Act—but along those lines it was also put to us there is now a significant body of environmental legislation, and it may be quite appropriate to have umbrella legislation for the raft of environmental legislation to provide a bit of structure around the hierarchy of how that is being applied. So, rather than the Environment Planning and Assessment Act itself there has also been some discussion around the need for umbrella environmental legislation?

Mr HADDAD: Firstly, there is nothing administratively or within the provisions of the existing legislation that cannot provide strategies, for instance, and plans for this outcome to be delivered. I suppose whether the bureaucracy is delivering on it or not is a different issue, but there is nothing preventing a local environmental plan or strategy to take into account that. I suppose the issue that has been the subject of attention is possible duplications, inconsistencies and otherwise between legislation when it comes to making decisions on certain development applications. We try to do that through the part 3A process. Some people think it is not a very good process and others think it is not a bad process, but that is one attempt at doing it. We said under part 3A we are going to integrate legislatively a number of other legislation. The initial submissions were to go further than that but the Houses of Parliament thought otherwise and we are operating now with what we have as an outcome of this integration. Again, whether we do that administratively in a proper manner or not is something for others to judge, but we have this mechanism.

I think we should do much more in strengthening, firstly, administrative arrangements between the different legislation. Whether we really need an umbrella, a new area of legislation, I am not sure. I have to think much harder about that. I need to challenge the administrative provisions. We have tried to do that recently. I am chairing now a committee with other chief executive officers and we are trying to work together to be able to deliver that. It is not easy. You have different terms of reference and different people, and they have to do their job and they have to do it properly. So, I have also to be careful to have the one decision maker overruling everybody to achieve that, so it is a fine balance.

Having said all that, we can see that when local councils, for instance, are making decisions on development applications, I can see they have much more difficulty achieving this. One way we have addressed that is we have done a lot of work on concurrences and referrals by removing them from the system so we can have fewer legislation coming into play. That is my opinion.

Reverend the Hon. FRED NILE: You mentioned you do not see a need for a new Act now. Do you see, out of the experience of the current legislation and proposed amendments over time, that there could be a new Act in, say, three to five years? Would that be within the realm of possibility?

Mr HADDAD: I think it will be. I said something wrong and it is not practical for me to say any piece of legislation will need eventually to be looked at. I am just saying that before we do any of this we need to sit down and think carefully what fundamental difference the new Act is going to achieve that the current Act is not doing. This is an important thing to do if we are honest in delivering something different. I know some people say, for example, we need to strengthen the infrastructure provisions in major planning. We can do that now. We do not need a new Act. People say we need to modernise the new Act. I need to understand what we mean by that. What outcome in public participation we can achieve with a fundamental review of legislation. The new Act may be seen by many as complex and difficult, but we are dealing with complex issues. That is the reality of the work. We need to find out how a new Act is going to deliver those complexities in a different way. Planning issues are complex issues because we are dealing with the interests of various people and we need to do that within a proper legislative framework.

It could well be that this legislative framework eventually will need to be expressed in a simple way. I have read in some of the submissions maybe we can express it. I certainly do not subscribe to the view that we

need one Act dealing with strategic aspects and another Act dealing with the development approval process. I think this is a backward step in my view. That would add complexities. On the contrary, we need to strengthen provisions to bring them closer together, because that would bring them much nearer not only to decision-makers but to the community and others. That is my view in summary.

Reverend the Hon. FRED NILE: You have indicated that a lot of the improvements could be done in various ways, through administration, and so on. If there were some areas where the current Act needed to be improved, do you agree there could be an amending Act, amendments to the Act, after you have had enough time to review the practical aspects of the current legislation?

Mr HADDAD: Yes. It would be after looking at the practical aspects. One area I particularly—I suppose not me but the system would benefit, is we need to recognise more the strategic aspects of the legislation. We tried to do that but I would like to see when we spend a lot of time on strategies not to legislate for the strategies but to legislate for the implementation of strategies a bit more. We are going through our famous comprehensive LEP program and we are having difficulty sometimes in convincing people to adopt certain things that have been debated and that imposes a lot of jamming in the system.

These are minor amendments—well, not minor but they are possible adjustments. I hesitate at advocating further amendments now, given that we have gone through all those amendments, and I can recognise people putting the view that the more you put amendments the more you express things legislatively in different ways and eventually you can express the same thing in one way rather than in 10 or 20 clauses. I can understand that is a possibility, that we can refine the way we are expressing some of those views, but that is up to the legal profession to express to see whether that can be done better than the way it is done now.

Reverend the Hon. FRED NILE: With the operation of the Implementation Advisory Committee, and obviously I think that was a good move, does that committee have enough power to advise you whether the Act needs to be improved? Are you using it as a sounding board, seeing you have all the stakeholders involved in that group?

Mr HADDAD: We are. We certainly put a lot of emphasis on this committee, and the Minister does. We meet with the committee on a monthly basis and we have a very thorough and disciplined implementation program. So, my answer to that is yes, it is influential in driving the process, particularly in implementation but also in drawing attention to any future adjustments to the system. It has been extremely influential in the housing codes and the part 3 reforms and in advising us on other aspects. I think it has the right level of representation. As I said, the Minister is very active and personally following up on this committee. I must also say the same applies to the Planning Director's Committee. We have another committee with planning directors. I am relying on it to provide much broader advice to us, not only on the legislation but on the broader planning, and it has been and still is a very ongoing, very useful committee, notwithstanding that we do not agree or we have very rigourous debates, but these forums have been very useful.

Reverend the Hon. FRED NILE: Are planning directors directly related to local government?

Mr HADDAD: That is correct. It is a group of local government planning directors.

Ms STONE: David Broyd is one also

Reverend the Hon. FRED NILE: And that has both country and metropolitan councils represented on it?

Mr HADDAD: It is a mixture of both metropolitan and regional. I think we have four representatives from regional—I am sorry, three.

Ms STONE: There are three from inland, three from the coast and three from metropolitan. So, we have a good cross-section. They communicate with the other people in the area so that brings an aggregated view about different issues.

CHAIR: We have that map of the western region now. We might go back to that. Does Reverend the Hon. Fred Nile wish to finish what he was doing?

Reverend the Hon. FRED NILE: Just one quick question following up that planning group. There have been suggestions there should be three standard instruments, LEP templates, tabled for the metropolitan, coastal and rural areas in the way you have set up that planning group. Do you see any advantage in pursuing that idea?

Ms STONE: I think the issue is whether or not they have enough clauses that meet the requirements of their particular region that they can easily use to develop their LEP. There is a view that because we have had more comprehensives being developed along the coast and in the metro, there has not been enough what we call local clauses developed to meet the requirements of the inland. Currently, as you probably know, on our web site we have a special area, comprehensive LEPs and assist councils. What we are doing there is very much responding to the regional councils developing a bank of standard clauses they can use, and that will very much respond to the issues raised with your Committee about having more clauses that meet the needs of the regions rather than the coast or metro.

The Hon. CHRISTINE ROBERTSON: Like floodplains?

Ms STONE: As you know, the issues to do with floodplains on the coast are quite different to inland and quite different from that of the brownfield areas. So, in response to that we have three draft clauses that we are finalising at the moment to deal with that diversity.

The Hon. CHRISTINE ROBERTSON: To resolve the problem in the western towns?

Ms STONE: Yes.

The Hon. RICK COLLESS: Mr Haddad, now I have this map in front of me, it appears that Moree Plains, Narrabri, Gunnedah local government areas and areas east of that are not included in the western region, and there is a similar exclusion between Upper Lachlan, Boorowa, Young, Wagga Wagga, those sorts of areas in the south. I presume it is called the southern region. But that still leaves a huge area with a vast different in all sorts of attributes to that western region. So, how can you have a single strategy for places like Bathurst, Lithgow and Oberon and Wilcannia, for example? The difference in those communities and the land forms, there is no similarity between those areas at all other than the fact that they are west of the range. That is the only thing they have in common really.

Mr HADDAD: Yes.

The Hon. RICK COLLESS: So how can you have a single strategy that applies to such a varying difference of communities?

Mr HADDAD: I am happy to look at this. As I was trying to say, not very well, we are addressing some specific issues, some of the subregional areas. Whether we should be working on two subregional strategies instead of one, I will consider that. We have our regional standard LEP program. Some of those areas are included in our area. I know in the western area, for example, we are working on nine councils as priority LEP standard programs. Those are our priorities and we are finalising them in the next year. I have a list of the plans for those councils, which includes Bathurst, Dubbo, Forbes, Mid Western, Murray, Orange and Wentworth. Those are examples of the council plans that we are working on as a priority in the area.

The Hon. RICK COLLESS: Let us take two of the councils that you mentioned—Bathurst and Wentworth I think you said.

Mr HADDAD: That is right, yes.

The Hon. RICK COLLESS: They are two very diverse communities. There is very little commonality between those two areas in relation to geography, soils, agriculture, environment, or anything else. Will those two local environmental plans [LEPs] be written in the same language? From what was said a minute ago about having clauses that suit particular regions and so on, I am assuming—and correct me if I am wrong—that the local government bodies then select those clauses that are applicable to their region. Is that correct?

Mr HADDAD: That is correct.

The Hon. RICK COLLESS: What we are doing is providing a desktop LEP. Councils go through all these clauses, tick them all, include them all and shove them off to the Department of Planning. The department ticks them off and we have desktop LEP that does not reflect any of the input that local councillors, staff on the council and communities should have into their local planning process. That is one of the concerns I have about this commonality that will apply across this huge region. If there are 10 clauses under section A, or however it is done, and you pick out the clauses that apply to your region, there is no other methodology—or is there—for community input into that local environmental plan?

Ms STONE: I think we need to look at the layers. Councils will be doing their local strategies. The interesting thing will be to see how that interrelates with strategic planning under the Local Government Act, which will be a big plus. They will then develop their local plans that will provide the framework for land-use planning. Councils will then provide development control plans [DCPs] that have the detail that is particular to their area and that provide development controls for that area. You want to put in controls but one of the questions that should be asked is whether we need the controls. If we do, councils can put them in the DCP.

The Hon. RICK COLLESS: What process is there for the resolution of conflict when local people want to go down a certain path in the planning process but that is not consistent with the established clauses of the Department of Planning?

Mr HADDAD: We need to ensure that their local strategies are properly reflected in the planning instruments. That is the end outcome. If the standard planning instruments that we now have do not reflect local strategies—the strategies that have been developed to reflect local requirements—either we have to find another one or we have to do something about it. Basically, that is the answer to your question. When we standardise all over the State we must ensure that we do not keep on adding things as we might end up non-standardising. That is the challenge we have.

The Hon. RICK COLLESS: Where is the right balance to ensure that you get sufficient local input to truly reflect the needs of that community as opposed to a Department of Planning directive that states, "No, you must do it this way"?

Mr RAY: A degree of flexibility is built into the standard instrument. Certain land uses are prescribed in zones but there is a range of choice to put other land uses in zones. What councils do is the first building block. They do their strategic work and they build up the bundle of things that will go into particular zones. However, they also have some flexibility. Although we have model provisions we encourage councils, where the model provisions do not fit, to come forward with a local provision. As long as that local provision does not undermine one of the mandatory standard provisions we are happy to consider it.

The standard LEP is really like a toolbox. However, you do not get there unless you do your strategic work and the work relating to each of the zones. There is a great deal of flexibility within each of the zones and within the controls. You can apply different controls in different clauses to different pieces of land. There is a degree of flexibility. As I said, there are also the additional local clauses. At a further level down there are development control plans. It is really not a one size fits all; it is a collection of tools that you bring together to reflect your local community, your local needs and your strategic approach.

The Hon. RICK COLLESS: Let me give you an example of where I am coming from. A local council with which I deal quite regularly sent me some information about changes to exempt and complying development regulations. Those regulations were more restrictive on that community than were the exempt and complying DCP that the council had, or whatever it was called at the time. It was going to make it much harder for people in that community to do what they needed to do and it was not going to work in the best interests of members of that community; however, it was being imposed on them. How do you go about resolving that conflict within the planning process?

Mr RAY: One of the issues with the exempt and complying codes is the process of getting some measures, standards and types that receive general acceptance. In relation to that we have always said that it is an ongoing process and we will continually listen to what councils have to say. In February and March we did a number of information sessions relating to both the housing codes, and we are just finishing up another set of information sessions after going to about seven or eight places in regional New South Wales. I think the last one in Tamworth today is on the commercial industrial codes.

We have always said, "If the code that we brought in does not fit there are a number of things that you can do. Please tell us what are the issues." At the moment we are going through a process of local exclusions and variations. We have received about 40 applications from different councils to look at variations and exclusions to set standards. Hopefully we will be in a position to go forward with it early next month. We have also said that we will listen to feedback. If some of the things are not working and if some of the provisions are too restrictive we will go back and revisit them. We do that through a process of consultation and stakeholder engagement.

We have a complying development expert panel that has representatives from industry—associations such as the Local Government and Shires Associations, the Planning Institute, the building surveyors, and insurers. It has substantial representation from 11 councils and I think two or three are regionally based councils. We take back the issues to that committee as we successively roll out the codes. As an illustration, recently we made changes to the housing code. We brought in some additional measures because we listened to what stakeholders and councils had to say. We brought in some new provisions relating to internal alterations to existing houses and alterations and additions to existing houses that were not in that first group of matters that were introduced in February.

People had told us that the controls were too restrictive. We are aware of it, we will continue to listen to councils and we will take on board the advice we get from councils and practitioners about how the code operates to ensure that we do not go backwards in individual pockets at the same time as we are generally going forwards.

Mr HADDAD: I wish to add to what Marcus just said. We have given councils the choice to use their own controls until February next year if they think they can achieve a better outcome with complying and exempt codes. What Marcus is saying is correct. Whether or not it is good or bad we are getting general feedback that our exempt and complying codes are too restrictive relative to other jurisdictions and other codes. We will have to work much harder to convince local councils and communities to accept some of those codes.

Because of the restrictions we have put on our codes we have had expressions of concern from communities that it was allowing houses to be built everywhere without the usual checks and balances. That was the strong feedback we received at various stages. Because of that we readjusted the code and we ended up with a code that many would argue is too restrictive. We have to do much more work on it. At the moment we are meeting about 11 per cent, 12 per cent or 13 per cent of our housing provisions, whilst other jurisdictions are meeting 50 per cent or 60 per cent of their housing provisions through exempt and complying development regulations. They manage to do that—with broad acceptance from their communities—in heritage areas, flood prone areas and other areas.

We have a challenge: we must convince communities that we can still get proper checks and balances in exempt and complying regulations through our development approval process. If that is outcome we want to achieve we must work much harder to try to free up the system. We are talking about new legislation but this is an avenue where the system can be freed up. It is a matter of trying to free up the system while still delivering proper outcomes. We have a community that is demanding appropriate balances in providing those outcomes and we need to better understand those requirements and deliver them.

The Hon. RICK COLLESS: After the consultation process you have gone through in working with local councils who has the final say?

Mr HADDAD: The guiding instrument that delivers this is the State environmental planning policy. That is the guiding instrument. The State environmental planning policy went through a public exhibition process, it went to the planning directors—who, by the way, were critical of various aspects of it—and it went through various consultative mechanisms. We took on board a number of things. In the end the department advises the Minister, the Minister makes the decision, and the SEPP is gazetted on that basis.

As Marcus was saying, we have an ongoing review mechanism and we receive submissions from various councils and various people to readjust. An independent committee is reconvened which advises me, I advise the Minister, and the SEPP either is notified or it is not as an ongoing process. We are now monitoring the process. We are having difficulties in monitoring it because we are running this process and we still have development control in councils, or other provisions in their LEPs, that are running concurrently with that. Eventually we will be able to achieve the right outcome.

The Hon. CHRISTINE ROBERTSON: I wish to go back to the map. Can you tell me whether the regional boundaries map that we have relates to administrative boundaries? We are getting mixed messages. We have been across New South Wales and we have seen some incredibly good strategic regional plans with which the Department of Planning has been involved. However, they bear no relationship to this map; rather, they bear a relationship to the industry bases or to the socio-demographics, apart from the amazing one that relates to a corridor between Sydney and Canberra. From the information we received when we were out on the ground I believe this map to be an administrative map rather than a planning map.

Mr HADDAD: Are you referring to our sub-regional strategies? Sometimes our sub-regional strategies cover areas within those regions, those areas.

The Hon. CHRISTINE ROBERTSON: That is fine, but does the map we are all looking at, which has five or six regions, indicate that you are preparing strategic plans for those regions? Or is it an administrative process?

Mr HADDAD: This is an administrative process.

The Hon. CHRISTINE ROBERTSON: Fine. That removes the other issue. While the Committee has been travelling around, it has had a massive amount of discussion about how to define a region. In some geographic areas, whether in Sydney, Newcastle, Wollongong or outside those areas, there has been some very good work by individual groupings to structure an attempt at a strategic direction for the entire regions from which they can operate. Some requests received by the Committee during its consultation—and we had no definition of a region because there is still some fight about that, as you well know—would operate well, because of the excellent administrative process.

The Committee visited the council that includes Orange and Bathurst, the Central West Regional Organisation of Councils [CENTROC], which had some exciting, well put together, proposals for the whole region. Some requests were for legislating the strategic process. Specifically relating to what you have said this morning, has the Department of Planning, and the planning process for the State, moved more towards working with the incredibly complex regulatory process rather than the strategic process? Has that happened because of the current legislation? It appears to me that that is what has happened. People are asking for legislated strategy.

Mr HADDAD: Are people asking to legislate the strategies themselves?

The Hon. CHRISTINE ROBERTSON: Not to legislate the strategic plan, that is endorsed by Parliament. But people are asking that the process of the strategic planning be legislated, rather than the regulations applying to the buildings and the environment. It was more about changing the Act.

Mr HADDAD: Maybe I will start by describing the actual process. We have done 10 regional strategies for all growth areas along the coast; different regional strategies. They have all been through the Cabinet process for the purpose of getting a whole-of-government sign-off on it. For those strategies, I issue directions to local governments to take them into account when they do their plans, or to justify the inconsistency if there is one. In the main, that is the legislative framework that we use. We do the strategy, we take into account local conditions, and then we adopt them. One way of adopting them is in the plan-making process.

Also, we have been increasingly adopting them by telling people that if they want to rezone their land or change anything, and if that is consistent with those strategies, we will deal with them. However, if they are inconsistent, they will have to do a lot of work and convince us why we should consider them. That is what we have been doing. That is the current process. If we want to legislate the strategy—and I can fully understand that you are not saying that—it is very difficult to make those strategies law. We used to have provisions in the regional environment planning [REP] process that were, in a sense, planning instruments, legal instruments. We found it very difficult to adjust those REPs. They were very difficult. Every time we want to amend something of substance we have to go through a very lengthy process to be able to deliver the outcome.

The Hon. CHRISTINE ROBERTSON: Like mining.

Mr HADDAD: A good strategy needs to be almost an on-the-ground living strategy. We need to be able to monitor. We will be putting much more resources into monitoring the effectiveness of those strategies and them come back and readjust as necessary. We need to be a bit more flexible in doing that. Basically, that is

what we are doing. Whether we got the boundaries right, the basis of it, it was a difficult judgement. Maybe, I am more than happy to go back and rethink it when we do our reviews to see whether we got the boundaries right. Maybe things are different. We should definitely work much closer with the natural resource management committees and all those people to pick up the local concerns.

We will put much more emphasis on making sure that those strategies are good strategies. I know that when we started about two or three years ago, my main goal was to try to get those strategies out. We had not done it before, to the best of my knowledge. We wanted to put efforts into getting those strategies out. They may not be 100 per cent perfect; hopefully next time they will be better. That is much more important, in my submission, than a very strict legislative process. But we need the legislative provisions to be able to put those strategies into effect.

The Hon. CHRISTINE ROBERTSON: I understand. In relation to that, when the Department of Planning is working on defining a region, does it use the socioeconomic data from the Australian Bureau of Statistics? Do you see that data? Currently Byron Bay is with Clarence, and that is a bit sad.

The Hon. RICK COLLESS: It is worse in the west.

The Hon. CHRISTINE ROBERTSON: Yes, but that is a really extreme one. All the regions have incredible issues.

Mr HADDAD: I do not know that we have used the data to define the region, but in formulating the strategies we use the data. In all our documents and background studies we use the data, but I am not sure to what extent. I need to get back to you on that after I have refreshed myself on how we define those regions.

The Hon. CHRISTINE ROBERTSON: Planning decisions for places such as Byron Bay are much different from those for Coffs Harbour, for example, because there are different humans there.

CHAIR: Mr Haddad, could you forward that information to the Committee?

Mr HADDAD: Sure, with pleasure.

The Hon. CHRISTINE ROBERTSON: As you know, it has been a contentious issue about how you define a region.

The Hon. MICHAEL VEITCH: I take this opportunity to close up some lose ends from my lines of questioning. There is no consistent theme to my line of questioning; I just want to close up a few loose ends from the last 12 months. First, one accusation that has been levelled on a regular basis towards the Committee is about the current planning reforms. It is said that they are Sydney-centric, they are very much based on the model that has worked in Sydney, and that is now being imposed on, or as someone said "thrust upon", everyone else. Is that correct, or is it a perception built on a falsity?

Mr HADDAD: It is a perception and sometimes maybe we have either not communicated or not practised it in many areas. It depends which area you are talking about. I will start with planning. I know that there were submissions to the effect that maybe we do not have our planning teams running the regions, that it is at a bureaucratic level and that everything is being run from Sydney. That is a bit of an unbalanced view because essentially it is no good to give the delegations to teams when there is not a strategic framework. It would be wrong for the centre not to establish first rules, strategies, or whatever, and then have people operating on the ground having the delegation to exercise those rules.

My judgement was basically that we were not advanced enough to be able to do that, to start with. That may have given the impression that the teams are not reflecting what the regions are doing. Certainly it is incorrect to say that regional issues are not inputting into the formulation of the strategies, for instance, or into the inputting of the standard LEP programs—that it is all being run regionally from the local councils, so they should reflect the Sydney units. In terms of the plan-making process, I certainly think that that is not correct, but it is a perception and maybe it is the perception because usually there is more disagreement in terms of the outcome. That is the difficult bit.

That takes a lot of time in us settling some of the LEPs that we now have, because there are discussions about strategies, inconsistencies with councils and the reality is that at the end of the day someone will have to

make a judgement. That judgement may not be acceptable to some. Having said that, in the exempt and complying area probably we should be doing better at reflecting more the non-Sydney based areas. There are much more pronounced areas in this area of planning reform which we need to adjust, in my view. We have to start putting in a system and that would be my advice to government. In the next round we will have to recognise more the differences in the regions.

In the area of the planning panels that we have instituted, this is an enabling mechanism that will apply to everybody. When they are operating we will be monitoring and if there are areas that need to be adjusted we will adjust them to reflect that. The short answer is that sometimes it is a perception more than the reality; in other cases probably we need to readjust a bit in some areas, such as the more local areas. Exempt and complying is an example that reflects more the local characteristics. Probably we will see more of that. On Thursday this week I am going to CENTROC and will be putting much more effort into trying to recognise that. We will have to readjust this.

CHAIR: On the adjustment, how often do you see that taking place? Will it be on a regular basis or as and when necessary?

Mr HADDAD: As a general observation my comment is that if we want to make sure that the planning system, and more particularly the reform to the planning system, is operating effectively we need to monitor on almost an ongoing basis. We need to put much more effort into that. There is no question about it, because we can come back here next year, or whenever, and the question will be: You have done all that and it is not working, so what are the alternative systems? There is no question that we need to put more resources into that. Having said that, that does not mean that at the end of the day in all cases we will have agreements with various people. There will be disagreements and people will say that the outcome is different from what people are doing in Sydney, or wherever. I am hoping that shortly we will publish a document on all the monitoring processes that we are putting in place. I have asked my colleagues here to do it and hopefully it will be made public to show how we are going to do it.

The Hon. MICHAEL VEITCH: My next two questions relate to local environment plans [LEP]. You mentioned these in your previous response, but one of the criticisms of the LEP process that the Committee has heard is that in local areas the local flavour, the local nuance, is sent up as a part of the process. A community consultation has taken place, and the community's feelings are known. That is sent to the Department of Planning and then to Parliamentary Counsel. By the time it gets back to the local government, the legalistic talk removes the local flavour and local nuance. The Committee has heard evidence of that. Is that a fair comment? Does that actually happen? Do the solicitors get a hold of it and remove all of the local flavour? And I am not attacking solicitors.

Mr RAY: I can assure you that there is no plan in either the department or, I am sure, in Parliamentary Counsel, to remove the local flavour. There is an issue I think we should acknowledge, in the way that local environmental plans have gone through the process of finalisation and preparation. Historically, it is certainly true that if you breach a plan you can be liable for criminal penalties of up to $1.1 million. The Government, for close to 30 years now, has said that there needs to be a legal review of those plans to ensure that if somebody is charged with an offence under the plans they understand it is clear what the breach is and all those requirements for criminal cases.

What has happened over time is that the lawyers get involved right at the end of the process, and I think this has been part of the difficulty. It is not really until the plan has been through all that consultation that in many cases it gets a legal review. Sometimes some of those clauses might not be absolutely clear. I am sure that, with the best will in the world of all parties, there is miscommunication when something is sent back.

One of the important initiatives that we are now going forward with in the reforms to plan making is a different way of drafting and a different way of going to the community and conducting the community consultation. We are having a planning proposal rather than a draft instrument. That planning proposal is, if you like, in narrative form what council wants to achieve with that particular plan. Then with the drafting process, although it still comes at the end, people have not been thinking in terms of actual clauses in instruments. So that planning proposal is to form the basis of the legal drafting. Then there is to be a cooperative approach between Parliamentary Counsel, the department and councils, a more cooperative drafting approach—which is something the department has done for a long time with Parliamentary Counsel on State instruments. So we are now moving towards that sort of interactive approach.

I know that Parliamentary Counsel has had representatives from the planning director's group and has spoken to them about this new approach. Obviously we have to make sure we resource it, to make sure that it does work. It will probably be a more resource-intensive approach. But we certainly want to end up with a plan that suits what the council's objectives are, within the framework of the standard instrument. We want to make sure that the strategic vision comes through, selecting all those bits in the toolbox. It is probably only through the fact that we have some degree of standardisation in the standard instrument that we are able to go to this next stage with that process.

Mr HADDAD: The main message here—and that is why we need the new method—is to involve the legal aspects and Parliamentary Counsel early as part of the process itself, rather than at the end. We have tended to go at the end, and rightly so there are basic issues at the end that we are struggling with, some things that should have been clarified early. That is what we are trying to do with the new part 3 process. Definitely we need to administer that, to ensure that there is this early process going on.

CHAIR: The concern was that council starts off with something, and by the time it gets to Parliamentary Counsel the intent gets lost. It is not a matter of doing something because they want to change it; it is the intent. I think what we really need to address is: How can we better do it before it gets to that final stage? Do they need to have a couple of goes at it, involving consultation? What is the way we could go forward?

Mr RAY: I think it is moving to this new model. As I said, the department has been involved with Parliamentary Counsel for some time on State instruments—a more cooperative drafting approach. It is a communication issue really. Part of the difficulty, I think, is that when an instrument has come back in the past, the explanation for the change is not apparent sometimes. For it to be successful, there has to be communication between all parties as to why this has been changed, or maybe this would be a better approach. It also gives council the opportunity to say, "But you are losing the local flavour." That is our approach going forward.

The Hon. MICHAEL VEITCH: So we get through that process. People have been saying to us that once they get their LEPs back, there is the timeframe for a review, the proposed five years or whatever. It has also been put to us that maybe a series of triggers would be a much better way of doing it. Along similar lines, electoral boundaries are altered after a shift in population, either plus or minus. There could be a significant industrial change to a particular council that triggers a review of the LEP, as opposed to timeframes. Would you be amenable to change like that?

Mr HADDAD: Yes, I think that is appropriate. Timeframes are just timeframes, but the strategic issue is significant changes or changes which can impact on the outcome. Obviously there are other things, including the rate of growth, different growth, and different requirements. These are things that change in communities. These things are happening, and we are still waiting another five years to review the LEP. Obviously there is something fundamentally flawed in that. But I agree with you.

Ms STONE: We are currently monitoring SEPP 1 variations on standard. We have only a small proportion of councils using SEPP 1 extensively. That clearly is a trigger that something needs to be reviewed—maybe not the whole LEP but a particular standard in the LEP; it may be timely. We are doing that sort of monitoring at the moment.

Reverend the Hon. FRED NILE: We have had some information that gives the impression that there is some sort of bottleneck with the LEPs with the Parliamentary Counsel and lengthy two-year delays. Would it be better to have within your department—you have lawyers already—a legal team to handle the job that the Parliamentary Counsel is doing, that is, people who have your thinking, so that it is not a detached group that are doing it? Could that be investigated?

Mr HADDAD: We have our lawyers involved in the process, in briefing and all the rest of it. I suppose it is just going beyond the statutory provisions to have our own lawyers doing the role of the Parliamentary Counsel. I think what we have been trying to do—and probably we need to do first before going there—is to, as I said, readjust the process so that there is much better interaction earlier on, and advocating the practice with councils as well so that councils can also have some legal advising or legal checking. I am not sure that they have all had it before, involving or at the same time as Parliamentary Counsel. With regard to the whole functions of Parliamentary Counsel, I want to address improvement to the process itself, rather than going beyond that if possible.

Reverend the Hon. FRED NILE: In one of your answers you referred to the regional planning panels. Would you briefly comment on how they are progressing? I notice some councils were opposed to them and were not going to appoint their representatives. Is that obstructing the process, or are you getting around that problem?

Mr HADDAD: If I may, I will pass on to Marcus, who is in charge of this area.

Mr RAY: I have some of the statistics here. Initially there were some concerns with some local councils about how the regional panels would operate. The most recent statistics I have show that for the five regions that were initially established on 1 July, which excludes the western region, 96 councils out of 108 have now nominated their local members forced there are a further six councils of those 108 that we are still waiting on to nominate. They have said that for various reasons, including their own council processes or whatever, they need an extension of time. I think that leaves about six councils that have not nominated.

Reverend the Hon. FRED NILE: Do we know the six?

Mr RAY: Yes, I can tell you the six. Cessnock, Byron and Blacktown have said they definitely will not nominate. Gunnedah, Palerang and Shoalhaven have said they are not nominating at this point in time but they might nominate in the future. What we are doing with those last three is that we are approaching them and trying to deal with the issues that are of concern to those councils. In relation to the other three, we are in the process at the moment where the chairs of the regional panels are holding orientation sessions throughout the different regions in the State. The first one of those was in Coffs Harbour on Thursday, and I think tomorrow we are in Tamworth and various other places around there; we are going around to all those regions. We are certainly inviting the general managers and the senior council staff along from those councils that have not nominated, so that they certainly can be aware of the process. If we get any development applications for those council areas, we will be approaching council again about the question of nomination.

The Hon. MICHAEL VEITCH: I have posed this question to a range of our witnesses. It is about ease of access for the end user of our planning system. I have been suggesting to people whether it would be possible to go on to the Internet, run your cursor across the map into a particular parcel of land, and then up would come all the development controls and planning instruments that relate to that particular parcel of land cost we have had a range of responses, from "We cannot do it" to some councils saying they are already doing that or have a very similar model to that. From the perspective of the Department of Planning, is it possible? If it is not possible, what would we have to do to make it happen? And who should do it?

Mr HADDAD: I cannot see why it is not possible. If it does happen—and I recognise that some councils are doing it more than others—then there will be significant efficiencies gained, not only for the end users but also for the policy makers and others. So I think it is a very good thing. It is something that we need to have resourced properly, because it is not only the doing it but also the maintaining of it that is very important, particularly when there are statutory obligations, information given to people which can impact on them.

CHAIR: That is one of the things that came up: Some of the councils would do it but there was the cost of maintaining it.

The Hon. CHRISTINE ROBERTSON: And the possibility of further litigious behaviour.

CHAIR: That is the point: Who should do it.

Mr HADDAD: We have started an e-planning program in the department, together with the Department of Local Government. Yolande can explain a little more about that. We are hoping the first step of it is to produce what we call a roadmap, which would basically put together what sort of things are practical to put this stage. I know that the Department of Lands has done some work as well, and will have to do it. I suppose we will have to do it, with my submissions and whatever, but in liaison with the Local Government and Shires Associations or representatives of local government. I think that is an exercise where we will have to do it jointly.

The Hon. CHRISTINE ROBERTSON: And the Department of Lands?

Mr HADDAD: And the Department of Lands. We have also made a number of submissions to the Commonwealth through a national program that it is running. We are hopeful that we can progress it. But it is

something that we will have to accelerate without any question. We are also particularly interested in using it generally in terms of improving public participation. This is another thing that other jurisdictions for whatever reason have done better than we have. I think we will benefit from a recommendation to accelerate this work.

Ms STONE: The Commonwealth is also promoting this very strongly. It is coming up with a common computer language that it is calling eDAS, which will mean that the States will be able to talk to one another as well and councils will also be able to exchange information. There is a great deal of interest. Victoria has spent about $22 million already on trying to move its program forward. In some areas it is doing better than us, but we have some councils that are way out there. It is very variable.

In addition, there is an interest in electronic delivery of the codes and we are piloting a program involving that. There is a great deal of interest and support. Most council web sites have something and some, like Pittwater Council, are well down the track. The big step is to get all that information on the 149 certificate; that is a real goal. That means that when you lodge the DA you have all the information. There is certainly a great deal of interest and support across councils and across the State and we are working positively together.

The Hon. MICHAEL VEITCH: Mr Haddad referred to communication with the practitioners at the coalface. The Committee has been told that with the plethora of reform and the significant changes that have made in recent times there has been training but in some places it has been for only two hours. Is the department conducting any evaluation of the training and does it have plans to roll out even more? It would appear that, particularly in the smaller country councils where resources are limited, people are grappling with a large number of changes.

Mr HADDAD: This is a factual response. We have put enormous resources relative to our total budget into trying to communicate. I am more than happy to provide the Committee with all the details. Of course, we always need to do more. We will definitely continue to put it very high on our agenda. In my submission, it is something that we have done better than in any previous reform process. We have really put in a lot of effort. Having said that, I respect that people say that they have had short notice. Some of these changes are significant and they involve amendments to systems and procedures within councils and people need time to adjust. We have tried to expedite the introduction of the reforms. I support the Government's decision to introduce it and then to adjust as we progress, and we will continue to do that. I am more than happy to provide more details about the resources we have put into that.

Mr RAY: Obviously we have made an effort to get out into the regions and to talk to councils about many of the initiatives. We recognise that sometimes two or four hours is great, but it is not enough. We will be back in the regions. We have established some dedicated information lines. We have one in particular for the housing and commercial and industrial codes. We also have a dedicated line for the joint regional planning panels. In all the presentation and information sessions we try to tell people where they can go to get further information. We also have a range of information sheets and user guides available on the web. We also have a dedicated website for the Planning Assessment Commission. We try to provide the resources even if we cannot physically be there. We have a package of resources available on the web and we have people to whom the councils can talk.

Ms STONE: With regard to plan making, we have skilled up our regional teams and they are now going out to individual clusters of councils helping them with training and understanding of the new part three process.

The Hon. CHRISTINE ROBERTSON: With the LEP process?

Ms STONE: Yes. This is an example of where our regional teams are taking the front running on doing that training and skilling up local councils on the plan making processes.

The Hon. RICK COLLESS: The complying code SEPP originally said that neighbour notification had to occur within 48 hours of receiving approval. It has now been changed to 48 hours before construction commences. Is that correct?

Mr RAY: Yes, that is correct.

The Hon. RICK COLLESS: Can you explain to the Committee the reasoning behind that change?

Mr RAY: The original provision was always meant to be a courtesy notification. It was brought in with the housing code in February. There were a lot of practical difficulties with implementing that notification because it required notification to any adjoining owner within 40 metres of the new house. There were difficulties with vacant land, certifiers being able to access the property ownership details and councils' concerns about providing that information to certifiers. A range of matters came up and there were some practical difficulties. We took that bundle of issues back to the complying development expert panel that I referred to and asked what approach we should take. I must acknowledge the assistance of the Local Government and Shires Associations. They polled about 49 councils and provided us with feedback about what would be the best approach to take with regard to notification in all the circumstances.

One of the issues that came up was that it is difficult if a courtesy notification happens immediately after approval but the construction does not commence for between three or five years because the complying development certificate has the same life as a consent. That raised a range of issues. The group included the Planning Institute, the Building Certifiers Association, the Urban Development Institute and the Housing Industry Association. The recommendation of that stakeholder group, and particularly from the councils, was to have no notification at all. That was a step too far for us. We acknowledge that there needs to be a courtesy notification so that people are aware when something is going to be constructed next door to them. We went back to the model we had before the reforms with State Environmental Planning Policy 60, which was the original exempted compliance policy from 1998 and which had the two-day before work commenced neighbour notification.

The Hon. RICK COLLESS: In that situation the neighbours have no right of appeal.

Mr RAY: It is purely a notification that the work is to commence. That is one of the features of complying development. Because the development meets the predetermined standards, or the envelope, there is no need for consultation.

The Hon. RICK COLLESS: When will the draft centres policy, which forms part of the planning framework, be finalised?

Mr HADDAD: We have received more than 100 submissions about the policy and we continue to receive submissions. Some of them raise very difficult issues. It is one of the most significant policies in planning terms and it will have serious implications. We want to ensure that we recognise the regional/rural and metropolitan differences.

The Hon. CHRISTINE ROBERTSON: You had better!

Mr HADDAD: We need to look at this. We are getting a very strong message in that regard. We are working very hard to get something in place before the end of the calendar year. I cannot say exactly what month, but we need to ensure that we address each issue properly.

The Hon. RICK COLLESS: Were the submissions generally supportive of the draft policy?

Mr HADDAD: They were generally supportive. However, I must say that sometimes they were at opposite ends of the spectrum. Some submissions said that this is going completely against the centres policy, others said that it would open up everything and others said that it would affect competition and so on. In general, the message is broadly supported. Some submissions want the department to be more sensitive to differences in regional and rural settings as distinct from metropolitan settings, and we are working with that. I want to have more discussions with some of the local councils as well. However, local councils generally are supportive of the policy as distinct from the other sectors.

Reverend the Hon. FRED NILE: In your evidence on 30 March you said that the Growth Centres Commission, which is now incorporated in the department, would be doing an audit of land release opportunities statewide. Can you provide an update on that audit?

Mr HADDAD: They have done the audit and we are looking at it now. Hopefully it will be made public soon. They have conducted the audit and we are progressing with that.

Reverend the Hon. FRED NILE: In identifying land release opportunities, has consideration been given or will it be given to current development strategies and infrastructure planning?

Mr HADDAD: Yes. The main direction as the outcome of this audit will be to focus on areas where it is possible to develop with servicing arrangements that are easily implemented. As I tried to say before, infrastructure planning as a discipline is an integrated part of advising governments in terms of land release generally.

Reverend the Hon. FRED NILE: The Farmers Association submission raised an important point that when councils are faced with a choice of selecting either council-owned land or private farmland to become an environmental zone that councils select the non-council land for environment zoning and the council land for development purposes, which discriminates against the private farmland. Has any thought been given to providing guidelines for councils in making those decisions and could any consideration be given to compensation for farmers whose land is zoned environmental?

Mr HADDAD: I am happy to consider providing more guidance to councils and others about this issue. I am not sure whether I can go beyond the existing provisions for compensation because the legislation provides for land acquisition in cases of major down zoning and so on.

Ms STONE: We recently put out a planning practice note about environmental zones, or E zones. In most of the zones council have the ability to permit agricultural uses. This is a local issue and it is up to the council whether they permit it or not. So I think it is very much up to the discretion of the council with regard to E2, E3, E4 zones, whether agriculture or other uses like ecotourism or those sorts of uses are permitted. It is very much up to the council, based on the merits of the particular situation.

The Hon. CHRISTINE ROBERTSON: This question is really on notice because it is far too complex to be answered in a short period of time. It relates to original statements about there being no requirement for review of the planning Act. Much of the evidence we have received from planning experts has indicated that a long-term review—like, let us not write a new one next year but perhaps have the commencement of the process of the review next year—would give us an outcome that would mean that we would not have masses of pieces of legislation for the one process and perhaps stand the State in good stead for the future. The question that will be sent to you on notice relates to exactly why you do not perceive that to be a good idea. The other part of the question is, do you propose then—because we currently have a Commonwealth review going on of the planning process—to continue to amend the multitudinous Acts that planning persons are dealing with in order to deliver some real strategy for the future of New South Wales? They are definitely on notice questions and they will be sent to you because they would probably take another an hour to discuss.

Ms STONE: Yes.

CHAIR: Would you please take those questions on notice?

Mr HADDAD: Yes. Mr Chair, we discussed regional strategies. I have a document here titled: Regional Strategy Update Report 2009, in terms of the first monitoring that we have done and how it has been implemented. May I table that document?

CHAIR: Yes.

Regional Strategy Update Report 2009 tabled.

CHAIR: Is there anything else you would like to add that you think we may not have covered and might be of interest to the Committee?

Mr HADDAD: No, but thank you for the opportunity. We will continue to be happy to provide any information to the Committee.

CHAIR: There maybe other questions from members of the Committee which you will receive through the secretariat. If you would not mind giving a response to any questions received within 21 days, it would be much appreciated. If you have any difficulty in doing that, would you please contact the secretariat and let them know?

Mr HADDAD: Of course.

CHAIR: I thank all of you for your attendance this morning and for your contributions. You have provided a lot of material and no doubt the Committee will be asking you to respond to further questions. Thank you for your support.

(The witnesses withdrew)

(Short adjournment)

DON COLAGIURI, The Parliamentary Counsel, Parliamentary Counsel's Office, Level 23, 50 Bridge Street, Sydney, affirmed and examined:

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

Mr COLAGIURI: I did not put a submission to the Committee's inquiry so I thought I would make an opening statement. In view of the fact that the request to appear before the Committee was in relation to the role of the Parliamentary Counsel's Office in drafting environmental planning instruments, I thought I would try to give a bit of an outline of what we do. I am sure you will want to examine those matters further in questions. I will just let you know that our role I think is most probably not well understood, and I suppose we should be spending more time going out and explaining what we do. We deal with State environmental planning policies, SEPPs, which are made by the Governor, and local environmental plans, which are made by the Minister, but not development control plans, which are made by the councils.

Broadly speaking, we have three roles. First, we draft the planning instruments on the instructions of the department. We provide a legal opinion that the planning instrument can legally be made under the Act. The third thing we do is through the New South Wales Government legislation website, which we maintain, we provide public access to consolidated and up-to-date planning instruments. On the drafting side, the office has been drafting instruments since the original planning scheme ordinances of the 1960s and the 1970s. In fact, it was one of the first instruments that I dealt with when I joined the office in 1974, and it is a long time ago. Since then we have been responsible for drafting all the LEPs under the new Act.

On the question of legality, that is a role we also exercise in relation to regulations. The Government does not proceed with making a planning instrument unless it has been drafted by Parliamentary Counsel and settled by Parliamentary Counsel and we have provided an opinion that it can legally be made. May I briefly say, because it has been raised, that there are a number of reasons why we exercise this traditional role. One of them is that the planning system is in New South Wales currently a fairly legal system. It operates by lots of rules, and our business is writing rules. It involves lots of legal rights, private lawyers, a specialist planning court and a desire by planners to have documented detailed planning rules. I guess Sydney is a very litigious place when it comes to land rights.

I think government expects that these professional drafting services are provided because of the importance of these planning instruments to the State's economic and social development, and also of course the interests of local communities. I think Mr Ray mentioned—and people do not often appreciate—that breaches of the requirements of planning instruments, SEPPs and local plans constitute crimes. Breaches of these rules as to when you can or cannot carry out development with or without consent is a crime with a penalty of $1.1 million, plus $110,000 for each day the offence continues. Of course, the reason for this very high penalty is that there are some provisions in local plans, such as protection of heritage items, where you need a really high penalty in case carrying out the development outweighs the fine for doing away with a heritage item. But it is one fine across the board. There are also on-the-spot fines, too: $1,500 to $3,000 if it is a new development.

Of course, planning instruments regulate a lot of activities. Anything that anyone says you do on land or whatever use you make of land is something that you control by a planning instrument. The other thing that is often not also appreciated is that section 28 of the Act allows a SEPP or a local plan, for the purposes of permitting any development that the plan authorises, to suspend any Act of Parliament. It can suspend any Act of Parliament and it can suspend any building covenant, and these things happen from time to time. Unlike regulations, Parliament cannot disallow planning instruments. So to a certain extent I think traditionally Parliamentary Counsel has been involved to provide some degree accountability that the planning instruments are in fact in accordance with what the Parliament intended when they enacted the Act.

The other area that we get involved with, and a role we play for all Acts and regulations, is providing public access to up-to-date planning instruments. Particularly, we used to do it traditionally in paper form; we now do it online. We are able to provide pretty well up-to-date access to authorised versions of the planning law

on the official New South Wales legislation website. This is a website that is widely used by the public and the private sector, and also ordinary members of the community. We take the view that it is our role to make the law accessible as widely as possible across New South Wales so that anybody with ordinary Internet access can access the law quickly and easily.

We have had to do a fair bit of work to get planning instruments on the system. This process of getting this law publicly accessible starts with the drafter who prepares the original instrument. We use a system called SGML—I will not go into the technicalities, but this is a sort of coding that you do not see on the printed document but that is in the electronic file that our drafters embed. It then produces the final instrument that is made by the Minister or the Governor, if it is a SEPP. If there are amendments, those amendments are incorporated by our staff in the principal instruments so that an up-to-date version of the law is available within three days. We try to do it on the day but three days is our turnaround time. Since October last year we have had a fairly world-leading development in that our online version of legislation is now official; it has the same status as paper reprints.

We also have a new system started in October that when instruments are made they are no longer officially made by being published in the gazette; they are now officially made by being published on our website. So we take the file we have drafted and we publish it to the web. All this process is dependent on the fact that we draft the instruments because we only provide this service for instruments that we draft. We do not have a very big staff. It is a very automated and specialist process, and that is why we can provide it very quickly. Because most of the issues have been raised about our capacity to draft and timelines, et cetera, we have in recent years had a very extensive enhancement of our EPI drafting program that coincided with Minister Sartor becoming the Minister. There were two very experienced additional drafters appointed. We have a range of measures in place, including the Assistant Parliamentary Counsel, Roby Hodge, managing the program. There is a lot of interaction now, I think as Mr Ray mentioned, with the department and liaison.

We keep very elaborate records of what instruments we deal with and how long the instruments are with us. We have a publicly accountable performance measure that we will deal with an average—this is a performance measure that we apply to regulations—of at least 70 per cent of instruments that are submitted to the office for drafting and an opinion within 20 business days. Of course, some instruments come back. They go on public consultation, they are changed and they come back, but while they are in our office that is our performance measure and we report on this publicly over the years in our annual report. We keep records of every instrument that arrives, when it arrives, when it goes out, how many pages it is. All this is accessible and looked at on a weekly basis so that we can monitor the progress of instruments through the office.

Our performance over the past five years, for the percentage of instruments completed within 20 days, is 75 per cent in 2004-05, 75 per cent in 2005-06, 89 per cent in 2006-07, 92 per cent in 2007-08, corresponding with that increase in the drafting resources that we got, and 88 per cent in 2008-09. That is our performance.

Briefly, may I indicate that everything has changed now since the rewrite of Part 3 that commenced on 1 July with the move to prose instructions for the drafting of instruments. There are two major changes with the new Part 3. One is that we now have a gateway process so that whereas in the past instruments would come direct from council and then we would work on them and they would go back to the department, there would be issues to be sorted out and they would go back and forth. Eventually they may never have been made or major changes made before they proceed.

Now the process is for the department to have a committee looking at these things and making a decision as whether these things are to proceed or whether they are not to proceed. So that will be an advantage. The other thing of course is prose instructions. This should speed up the process for finalising drafts. We moved to prose instructions for drafting bills back in the 1960s, and we moved to the system of using prose instructions for regulations in about 1990.

The Hon. CHRISTINE ROBERTSON: I am sorry; we do not know what prose instructions are.

Mr COLAGIURI: I am sorry. We always accuse planners of using jargon. That is when councils, when they are settling what they want to do, will describe the process by describing what the problem is they are trying to deal with in ordinary language, not by producing a draft instrument, describe exactly what it is they want to achieve. So instead of producing documents that say, "omit the word 'dog' after the word 'cat'", "insert the following clause after clause 5", and "subject to clause 55", hopefully we get a document that the people and council officers understand—and this hopefully will mean not only that council members can understand what it

is that is being proposed and detailed, when it goes to the department, the departmental officers understand and it is clear what it is that is being proposed. When it goes on public consultation it is that proposal that will go on public consultation, rather than a technical legal instrument.

It is only after that proposal, if there is a decision to proceed with it, that we will then drafting the instrument to give effect to it. Of course, that will also involve the process of liaising with the department and the council, drafts going back and forth, as do with all instruments, to settle whether that instrument is in fact going to achieve the purpose that was intended. That is the process that goes on for regulations and bills.

The Hon. CHRISTINE ROBERTSON: Thank you.

Mr COLAGIURI: I very briefly mention the standard instrument. That has been a major issue, as you can see from the submissions. It is not just Parliamentary Counsel who has decided things should be standardised; it has been the Government who decided this after we had that period in the 1980s. Where we had a thousand flowers bloom and our planning law had thousands of different zones, terms that were used, that we used differently in different councils. That was the reason for the push for standardisation.

The other part of it was that a lot of the decisions the councils make in implementing their zoning is being done now by maps rather than trying to describe things in words. They are making the law by virtue of maps as to heights of buildings, not just land zoning but describing the heights of buildings, describing the land that is flood prone and densities. That is a very important thing because we have provided access to those maps on our website. We have a significant role in checking those maps to make sure they comply with the department's standard. If they do not comply with the department's standard they will not display properly. By way of observation, my secretary some time ago was spending about half her time in checking maps because a lot of technical detail needs to be checked.

I conclude by saying that Parliamentary Counsel does whatever we are asked to do by way of drafting services by the Government. I point out, of course, that our services are free of charge. I should qualify that—free to the department and to councils.

CHAIR: Some councils have said in evidence that they have seen amendments to the LEPs from the Parliamentary Counsel's Office that they believe went beyond legal drafting and touched on planning matters. In evidence, Penrith City Council posed a question whether it would be possible to remove PC from the LEP-making process. It said if we have a new template as a blueprint our local environmental plan should be produced and we have a standard set of zones, a standard set of land use definitions, a standard framework. I pose the question, why do we need to go backwards and forwards to the PC if we are working on a standard proposal? When assessing draft LEPs, what is the primary objective of the Parliamentary Counsel's Office and do you think there is scope for PCs to be removed from the LEP-making process?

Mr COLAGIURI: That is a broad-ranging set of questions there. To begin with, I think a lot of people's perception about these things and councils' is what they have experienced over the years and it has always been second-hand and we have not had very much direct contact with them because we deal through the department, but back in the 1980s there was a period when a lot of planning instruments were coming straight to the Parliamentary Counsel's Office, they were not going to the department, the minor ones or so-called minor ones. All we had to operate with were the department's stated planning principles called section 117 directions about what should be and should not be in plans. In those days, in the 1980s, it was a drafter pointing out to the council and to the department that there were planning instruments that did not comply with these directions and principles. It was not a role we particularly liked to exercise; we prefer to exercise a role with the policy people working out what it is they want to achieve and making sure that it is effectively delivered.

But, in those 1980s years we were getting involved in that sort of role and, hopefully, that has changed now. So, there might be perceptions from that period. I guess the general answer to the question about the involvement of Parliamentary Counsel is if we are to continue to have a system as we have that is based on laws, on development being regulated by the promulgation of laws rather than based on development assessment, then they need to be professionally drafted. We do this not only for the planning area but also for a whole host of other areas. We do not profess to be experts in planning but we hope we are experts in trying to convey in as plain a language as we possibly can the policy that people have settled on, and that is the role of Parliamentary Counsel in all jurisdictions.

So, while it remains, some body of drafters has to put these things together, and obviously I think Parliamentary Counsel is the best place to provide the best professional services. There are other jurisdictions where separate drafting offices are created. The Commonwealth has a separate office for drafting government bills. It has a separate office in the Senate for drafting non-government bills. It has a separate office in the Department of the Attorney-General drafting Commonwealth regulations and often a separate group in the Taxation Office drafting tax matters, but I think in the States the resource demands are such that we tend to have State offices doing a whole range of different things, as we do in New South Wales.

To come back a bit to the standard instrument, you will recall from the discussion with Marcus Ray gave that the standard instrument is not just a template and you are given this thing and you put in the name of the council and submit that as your plan. An awful lot of drafting goes on in adapting that plan to the local council area. It is obviously now very much easier to do because certain clauses are standardised but there are a lot of additional local variations, local clauses and we have to make sure they are consistent with the rest of the standard clauses, so there is a lot of drafting involved there.

The other thing to do with the standard instrument is that part of the process with the standard instrument is that as changes to the standard provisions occur, it is not just a standard that will stay in that form forevermore; there have been a number of changes to the mandatory provisions that are done by the Governor by order. If there is a dispute, say, about what a church might constitute in a planning instrument, what qualifies as a church and what does not qualify as a church. If a problem has arisen and we need to change the standard instrument definition of what a church is, this will be done by order of the Governor and, after the order is made, it will automatically change all the planning instruments that have adopted the standard instrument. For all those councils that have adopted the standard instrument, it will automatically change the definition in the official version of the instrument.

The way it will be done is that the consolidation staff in my office will get all the various standard instruments and make the change and update the official versions of the website with that change, without the process being that you need to go back to every council and 100 or 150 councils have to go through the process of doing an amendment to their LEP and going through that whole process. Obviously, that is not going to be the source of major changes to the standard instrument by for the standard instrument to work it has to be kept up-to-date, it has to change to reflect changes. So, to a certain extent we are part and parcel of the exercise in being able to deliver officially online the instruments for all the local councils.

The Hon. RICK COLLESS: In relation to that, one of the problems that many members of Parliament have, particularly those of us who are shearers and citrus growers and agronomists, and so on, is we are not used to interpreting and reading that legalese that you are so adept at providing in Acts of Parliament and the instruments you prepare. Is there any way that particularly those instruments going back to the local community—and most people out there in the wider community will never read an Act of Parliament, but many of them will read the development control plans and the planning instruments you have been referring to, and so on. Is there any way you can maintain the legal standard that is required but simplify the language so people who do not have the legal background that you do can understand exactly what is meant by some of these documents?

Mr COLAGIURI: That is an ongoing issue for all drafting officers, all around Australia, all around the world. We meet constantly and discuss these issues. It is not just an issue for planning instruments. I think the way things have developed, there is more and more community engagement with the terms of the law, particularly now it is more publicly accessible and you do not have to go to a lawyer to tell you what your rights are. You can access the law yourself and so can various community groups. So, it is a pressing problem. Sometimes there are provisions of the law that you cannot make easily comprehensible to anyone. There are complicated issues with regard to probate. We try our best but in the area of planning law I agree. In our profession it is called the plain English movement. Some people think that is simplifying everything, making everything simple, but it is not. We still have to deal, as we have with planning, with a lot of very complex policy issues. Planners do not simply make simple rules. They want complicated rules and that is an ongoing challenge to try to present that in a comprehensible way.

I mentioned earlier that one of the things I pushed heavily when I was involved in rewriting Part 3 and setting the standard instrument was to try to move people away from describing planning provisions in words and moving to maps. It is far easier for people to look at a map that indicates various areas in various colours and say this area is this number of storeys or this height, including things such as some plain accesses and tall buildings in the city and very complex rules. One issue is maps and therefore a lot of work is involved. So, when

these documents go out on public exhibition people can see much more readily—it is difficult being confronted with a planning instrument 250 pages long or 150 pages. The clause you are dealing with eventually might be simple, but it is a difficult thing. It is far easier to engage with things like maps, so a lot of those things are done. A lot of technical issues like, if you say it is two metres in height, how you describe where you measure that two metres from and what you include in that two metres, rooms and attics, can be away in the more complex document.

Part of the process with the maps is that we now make those available online so you can instantly click on your map and that opens up in a zoomable PDF version and you can go down to your block of land and see what the zoning is. I suspect that that process has been far more useful in making these instruments accessible to ordinary people than most other things we have done, frankly.

The Hon. RICK COLLESS: In relation to the development control plans, some of the people who have given evidence here have called for council development control plans to be scrutinised by your office. What is your comment on that? Does it have any merit or any need?

Mr COLAGIURI: My answer is over my dead body. No, it is too much work for Parliamentary Counsel. I think there has to be a division when you are looking at planning between the rules that are mandatory, when things are on appeal to the Land and Environment Court that have to be imposed, and a greater focus then on the important matters.

Obviously there is a need for a lot of detail, and a lot of local colour and variation are required. Planners can use a bit more of the technical language that they like to use. As long as those sorts of instruments are not binding law, as are the local plan and the SEPP, they are far better left to councils. Sometimes there is friction between the councils, the department and us. When councils prepare a lot of control plans or other documents they like to pick up other documents that they have. If they are dealing with works on roadways—let us say that they are dealing with an outdoor cafe—they will say, "You can have an outdoor cafe but you have to comply with the council's policy on outdoor seating, which is in another document somewhere out there."

In a legal respect, if we are making planning instruments, the requirements have to be in the document. It is sub-delegation to leave significant matters to some other document that has been made by a council officer. You do not know what the current version is because a lot of council instruments are used as policy documents, different people change them and they do not have the same control that legal instruments have. Often it is better if the development control plans continue to call up various policies and are not subject to the more rigorous process involved in planning instrument drafting.

Reverend the Hon. FRED NILE: I wish to follow up on some details about Parliamentary Counsel. What is the total number of staff that you have?

Mr COLAGIURI: Currently we have 47 staff. Over the past couple of years we have hovered in the vicinity of about 50, but currently we have 47, which is about 21 or so lawyers or drafters and the rest are support staff.

Reverend the Hon. FRED NILE: What is your planning instrument or LEP workload? What percentage of staff would be working in that area? What number of staff are involved?

Mr COLAGIURI: With those new arrangements a couple of years ago we had a change and we enhanced the program. For many years in the 1980s essentially we had two or three people trying to do everything. However, they have now retired. Quite frankly, we have tried to spread the work throughout the whole office but we have a dedicated group that pretty much does only planning instruments. That group comprises a very senior drafter who is a Deputy Parliamentary Counsel from interstate who has had experience in planning laws. It comprises another senior officer who was a drafter in our office, who became a lawyer in the Department of Local Government and who has come back, so she has a lot of experience. We have another officer who does a lot of the minor amendments.

An Assistant Parliamentary Counsel manages the program and spends a lot of her time on it. However, that number of people cannot cope with the numbers of instruments that come in, so we spread them around to our other senior officers. Nine or 10 other drafters might be involved in this work. That group of staff, or those senior officers, are doing government bills, non-government bills and regulations. They are senior people and they are used to dealing with a multitude of jobs. It has been necessary, in particular, because of the demands of

the standard instrument program. We are trying to maintain as much consistency as we can in the office because that has been a criticism in the past. We are trying to get a consistent approach, which is why a lot of the standard instruments have been done by the two senior people that we have.

Reverend the Hon. FRED NILE: Would it be true to say that in recent years there has been a dramatic increase, in particular, in the LEP workload? It is all part of the Government's policy and planning requirements.

Mr COLAGIURI: I would not call it dramatic, but there has definitely been an increase. Our figures are fairly consistent in the amount of work we do in planning instruments. There has been a spike with the standard instruments coming in and we have an anxiety about how that will impact on the office. But the department and the Minister have been looking at that program, they have decided on the priorities and they have worked out which ones they want to progress in an orderly way. We are now much more confident that there will not be that dramatic a pike in our work. However, I would not call it a dramatic increase.

Reverend the Hon. FRED NILE: I thought that the new amendments would have increased your workload?

Mr COLAGIURI: The 2008 reforms?

Reverend the Hon. FRED NILE: Yes.

Mr COLAGIURI: I would say that the 2008 reforms most probably would reduce the amount of work we have because we go to narrative. In the past a lot of the work we have done has been as a result of instruments coming to us. We draft them, send them back, changes are made and they come back again because we have not really captured what they had in mind. They go back and forth, or what the former Minister used to call fluffing around. A lot of work is involved in that process. I am hoping that with the gateway process—the department is making a decision upfront as to what will get through—that will improve things and they will not be coming back as often. But, of course, the standard instrument program is a big program and it has the potential to create a lot of work for us.

The Hon. MICHAEL VEITCH: Thank you for explaining the role of Parliamentary Counsel in a planning context. Prior to that I was not clear about the role of your organisation. In some of the evidence we have received during this process witnesses have been giving evidence based on historical events that occurred a long time ago as opposed to what is happening now. Thank you very much for that explanation. Amongst local government planning practitioners is there an adequate knowledge of the role of Parliamentary Counsel?

Mr COLAGIURI: No. I think I mentioned that we are not very good at telling people what we do. We are pretty busy people so we do what we have to do. The manager of the program recently met with the planning directors and she had a long session to explain what we do, in particular, the impact of the legislation website and that side of things. We are doing a bit more about it. However, there are perceptions. I meant to mention this in case somebody does not ask me the question but often there is a perception about delays and that things have been with Parliamentary Counsel for a long time. There are a lot of reasons why that perception is about.

As I have said, we have very elaborate records. Whenever people have asked us about particular instruments we can put out a great long sheet about where things have been and where they have gone. Often council puts up a proposal and 12 months go by. However, in reality, the proposal has been with us for 10 or 15 working days and it has been elsewhere for the rest of the 12 months. Some of this has been caused by a number of factors. For a long time there was no clear record in the department as to where things were. You would have to find the proposal, follow it around various places and then find a note on the file that it had gone to X. When someone rings up and wants to know where it is you have to go and find things on people's desks.

The department has now done a lot of work to develop a document management system to track planning instruments. The long and the short of this long story is that a council sends up an instrument, asks regional office where it is, and it is told, "It is with Parliamentary Counsel." Often a council does not realise that it has not yet got to Parliamentary Counsel, or it has been to Parliamentary Counsel and it has gone back to the department. People get the perception that something has been sent up, 12 months have gone by and they are informed that it is still with Parliamentary Counsel. It is one of those things.

I hope that the new tracking system will mean that people are more aware of where things are in the system and that that does not occur. We find this out because eventually those who are keen on an instrument have reached frustration point with it. Everybody has said, "We are okay with that instrument, but where is it?" We get calls from people who say, "We know that the instrument is with you. When are you going to get it done?" We say, "Sorry, we have not yet received it." We used to get quite a few of those calls. Things have changed a bit now, but there is that perception.

The Hon. MICHAEL VEITCH: It is an unfair and inaccurate perception.

Mr COLAGIURI: I think it is an inaccurate perception. The system is good but I have great hopes that the new process will make the system better. The whole process needs to be sped up.

The Hon. MICHAEL VEITCH: In response to an earlier question from the Deputy Chair you referred to sub-delegation within a LEP. Can you clarify that for me? Would you not only sight the document that has been referred to but also ensure that it has some legal standing?

Mr COLAGIURI: Unfortunately, that is true. If the Parliament says that a particular planning law or LEP is to be made by the Minister, or a SEPP has to be made by the Governor, it is not abiding by Parliament's intention if the Governor makes a SEPP that says, "All these substantive matters will be determined by the council's policy on X." The rules that are made in that policy by council X or by department Y have exactly the same effect as if those words were in the planning instrument. There is always a subtle question about how far you can go. Obviously you can leave certain things to others to determine but it ends up being a question of degree, about whether you have substantially sub-delegated the provision.

We get around that in some ways. For instance in the past, with exempt and complying development, local councils wanted to pick up their development control plans. We ask them to publish their development control plans on a particular day. We then say in the planning instrument that the complying development is a particular DCP that is in force as published on that day, so it is fixed. We can have a look at that instrument and ensure it is roughly on track. However, that is an issue.

Reverend the Hon. FRED NILE: You said earlier that you are often accused of delaying LEPs, sometimes for a year or two years. Would it help if the moment you received an LEP you advised council that you had received it on a specific date? Councils appear to be confused about where the LEPs are and they are blaming you for the delays.

Mr COLAGIURI: I need to take up that issue with the department. I think part of the new process that the department has put in place to track the progress of LEPs will enable councils to obtain information from the system as to where it is up to—whether or not it is with us. I will take it up with the department. It is not just in the interests of Parliamentary Counsel, which is being blamed for delays; obviously it is in the interests of everybody involved in the system to know where things are up to.

Reverend the Hon. FRED NILE: And locate where the delay is. Obviously it could be with you or someone else in the Planning department?

Mr COLAGIURI: We have those systems in our office. On a weekly basis we track where things are. If some junior officer is sitting on something they will be spoken to. That is probably a good thing to do.

CHAIR: In your view, how can we better communicate between Parliamentary Counsel and the Department of Planning and councils to streamline that problem?

Mr COLAGIURI: The best way is that, when we can, we try to get everyone in the same room; the councils' officers and the departmental officers, who are the key decision makers in the instruments, in the same room and talk. We find with drafting that brings out the issues and that is how things are resolved quickly, rather than things going back and forth and having some misunderstanding. The reality is that with councils' officers spread throughout New South Wales it is not an easy process. We try to do that these days, and try to do more of it. Maybe we could improve it if we communicate electronically by email, as we now do instead of having meetings, those communications explain why we have made changes.

CHAIR: At what point is that best done? Is it best done towards the end, or should it be done in two different positions?

Mr COLAGIURI: That comes to the second way, which we have been thinking of and working towards, of improving the system. I think Sam Haddad mentioned getting involved earlier in the process, not to draft the instrument but as issues are identified. The issue is sent to us, and this happened with the standard instruments. They are yet to be submitted but the department's legal officers or council officers identify a legal issue that needs to be resolved and they send that to us separately as a separate issue, often because those issues tend to repeat themselves. If there is an issue in one council, more likely than not it will become an issue in another. We are working towards having earlier involvement in resolving those issues.

The third case is working more on the standard clauses, because obviously there are the standard instrument clauses, which are absolutely standard where they apply, and then there is a whole range of other clauses that councils, if they need to have a provision dealing with flood-prone land or airport noise, there is one available that we had discussed with the department. They can use that as the base. We have been working with the department in working up these clauses and we have been sending them to the department and the department has been making them available to the councils. That is a better way of drafting rather than the legal problem being discovered at the end of the process—

The Hon. CHRISTINE ROBERTSON: Or every individual council trying to do it.

Mr COLAGIURI: Trying to deal with it.

CHAIR: The councils, to get the final bit in, sometimes differ, according to them, from what Parliamentary Counsel ends up with.

Mr COLAGIURI: If we have not got the intent, then Parliamentary Counsel will say that we have failed. Our task is to get into the written law the detailed policies that the people who are deciding the policy want. If we have not done it, we have failed in our job. We do not always get it right. Sometimes with these things it is to do with a problem because councils currently draft their own instruments. Once you have drafted an instrument yourself, you become very attached to it and that is part of the reason for a change to people writing in narrative what they want to do. Once they write it down in a draft they become very attached, and we find it very difficult. Quite often, because we have changed it, we do not explain why we have changed it. We have to go through the process of explaining why the change has been made.

Often when we get council people in and speak to them, to discuss these things, they understand why the change is made. Very often we understand that what we have done over here does not quite work, because we get more feedback from the council officer. There is that element. I could give an example to describe this process. Not only do councils and departmental officers often become concerned about the words that they use, but also often they are concerned about style. I am sure that one day some instrument will arrive where a council will want cherubs trumpeting around the edge of the paper and we will strike them out and send it back and say, "Sorry, you can't have cherubs", and they will get very upset because although they are lovely cherubs we cannot display them on the website. That happens, but we cannot do cherubs.

CHAIR: Mr Colagiuri, thank you for your contribution and for your explanation of your office. Certainly, I had no idea what happens in the Parliamentary Counsel's Office, but I am a little better informed now. Other questions may be forwarded to you. If so, would you respond within 21 days of receiving them?

Mr COLAGIURI: Yes.

(The witness withdrew)

ROBIN ROGERS, Assistant Commissioner, New South Wales Rural Fire Service, Director of Operational Services, Locked Mail Bay 17, Granville, sworn and examined:

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

Mr ROGERS: Yes. Firstly, thank you for the opportunity to appear. I seek the Committee's indulgence to allow me to read onto the record a brief opening statement, particularly concerning the Rural Fire Service involvement in the planning system. By way of context, in New South Wales more than 250 residential houses were destroyed between mid-November 1993 and January 1994 and a total of 109 residential properties were destroyed in the 2001-2002 bushfires. Losses were particularly severe in the Blue Mountains, Penrith, Wollondilly, Shoalhaven and Hawkesbury local government areas. Following that, in January 2003 the devastating fires that hit the Australian Capital Territory severely damage the suburbs of Duffy and Chapman, with 500 homes lost.

On 7 February 2009, Australia experienced its greatest peacetime disaster with multiple fires burning over 408,000 hectares in Victoria. Tragically, 173 people died with more than 2,000 homes destroyed and a further 1,000 damages. Infrastructure, communities and families have been devastated the most extreme bushfire event in our history. Historically, the Rural Fire Service was seen as a suppression organisation responding to bushfires and other emergencies across New South Wales. However, over time the Rural Fire Service has developed so it is now not only the lead agency in combating bushfires but also in bushfire mitigation, helping the community to be better prepared for and protected from bushfires.

Following the devastating bushfires of 2001-2002 a joint parliamentary inquiry was established. Its report of 28 June 2002 endorsed the release of *Planning For Bush Fire Protection 2001*. That document was jointly prepared by the then Planning New South Wales and the Rural Fire Service. On 1 August 2002 a series of amendments to the Rural Fires Act and the Environmental Planning and Assessment Act came into effect. Various guidelines and standards were available prior to the introduction to that legislation, but there was no mechanism to facilitate or enforce their application. The reforms provided the necessary planning framework for developments on land likely to be affected by bushfires. The aim of the reforms was to make our bushfire communities safer places in which to build and live and to better protect firefighters.

The legislation provides a clear relationship between the Building Code of Australia, Australian standards and planning for bushfire protection. Bushfire protection and safety are now integral to the State's planning laws and fosters smart planning and building in one of the most bushfire-prone regions in the world. Due to historic settlement patterns and the need to provide housing, development has and will continue to occur in bushfire-prone areas in the State. Given that New South Wales has approximately 20 million hectares of bushfire-prone land, bushfires will remain a challenge for the community. The reforms introduced through the 2002 amendments play a vital role in helping meet that challenge.

Improved land use planning decisions for development in bushfire-prone areas are intrinsic to the fire-management strategies of the service. The Rural Fire Service is involved, and it is appropriate that it be involved, in master plans, subdivisions and special fire protection purposes developments. This ensures that new areas of urban settlement are designed in such a way to minimise the impact of fire on the community. The planning role is just one of the suite of measures to help mitigate the impact of bushfires on our communities. A range of other measures, including hazard reduction works, addressing complaints from the community and engaging the community in community education activities, provides the best possible protection from fire.

The new functions of 2002 had a profound impact on the Rural Fire Service organisation. One challenge included incorporating a regulatory role to the existing organisation. Initial challenges in managing that work included the need to establish processes to successfully implement the requirements of *Planning for Bush Fire Protection 2001* across the Rural Fire Service throughout local government and the development industry in general.

From an industry perspective, the new legislation created major challenges for developers, local government and members of the community. The Rural Fire Service devoted time and resources, including

workshops, to give stakeholders an understanding of what was required by legislation and to assist with the mapping of bushfire-prone land. During the initial period many local government councils were unnecessarily sending all development applications on bushfire-prone areas to the Rural Fire Service, increasing the volume of referrals of associated approval periods. This meant that in the first two years of operation the Rural Fire Service struggled in many cases to meet the 40-day timeframe. However, with funding and staffing enhancements this has reduced considerably. The 2007-08 annual report notes that 97 per cent of all developments assessed were completed within the 40-day timeframe.

In 2006 an update to *Planning for Bush Fire Protection* was released. That document moved from a prescriptive type of arrangement to a more performance-based arrangement, providing greater flexibility and innovation in achieving compliance. The new document focuses on safer outcomes instead of simply meeting prescriptive requirements. This is in line with current planning and building legislation trend is in the New South Wales statutory regulations. Currently New South Wales has the most progressive and far-reaching legislating provisions in Australia, with many States seeking advice on implementing similar measures. This includes Victoria. The planning documents of other States and Territories do not have the legislative backing to ensure that development conforms to planning, design and construction standards to mitigate the impact of bushfires.

The Rural Fire Service forms the linchpin in implementing planning for bushfire protection measures and works jointly with local government and the development industry to link responsible planning and development control with the protection of life, property and the environment. In closing, the principal driver for the Rural Fire Service's involvement in development assessment is not only to protect the community but also to help manage the environment in which our volunteer firefighters operate, making it a safer place for them to work, and protecting life, property and the community.

CHAIR: Throughout the inquiry the issue of development applications being required for referral to the Rural Fire Service was consistently raised. The majority of comments focused on the time taken for the Rural Fire Service to process these referrals. Our questions to you will be focused on the Rural Fire Service's role in development applications. Are you able to provide the Committee with information on the number of referrals the Rural Fire Service receives each year, with an indication of which regions or local government areas generate large numbers of referrals?

Mr ROGERS: I would have to take the details of the local government areas question and the number on notice, if that is okay. I do not have that information on me.

CHAIR: Can you outline the process by which referrals are assessed, what is involved, and whether there are any variants according to the region or level of risk?

Mr ROGERS: Certainly. There are two types of development principally that the Rural Fire Service is involved with, one being the assessments under section 79BA of the Environmental Planning and Assessment Act, which is normally confined to infill development—a vacant block of land that someone wants to build on. They are handled in a very different way, inasmuch as the local council has the responsibility to assess whether that development meets *Planning for Bushfire Protection*, and if it does not, to pass it to the Rural Fire Service.

It is fair to say, as I mentioned in my opening statement, that if it is in a bushfire-prone area many councils send them straight to us, irrespective of whether it meets the document or not. We have a target performance of those types of developments that are handled locally within 14 days; that is an internal timeframe we set to try to manage those developments. They are very much done by our local district staff. The other types of developments are integrated developments, which are referred to us through section 100B of the Rural Fires Act, which is subdivisions, special-purpose developments such as schools, childcare centres, nursing homes and things like that, and they are the principal types of ones we handle at head office.

They require a bushfire safety authority to be issued by the Rural Fire Service Authority, by the commissioner, in order for that development to proceed. Whereas, the other ones I spoke about, under section 79BA, simply require a recommendation back to council as to whether it should approve them or not, but ultimately it is council's decision. The integrated developments are more the ones that we need to give agreement to for them to go forward. They are handled within our head office development control unit, with support from regional people for site visits where needed.

Basically we get information that is prescribed to be provided to us, such are the vegetation, slope, the site-specific information, and then our development assessment team will assess that based on the information that is provided and the information we have, and then we make a determination on whether it meets it. If it does meet it, we then make a decision on whether it needs any conditions, in which case correspondence will be provided back to council giving them a determination. In many cases, quite a lot of the time the information that comes in is not sufficient for us to make a determination, so we have to write back to the council saying we require further information. They in turn go back to the applicant, who may have to then engage someone else to provide some information, and that can end up in a very lengthy process.

CHAIR: What guidelines are used for the assessments? Do officers who undertake assessments require specialist expertise and training?

Mr ROGERS: Yes, they do. There is a formal training program which is in partnership with the University of Western Sydney. That is a graduate program that we put all our officers through who are carrying out those assessments.

The Hon. RICK COLLESS: In doing one of those development assessments, do you consider the hazard reduction policies of the other agencies that are involved, such as National Parks, Local Government and State Forests?

Mr ROGERS: No.

The Hon. RICK COLLESS: What factors do you take into consideration?

Mr ROGERS: We take into consideration the slope, the vegetation type and the distance between the proposed development and the hazard as it is, the bushland that is there. If I might elaborate: The hazard reduction policies, whilst they are important and critical to be maintained, there is no guarantee that those policies can be maintained to a level to afford protection to a particular property. Given that hazard reduction relies a lot on weather opportunities, and we and land management agencies do a lot of work when we can, but there is no guarantee that that can be maintained to that level, certainly not to carry fire. Even an area that has been hazard reduced three or four years ago, in extreme conditions will still carry fire and will still provide ember attack on a building, so we do not take that into account. The only time we take it into account is if it is mechanically cleared so the vegetation is simply not there and there is a guarantee, through a management plan of a land manager, that will keep that going in perpetuity.

The Hon. RICK COLLESS: When you do that assessment, do you have a base level fuel load that you work it out on?

Mr ROGERS: It is based on the potential to carry fire on those fuel loads. There is documentation. I could not give you the detail of what that is, and I can get it for you if you want. But there are assumptions made on the vegetation type on its fuel-carrying potential.

The Hon. RICK COLLESS: It is a great variable in any forest that the fuel load can vary from a few tonnes per hectare to 100-plus tonnes per hectare, given the amount of time that there has been some hazard reduction, the way it has been managed, or whatever. It applies to every ecosystem. When you make those assessments, what sort of fuel levels do you calculate your estimates on?

Mr ROGERS: If the Committee wishes, I can provide that information. I do not have the information with me, but I am very happy to provide it to you.

CHAIR: That would be very helpful.

The Hon. RICK COLLESS: Is the Rural Fire Service adequately resourced to undertake those assessments?

Mr ROGERS: Yes fortunately we were provided with a staffing enhancement in, I think it was, around 2003-04, when we realised the quantum of work. I think one of the problems we had going into the legislative reforms was that no-one understood how many development applications were to be triggered by bushfire-prone lands, so there was no capture anywhere of the information. So it was a matter of trying to understand it, and then we went to Government with a request for more resources, which were provided.

The Hon. MATTHEW MASON-COX: If you are adequately resourced, why have we heard so many submissions from various councils and other bodies saying that the delays are there? What are the causes of the delays, if you have adequate resources?

Mr ROGERS: I would suggest that part of it is the fact that when we send something back to get a lot of information, it seems to take an inordinate amount of time to get a response back from council—which is not necessarily the council's fault because they are seeking it from the applicant. There is an element that simply falls into that category. I think the other part is that councils tend to hark back to the days when it was first introduced. As I acknowledged, we did have some difficulty meeting the 40-day timeframe, because we simply did not understand the quantum of work. But since that time I do not believe that is the case. As I mentioned, as published in our last annual report, 97 per cent of development applications met the timeframe.

The Hon. MATTHEW MASON-COX: You do not accept that there are delays in the system?

Mr ROGERS: I am not suggesting that there are never any delays, but I am suggesting that by and large, and 97 per cent of the time, we meet the 40-day timeframe. We are always looking at ways to streamline the process, and we continue to do that. We are now looking at using e-mail correspondence rather than waiting for that to go through the postal system. So we are always trying to do that. We are also examining whether there are opportunities for us to get development applications electronically. We are constantly trying to streamline the process.

The Hon. MATTHEW MASON-COX: It is just that we have been given evidence that is in direct contradiction with what you have said.

The Hon. CHRISTINE ROBERTSON: No. He gave the historical picture.

The Hon. MATTHEW MASON-COX: I am asking the question.

The Hon. CHRISTINE ROBERTSON: It is contradicting what he said.

DEPUTY-CHAIR: The Hon. Matthew Mason-Cox has the call.

The Hon. MATTHEW MASON-COX: We need to contemplate how we write recommendations. I want to be absolutely clear that you do not see that there are any delays. In 97 per cent of cases there are no delays, it is not a resourcing issue, and you believe that going forward there are no resourcing issues on the horizon in relation to the roles you need to play?

Mr ROGERS: Do you mean in relation to planning reforms?

The Hon. MATTHEW MASON-COX: Yes, in relation to referrals to the Rural Fire Service.

Mr ROGERS: We have had many discussions with the Department of Planning about the proposed planning reforms. One of the areas that we are trying to work through with the Department of Planning is to reduce the unnecessary level of referrals we are getting from local government. We are developing a computer tool that local government can use to assess developments as to whether they meet *Planning for Bushfire Protection* or not, and, based on a series of inputs, recommend conditions that would then be applied to those developments, rather than them coming to us. Where we see our focus should be is on those developments that do not meet *Planning for Bushfire Protection* and need specialist advice and things that are a little bit outside of the norm for us to be able to do that.

One of the areas that we are very keen to address is reducing those unnecessary referrals, so we can concentrate on the integrated referrals and those that do not meet the *Planning for Bushfire Protection* guidelines. We have a joint liaison committee with local government that covers all manner of relationships with local government. There has not been something brought to that committee for—I would have to check—some years as far as inordinate delays with development applications. I would suggest that they are an historical thing that people just have fixed in their minds. If there is not, I would be more than happy to respond to specific examples of supposed delays.

The Hon. MATTHEW MASON-COX: We may well do that.

Mr ROGERS: Yes. If there is, then I can provide the Committee with actual evidence on the particular developments.

The Hon. MATTHEW MASON-COX: What is the status of the computer modelling?

Mr ROGERS: I would have to check. The modelling side of it is complete. I think it is now being tried to be put into a more usable format, so that work is going on now.

The Hon. MATTHEW MASON-COX: When do you envisage that being finished?

Mr ROGERS: I believe that that would be ready to be provided to council within a few months.

The Hon. MATTHEW MASON-COX: What are the next steps in relation to that?

Mr ROGERS: We plan to visit every council and provide a training program to their staff on how to use it, and then provide a mentoring role for some time. As we do each council, we are looking at maybe leaving one of our officers there for a few days so that they can be there to support them through that process, to make sure they have the right knowledge before we ask them to deal with it.

The Hon. MATTHEW MASON-COX: And then it is envisaged, I presume, that you will delegate the responsibility for referrals that fit within the model to the council concerned, rather than having to deal with them yourself?

Mr ROGERS: Yes.

The Hon. MATTHEW MASON-COX: And therefore specialise in the difficult cases that fall outside the more straightforward cases?

Mr ROGERS: That is correct.

The Hon. MATTHEW MASON-COX: When do you envisage that whole process being ready to run in the council areas?

Mr ROGERS: Is that us completing the training?

The Hon. MATTHEW MASON-COX: Yes, so we have a new delegated system based on the computer modelling that has had training.

Mr ROGERS: I probably could not give you an actual answer as far as rolling it out. We are a little bit unsure of how much time we have to spend with every council. We probably have to see how that goes, as far as how much direct support the councils need, and we may have to leave people there a little longer.

The Hon. MATTHEW MASON-COX: What is your target date?

Mr ROGERS: We would have to have that training complete and councils self-sufficient within six months.

Reverend the Hon. FRED NILE: We always regard the Rural Fire Service as a volunteer organisation. I assume you have had to increase your full-time staff to handle this and that it could not be done by volunteers.

Mr ROGERS: That is correct.

Reverend the Hon. FRED NILE: Has that been covered by your budget or did you get a budget increase when you took on that responsibility?

Mr ROGERS: Yes, we did.

Reverend the Hon. FRED NILE: Are you satisfied with that?

Mr ROGERS: We demonstrated the need and the Government responded with the staffing that we were seeking. That was a few years ago and we are comfortable that we have the appropriate staff. The challenge for us is to ensure that we are using the staff properly. That becomes an ongoing challenge for any government department. We must ensure that we are providing the best service to the community. That involves constant refinement, but we are comfortable with how we are resourced now.

Reverend the Hon. FRED NILE: There have been reports of confusion about large buildings such as a hospital or an aged persons' facility on the fringe of the metropolitan area and your role in doing assessments. Is there some problem with that area—that is, where it is almost metropolitan? Would the New South Wales Fire Brigades have a role in that case or is the Rural Fire Service solely responsible for doing that assessment?

Mr ROGERS: That applies anywhere in the State. For example, North Sydney Council had issues with some bushland areas. We met with the council and helped it to map the bushfire prone areas. Whilst the council does not have a huge bushfire problem, it still has the potential, particularly given the terrain, for properties to be lost on a bad day. Therefore, it is appropriate that some standards be put in place. The Rural Fire Service has that role across the State anywhere there is bushfire prone land. It is not connected with our jurisdictional responsibilities with regard to firefighting; it is completely separate.

Reverend the Hon. FRED NILE: Does the Rural Fire Service have the power to veto a project if it believes that a proposed development presents a fire risk? Does the service have the power to recommend that a project not go ahead?

Mr ROGERS: If it is in the integrated development category, which is the referral under section 100B of the Rural Fires Act, and we refuse to issue a bushfire safety authority, the development cannot proceed without the applicant taking us to court. That has happened on a number of occasions.

Reverend the Hon. FRED NILE: Have there been any cases in which a development did go ahead without a bushfire safety authority? Are there cases in which the Rural Fire Service was not involved when a development was under construction and the developers have tried to get a bushfire safety certificate after it was completed?

Mr ROGERS: Not that I am aware of. There have been many occasions when we have refused to issue the authority and the developer has taken the matter to court. We have been extremely successful in that regard. I am not aware of any that have been built and the developer has subsequently asked for approval. The only example that I can think of that is close to that relates to an existing nursing home.

The Hon. CHRISTINE ROBERTSON: Before the legislation was enacted?

Mr ROGERS: Yes. It was built before the legislation, but the owner was seeking to provide additional services and therefore additional buildings. In those cases it is quite challenging because the facilities were built before the legislation was enacted. For all intents and purposes, they technically need to meet the requirements, but given site constraints it would be impossible. We look at it from the point of view of the best outcome for the residents. We say that a building can be constructed if general fire safety for the rest of the residents is improved. That is important because these developments are vital to the community, particularly aged care facilities. We try to work with them to get a better outcome for the residents and still allow an increase in capacity.

Reverend the Hon. FRED NILE: Would you make recommendations about how they could quickly move elderly people out of the building?

Mr ROGERS: All aged care facilities are required to prepare an evacuation plan.

The Hon. CHRISTINE ROBERTSON: The issue for the Rural Fire Service appears to be that there are two processes—an advisory process and a legislative process. Do you think that local government bodies are clear about that? There appears to be some confusion about the differences and the implementation.

Mr ROGERS: It is difficult in that example because local government involves so many different entities. Some seem to understand it very well and it may be true that others are confused. We are very clear in

our communication with local government about our advisory role under section 79BA. We clearly say, "It is our recommendation".

The Hon. CHRISTINE ROBERTSON: Who has the legal responsibility?

Mr ROGERS: The council. It is the consent authority in that matter.

The Hon. CHRISTINE ROBERTSON: Are their efforts to have additional examinations an attempt to cover themselves? I realise that I am asking a policy-related question.

Mr ROGERS: Anecdotally, I think that councils refer many of the bushfire prone developments that may well meet the requirements as a risk management strategy. I do not know whether that relates to liability or whether it is simply a risk management strategy. They might see it as easier to send them to us. It certainly does overload us. About 87 per cent of the cases we receive meet the planning for bushfire protection requirements.

The Hon. CHRISTINE ROBERTSON: Some councils have given the impression that they are actually better resourced and informed than the Rural Fire Service to provide advice. I am not sure whether that relates to the massive changes in the Rural Fire Service in recent years and the fact that it now has a number of different entities whereas in the past they were tangled up with shires and local government. What do you think about that? The Rural Fire Service has provided extensive training. How have you resourced those individuals so that they are able to give high-class advice to local government regions, especially in the country?

Mr ROGERS: In relation to the recommendation-type roles, which is where local people get involved, I believe the training that has been provided is very good. Most of those people are the same people who were working for the local council prior to the transfer of staff in 2001. It is mostly the same people and they have followed the same path, but they are now provided with more training than they would otherwise have had. They do not get the same level of graduate diploma training as the specialist officers who handle the integrated work because it is only part of their job, not their full-time job.

The people at head office are solely responsible for development control. Because they are making those recommendations it is normally a single block and it is not as intricate as subdivisions. I believe we have some very competent staff around the State. I have never heard concerns expressed about the level of competence of our staff. If there are concerns, like the time delays, I am more than happy to examine any specific examples. We have 700 staff around the State and if there is a training deficiency with one or two we will address it. We are certainly not aware of it.

The Hon. CHRISTINE ROBERTSON: To cover themselves they did not provide specific examples—it was an inference.

The Hon. MICHAEL VEITCH: You referred to a number of inappropriate referrals from councils. Do you keep a record of those referrals?

Mr ROGERS: We do keep a record. The ultimate determination is that they do or do not meet the planning for bushfire protection requirements within the categories. There are three levels of construction. If a level two development application is received and it is agreed that it can proceed then it meets planning for bushfire protection requirements. We have a flame zone that goes beyond the three categories of construction. We should be getting any developments determined to be in flame zones. That is only 13 per cent of the developments. Since 2002 we have received 41,000 S79BA developments. Anecdotally it is suggested that 87 per cent of those developments could have been dealt with because they met planning for bushfire protection requirements.

The Hon. MICHAEL VEITCH: By the council as opposed to being referred to the Rural Fire Service?

Mr ROGERS: Yes.

The Hon. MICHAEL VEITCH: Do your officers undertake physical inspections of the development area?

Mr ROGERS: It depends on the development. Often the information provided by the consultant is very comprehensive. Our officers will assess that based on aerial photography. They have slope modelling of those areas so they can see whether it is correct. If it lines up, they may not attend. If they have any doubts they will go out and look at it or ask one of the local people to look at it and to provide a report to head office including photographs.

The Hon. MICHAEL VEITCH: One of the district officers?

Mr ROGERS: Yes.

The Hon. MICHAEL VEITCH: How often do you review or update the vegetation mapping?

Mr ROGERS: Do you mean the bushfire prone map?

The Hon. MICHAEL VEITCH: Yes.

Mr ROGERS: It is a council map, but in most cases we have done it for councils because they do not have the expertise. That must be reviewed every five years.

The Hon. MICHAEL VEITCH: I refer to the relationship between the Rural Fire Service and councils with regard to planning and how much time you invest in raising the awareness of local government practitioners about your role in regard to planning. Do you spend a lot of time doing that?

Mr ROGERS: A lot of it happens by virtue of developments that come up. We will talk to the councils about how we are dealing with a development and our role. We have certainly had a number of council awareness sessions around the State. As I indicated, we will do more of them in trying to get councils to play a bigger role in infill-type developments. We have carried out a lot of work in that regard. I have personally attended quite a few council forums and groups of council forums and talked about our role and I have listened to their perceptions about how we operate. In some cases it is fair to say that as a result of those sessions we have clarified our procedures and where councils find it ambiguous we have tried to resolve the situation. Our role is to make it easier for developers and councils, providing what they want to do fits within the framework.

CHAIR: Thank you very much for your contribution to this inquiry.

(The witness withdrew)

JAMES RYAN, Treasurer, Nature Conservation Council of New South Wales, and

ANNE REEVES, Executive member, Nature Conservation Council of New South Wales, affirmed and examined:

CHAIR: Before beginning I should inform you that 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 and the Committee will consider your request. If you do take any questions on notice today the Committee would appreciate it if your response could be sent to the secretariat within 21 days of the date on which the questions are forwarded to you. Before commencing questions, would either of you like to make a brief opening statement?

Mr RYAN: Yes, I would like to make a brief statement. First of all, I would like to quickly explain that the Director of the Nature Conservation Council of New South Wales, Cate Faehrmann, was unable to attend today so Anne Reeves, a long-standing executive member, has generously been able to come along at short notice.

We do not want to present any new information to the information we have provided in our submission but just for a moment I would like to reflect on the executive summary of our submission. Our interest as an organisation is in biodiversity conservation, climate change and urban sustainability. By " urban sustainability" we are particularly interested in how residential and industrial development occurs in patterns and if that occurs in a way that reduces greenhouse gas emissions from transport et cetera, and if it reduces impacts on threatened species or endangered ecological communities. They are our areas of interest and we have tried to focus on those throughout the submission.

One of our main areas of concern, which I hope we have managed to illustrate, is that when it comes to protecting threatened species and biodiversity, the planning system is incredibly complex and at this point there are effectively five different methodologies or systems by which threatened species can be evaluated in a development process. Our concern is that this is allowing inconsistent methods to be used by different developers in different places and we are not getting a consistent outcome. In fact, the discretion in part 3A of the planning Act is so broad that often we are not getting any adequate protection at all for threatened species.

In contrast to, I guess, the stated aim of the current New South Wales Government in making the planning system quicker and easier to get through, we actually think it is becoming more difficult because extra layers have been added in, which are well intentioned but they are hard to understand and in some cases they are just roadblocks that are actually being avoided. What we would like to see is a system that puts ecologically sustainable development as the main objective in the planning Act, so that the interests of the environment, the economy and our society are all taken together on an equal footing. At present the planning Act has a whole range of objectives, none of which are ranked in any priority order above the other, so it can be quite confusing to the decision-maker as to what their primary objective is.

We would also like to see a system in place where particularly assessments of threatened species are done by a third party at arm's length from the applicant and the proponent, and we see that this could be effectively done by the proponent. When they make an application they will obviously have a dollar value in mind—in fact, that is part of what they have to do when they make an application either as a part 4 or a part 3A—and a certain amount of that could be allocated as a set fee for flora and fauna assessments that either the local council, or possible better off, the Department of Environment and Climate Change [DECC] would then assign an accredited ecologist to make an assessment of the project. We see that would actually provide more transparent and valuable information to the council or to the New South Wales Government than the current arrangement where developers engage their preferred consultants to do their work for them and there is an obvious consequence of that: consultants who want to get more work need to work very well with those developers.

Finally, we see that there is a great gap at the moment in any monitoring system in the New South Wales planning system. For example, the New South Wales development monitor, which is published by the department, can tell you how many development applications were lodged and in which councils, how many part 3A developments were lodged and how long it has taken to the process those development applications, and it can tell you the value of those development applications but it cannot tell you how much native vegetation has been impacted as a result of those applications, and it cannot tell you how many of those had significant impacts

on threatened species et cetera. We think there is a big gap in the qualitative monitoring of the planning system and to a certain extent we are operating in the dark because that monitoring just does not take place.

Ms REEVES: Can I just add one comment?

CHAIR: Yes.

Ms REEVES: One of the concerns of the Nature Conservation Council is also to ensure that there is an adequate opportunity for the community to participate and contribute to the outcomes of good planning. So that is also at the back of many of the points that we are making, and that Mr Ryan has just elaborated on. The community voice should be heard and some of the complicated systems that have come in more recently have tended to bypass or override some of those opportunities, and that is also of concern to us.

CHAIR: You are critical of the fact that the objects of the Environmental Planning and Assessment Act are not prioritised. You recommend that the Act should have ecological sustainable development as its primary object. If that were to be the case, would the remaining objects need to be prioritised?

Mr RYAN: That is a good question that possibly you should ask the Parliamentary Counsel or something. I guess one of the things at the forefront of the minds of people in the conservation movement is the judgement in the Court of Appeal in *Walker v the Minister for Planning*, which is Sandon Point. The judge there made it really clear that it is difficult to come to a very clear conclusion when the objects of the Act—I think there are at least half a dozen of them—are not prioritised. It would be certainly a step forward in giving direction to decision-makers if those objects were prioritised, and certainly we believe that the principles of ecological sustainable development [ESD]—which have been adopted by Australia, I think, since 1992 in the Rio conference and all of that—gives a pretty broad and balanced overview of how we as a society should take into account all factors when we are considering development.

CHAIR: Ecologically sustainable development is currently an object of the Act and all objects are to be considered equally. What do you believe would be the practical outcome of making ESD the primary object?

Mr RYAN: I think the practical outcome is that if it was a council or the Minister or a judge in the Land and Environment Court the principles that are identified under ESD would need to be taken into account as a mandatory consideration, and those principles obviously include the precautionary principle and the biodiversity principle and the social-equity principle et cetera. Essentially they would mandate that a decision-maker must balance the environmental, social and the economic considerations all on an equal plane. Does that answer your question?

CHAIR: Thank you.

The Hon. RICK COLLESS: Do you not consider that when developments are proposed that very often the social implications of those developments are at the forefront of the approval process and, that being the case, when you look at the ecological issues what level should one go to in order to protect the environmental aspects of the particular area being developed? Do we go down to individual animals or plants? Do we go down to endangered populations or local communities? Where should the cut-off be so that it becomes important enough not to allow that development to go ahead on environmental grounds?

Mr RYAN: I think obviously many of those judgements have to made on a case-by-case basis but if you want to focus on biodiversity for a moment, for example. Biodiversity is like one of those really—I was going to say it is a big-ticket item but I do not think it is a big-ticket item—fundamental questions for us, whether it is on a spiritual or ideological level that you think all species have a right to survive, or whether you think at a more practical level about the gene bank as part of the building blocks of the whole environment in which we live and if we start eliminating part of that gene bank we prejudice our ability to evolve and adapt in the future; whichever approach you take, biodiversity and the conservation of it is really important. I suppose my observation is that there have been many scientific minds that have put their efforts into trying to evaluate at what level do you intervene? What is protection? What constitutes protection?

Most recently the New South Wales Government has put a lot of effort into the biobanking regime and has come up with quite a complex and rigorous method of evaluating impacts on threatened species. It went through probably at least a two-year process to develop that and it was part of the packages that were enabled in July 2008, I think, into the planning Act. Obviously there are very rigorous and well thought out methods in

how to evaluate the question and, to me, obviously if it is a single plant or a single animal that is not really the issue of concern; it is whether as a population that species has an ability to survive and maintain its gene bank et cetera. I think what we are trying to say is, when we consider development we should have a rigorous and well thought out method of being able to evaluate exactly the question that you have just asked. At the moment we have biobanking and we have seven-part tests under part 5A of the Act, neither of which are the same and a developer can choose either—they are quite different.

We have a policy called principles of offsetting, which DECC publishes. We have the choice of biocertification of LEPs, which is quite different again, and then we have part 3A, which gives the Minister the discretion to make no allowances for biodiversity if he or she wishes. I think what we are trying to say is, to answer the question you have just asked, consistently and in a productive way there should be an accepted methodology and there should be one and we should stick to it.

The Hon. RICK COLLESS: What would be your preferred methodology?

Mr RYAN: Our preferred methodology would be something that produces outcomes according to the Janus criteria, which are widely accepted criteria from scientists which says things like if 70 per cent, for example, of an ecological community has already disappeared, then the remaining 30 per cent should be protected. It also has various trigger points, I guess, by saying if a certain amount is in a national park it has quite a high level of security so it is more robust; if a certain amount is not in a national park it is at greater risk of continuing incremental development across its range. And it has a whole load of other criteria, including the range at which something occurs. If it is a very restricted habitat, then obviously it is at risk of being impacted by a small number of developments. If it is found from Cape York to Wilsons Promontory it has a much greater risk of surviving. So we would support a methodology that is rigorous, clear and transparent and produces outcomes that are commensurate with the Janus criteria.

The Hon. RICK COLLESS: The Janus criteria you refer to is the 70/30, is it not?

Mr RYAN: I think it is a lot more complicated but it certainly includes that type of thinking.

The Hon. RICK COLLESS: I have a great deal of problem with that as a concept—if it is 70 per cent gone then you must retain the 30 per cent that is left—because ultimately that will depend on the size of the original resource. The situation I have in mind in thinking about this is the grassy white box woodlands of the northern tablelands—a huge area was originally covered by that and it is estimated that it is about 30 per cent remaining at the moment. So the Government in its wisdom is applying that by preventing the removal of some box trees from grazing land and preventing farmers from ploughing some of that grass land in order to sow winter feed for their cattle and so on. When I quizzed some of the people about that, they suggested that the farmers should stop growing cattle and start growing Queensland bluegrass seed on that country, which is a hideous suggestion. It is just nonsensical. In terms of planning, how do we get over that problem where we have a lot of that land that has previously been cleared, has now reverted back to bluegrass country, and there is seedling white box coming up on it, and the farmer wants to reinstate the agricultural productivity of that land that it once had and he is no longer allowed to do it? And that is the application of the Janus principle.

Mr RYAN: Yes, and that is under the Native Vegetation Act, not under the Planning Act or the Threatened Species Act. I think in a lot of these issues there is a great deal of conflict between what I would call the public good and the public interest, in saying we need to preserve a reasonable amount of our gene bank, and the private interest. If a particular private landholder is impacted I think there is conflict. If you are suggesting that the New South Wales Government needs to come up with a way so that those private landholders are not disadvantaged because they are providing some public services, I agree with you and I think the whole of the conservation movement would agree with you.

The Hon. RICK COLLESS: I can assure you that they do not. The whole of the conservation does not agree with what I have just said.

Mr RYAN: Sure.

The Hon. CHRISTINE ROBERTSON: He is talking about compensation to implement that.

Mr RYAN: To take the biobanking methodology, for example, part of its operation is supposed to say that where you have a situation where a developer wants to remove some habitat that has high conservation

value, the developer will buy credits from someone with those values who is prepared to lock up their private land over here. The idea is that this person here receives monetary payments for the services that they are providing in order for that person to be able to develop in that area and protect these values. I am not here to talk in detail about biobanking but that is one approach that the New South Wales Government has developed a methodology to compensate private landholders for a conservation task. I think there are probably more mechanisms that should be developed because this conflict is constant and ongoing. I do not find any difficulty in appreciating the private landholders' position if they are being told that there is a limit to what they can do because we have decided that no more of the grassy white box has to be cleared.

The Hon. RICK COLLESS: The point I was making in relation to the grassy white box woodland, too, is the size of the resource. If it was a small pocket of only a few thousand hectares or whatever that was remaining, it may well be understandable. But where this resource originally covered hundreds of thousands of hectares, and there are still probably 100,000 hectares of it left, it just defies belief for me to have people saying to me that there is only 30 per cent of this stuff left yet it covers half of New South Wales.

Ms REEVES: One of the issues that we are facing, and which your Committee is facing, is that what we have done historically is a great fragmentation of what was the original—and grassy white box is a good example. It was widespread but it is now very fragmented. One of the issues in the broader scale of planning, as opposed to the development control aspects, which I had thought was perhaps your prime focus and which we have tended to address in our submission, is how you work through a system that will work in the long term to address sustaining what was once a very widespread resource. The fauna and the flora that depend on that very widespread source do not necessarily stay put all the time, particularly the bird populations. We all know there is a big decline of woodland birds across much of Australia.

Much of this is related to the fact that we have, as I say, fragmented the different patterns of vegetation through various forms of development, some agricultural and some for urban and other settlements. If we are looking at the ultimate best planning solution we need to look at the landscape scale. Just as the previous people that you were talking to on bushfire are beginning to address bushfire risk on a landscape and mange it on a landscape scale, tenure free, we also need, ultimately and ideally, to have an element in our planning system that looks at tenure-free type long-term objectives from which you distil how you determine the individual developments.

The Hon. MATTHEW MASON-COX: I ask you to turn to page 9 of your submission. You make a serious allegation that you believe "the increasing politicisation of the New South Wales public service has contributed to a lack of willingness for senior public servants to give unfletching advice, even in circumstances in which the advice does not match government objectives or policy". That is a serious allegation. I would like to understand what evidence you have for that.

Mr RYAN: Did we really say "unfletching advice" and not "unflinching advice"?

The Hon. MATTHEW MASON-COX: I have just read a direct quote from your submission on page 9, just above recommendation 3.

Mr RYAN: "Unflinching", yes. I guess one of the things we are talking about there is public perceptions of part 3A. In the paragraph above that we go through a few dot points, which, in our opinion, are common public perceptions of the part 3A process. I guess the easiest way for me to answer what you are talking about in terms of the perception that there is an increasing politicisation of the public service is, I mean, what we are referring to of course is the well-reported issue of having five-year contracts for senior department heads, et cetera, and performance measures. I recall the media reporting that in the case of the police commissioner one of the performance measures was that the perception of crime had to go down or something like that. So it is that genre of things that we are talking about.

For example, in the recent approval of the Huntley development near Branxton in the Hunter Valley, that is a part 3A decision which was subject to a memorandum of understanding between the planning Minister, the environment Minister and the particular developer involved in that. Consequently, the submissions and correspondence from the Department of Environment and Climate Change all began with things like "the department supports" this and "we are a signatory to the MOU", et cetera, where in that instance, in that particular development there is a serious issue of developing 50 per cent of the extent of a very rare plant. In our view, the ability of the Department of Environment and Climate Change, which is the department that would

have the expertise in this case, to give an honest and frank assessment of the full impact of that development was fettered, if you like, by its involvement with whole-of-government policy and approach.

The Hon. MATTHEW MASON-COX: And that is your perception?

Mr RYAN: Yes.

The Hon. MATTHEW MASON-COX: You also note that you are highly concerned by the lack of capacity in the Department of Planning to make valid assessments of environmental impacts. Can you expand on why that is the case?

Mr RYAN: If we go back to that same example, for a large part 3A development, significant, very serious and numerous community objections to the serious environmental harm and impact that it had the potential to cause. You have several informed and expert submissions from the community perspective. You have a flora and fauna statement that has been written on behalf of the developer. Both are saying quite contrary things, and we are talking about an issue here that goes to extension because the range of this plant is only two kilometres wide. In one of those situations we have a very restricted extent and this development will take up half of that range. There are real possibilities that it is a significant event that would lead to extinction. The Department of Planning is in charge of the whole part 3A. It would have been appropriate in that situation to call for an independent expert review of the competing submissions that were made to the assessment process to try to get some independence on this.

Obviously DECC is involved in the whole-of-government approach and could not be regarded or was having difficulty being independent at that point. So that is what I mean or that is what we mean when we are saying—you have a lot of part 3A developments. A lot of developers have chosen to go through part 3A. I believe there have been a lot of complaints from the development industry at the length of time being taken to process part 3A developments. My experience of trying to discuss these issues with the Department of Planning staff who are in charge of these part 3A developments is that they are overworked, they have a lot of responsibilities and they do not have the expert skills that you would need to assess all of that stuff.

The Hon. MATTHEW MASON-COX: In a similar vein, on the last page of your submission, page 24, you recommend that the New South Wales Government consider legislative measures to ensure its existing policies to reduce dispersed patterns of settlement and car dependency and maximising access to public transport are implemented. What sort of legislative response are you recommending here?

Mr RYAN: I guess the intent of that recommendation is to say that the Government needs to put some detailed thought into how it could implement its own policy more consistently and more reliably via legislation.

The Hon. MATTHEW MASON-COX: But is not the point here that the Government has a policy but it is not implementing it because it chooses not to? You mentioned the example of the north-west rail link and the fact that we will have a large population in that area but the Government chooses not to implement its stated policy of officially putting in an appropriate rail link to that area?

Mr RYAN: That is exactly the point. The set of policies that are available on the Department of Planning's website are very good. They describe all the pitfalls of trying to have urban sprawl stretching right out and not connecting that with adequate public transport—the impact on people's health, the impact of the loss of habitat, impact of increased greenhouse gases. That is all well-documented by the department's set of policies and it really concerns us that, despite the recognition, we are still getting development decisions that are contrary to those policies or do not seem to recognise them.

The Hon. MATTHEW MASON-COX: So, is this an act of desperation on your part? Can we legislatively bind the Government to do what its own policy says it should do because there is no other way of finding it? Is that what is at the heart of this?

Mr RYAN: Yes. I think what we would like to see is a more specific set of criteria that need to be adhered to when we are doing regional planning or planning new release areas and when the Minister is engaging in part 3A decisions. Instead of the discretion being very wide, as it is now, we would like to see a set of criteria that need to be established.

Reverend the Hon. FRED NILE: In your submission you recommend that public participation in the New South Wales planning regime should be restored to the levels established by the Act in 1979. Can you expand on what is required to achieve this aim and how it could be achieved to get greater public consultation than we have already?

Mr RYAN: Sure. Just to say a couple of areas, for example. The current exempt and complying development SEPP aims to have 50 per cent of residential development now go through as complying development, not as advertised development. This applies to residential development. In many cases, if people are worried about overshadowing or the loss of significant trees or the change of character of the area, the first they will know of that is when the builders start work next door. Many places will have lost that ability to object to their local council before a development occurs.

Another example is part 3A, where we have seen more and more part 3A decisions. Developers choose to take the part 3A route. That effectively moves many decisions away from the local area into the Department of Planning's office in Bridge Street. So, people have less chance to contact their local council offices. Our members are usually quite active local community groups and they are constantly contacting the local council or trying to contact the Department of Planning. Just that issue of distance makes it much more difficult. Thirdly, for example, the LEP gateway process, which is part of the planning reforms, now says that some changes to zonings will not be advertised at all or they may only be advertised for 14 days. We tend to find that many of our members only become aware of developments they have serious concerns over when they have been advertised. So, if you start taking away that public exhibition period, many things go through and they have not had the opportunity.

Reverend the Hon. FRED NILE: Also in your submission you seek the scrapping of the whole part 3A planning system. Assuming it is here to stay—it seems to be government policy—do you have any recommendations how it could work more effectively, the part 3A regime?

Mr RYAN: One of the criticisms of part 3A is just the breath of discretion the Minister has. The Minister can determine the terms of reference, the EARs as they are called now, the environmental assessment requirements. The Minister determines. The Minister can determine whether they are being complied with and then make a decision regardless of whether they have been complied with or not. We would like to see a more prescriptive approach, saying if part 3A is going to stay and the Minister is the consent authority, it needs to be more transparent and more prescriptive just what the criteria are by which a development is assessed.

Ms REEVES: This is not unique to this legislation. There are a number of Acts where ministerial discretion is not in any way confined. That leads to obvious risks for the population as you get swinging changes from time to time and governments with different perspectives. So, if one is looking at a long-term planning consistency, defining some of the approaches the Minister should be following and taking into consideration does provide the community at large and the population at large and the State at large a degree of security that is not present otherwise.

Reverend the Hon. FRED NILE: In regard to the joint regional planning panels, apparently you are not happy with those either. Why are you not happy with those? They are only really getting underway so we do not know how they are going to work effectively yet.

Mr RYAN: I do not think they have made a decision yet. It is essentially the same thing. Usually local conservation groups get to know their local councillors quite well. They will often have a large amount of input into local councils' DCPs in terms of conservation zones and landcare grants and all that type of thing. To remove the decision from the local council and put it into a joint regional planning panel, which may not even meet in the local government area, again reduces the ability of local residents to express their concerns about particular developments.

Ms REEVES: I would add, as a former local government elected member, I have been absolutely impressed many times by the understanding at the local level of the way a particular area functions. It is very insightful and can lead to very much improved outcomes, and these sorts of comments would not be heard if you do not have that process in place.

The Hon. MICHAEL VEITCH: Yesterday we heard evidence from doctor John Formby, who came representing the Friends of Crookwell, but also has a Ph.D. in environmental assessment. He opposed the suggestion that we need an independent environmental assessment commission in New South Wales. Some of

the testimony you provide today would, in my view, support that suggestion. Do you have any views about Dr Formby's suggestion?

Mr RYAN: I do not know a great deal of detail about his suggestion but I think there is certainly merit in having a level of independence in environmental assessment. Indeed, my understanding is that is the exact intention of what occurs now. People are required to get an independent consultant's report to support either their rezoning or their development application.

The Hon. CHRISTINE ROBERTSON: But they pay for them?

Mr RYAN: They do pay for them. We are in this current situation now where many people perceive that the reliance of those consultants on the development sector influences the tone of what they write. So, we have long held that those consultants should be engaged at arm's-length by the council or the Department of Environment and Climate Change or the Department of Planning. If you went one step further and created another agency to conduct and to oversee that process, it probably has a lot of merit.

Ms REEVES: That does not mean you want yet another layer of complexity. You have to work out a way of trying to unwind something that is flexible at the same time.

The Hon. MICHAEL VEITCH: Dr Formby yesterday also raised his concerns about the standard of environmental impact statements or environmental impact assessments in the development assessment process. Particularly he was concerned about the rigour involved in those assessments but also the capacity to substantiate some of the statements that are made in those assessments. Do you concur? Again, your comments earlier tend to mirror his sentiments. Do you concur with that view and also—it is very well to be critical of the process—do you have suggestions on maybe how that can be enhanced or improved?

Mr RYAN: We give an example in our submission relating to a recent part 3A approval in the Hunter employment zone, where consultants who perform work regularly in that area gave the finding that there was no significant impact on certain threatened species. Due to the high level of concern of government agencies and the community, the Department of Planning required another consultant to be brought in and to do a further assessment. They found exactly the opposite: that there was going to be a significant impact. I, as an individual, and the Nature Conservation Council constantly have concerns about the rigour of consultants' reports presented to support development. I guess one of our motivations in presenting this model to say it should be at arm's-length is that professional consultants usually choose their field of work because they like it and they are motivated to do a good job and can operate without concern that they have to tweak their findings to suit their customers. The Department of Planning or the Department of Environment and Climate Change, or whoever, can draw up a list of accredited consultants—

The Hon. MICHAEL VEITCH: Like a panel?

Mr RYAN: Like a panel, of certain people who have a certain qualification and who have shown they can write suitably rigourous reports, and those people are the ones chosen—pull them out of a hat, have a rotating system or whatever—to-do assessments on part 3A developments, et cetera.

The Hon. MICHAEL VEITCH: We also have heard evidence about the appeals process for development, particularly how the Land and Environment Court has become quite adversarial almost. There was a suggestion yesterday that there almost needs to be another step in the process that allows for mediation or there needs to be greater focus placed on mediation prior to the Land and Environment Court. What are your views on that?

Mr RYAN: It is not something we focused on in our submission but certainly our members regularly take action in the Land and Environment Court. I think the thing obvious to all of us is that for a community organisation to act in the public interest you need such a strong case. It has to be not 50:50, it has to be something like 80:20 in your favour before you ever have a hope of getting assistance by a pro bono lawyer, or getting legal aid or having something, otherwise you just simply expose yourself to quite high costs. Whether it is mediation or a dispute resolution system, that is an intermediary step between the first consent authority and the Land and Environment Court, and it could have great benefits for the public interest.

Ms REEVES: It would also need to be protected. My observation is that over the years the Land and Environment Court, or the system that operated in South Australia, was similar but different. It operated on a

low-key basis. Over the years it has tended to become more and more dominated by high-powered legal argument. Whatever the innovation that is brought in it must be fenced around so that it minimises this dependence. Any outcome depends more on the legal fraternity than it depends on the merits of the case. That is important.

The Hon. MICHAEL VEITCH: Earlier you spoke about public exhibition periods of 14 days for planning instruments or development applications. What would be an ideal exhibition period?

Mr RYAN: Currently there are 14-day exhibition periods for small developments. No-one is really complaining about that when it is the house next door. However, when you are changing an LEP, which is a fundamental thing to do, and you are considering having no exhibition period or an exhibition period of only 14 days, that is a real cause for concern. We would support a minimum 30-day or 28-day exhibition period for LEP changes.

The Hon. MICHAEL VEITCH: My last question relates to regional plans, or even to local environmental plans and the way in which they deal with biodiversity issues. What are your comments about the adequacy of LEPs, or their attachment to regional plans or regional strategies for biodiversity?

The Hon. CHRISTINE ROBERTSON: And the mapping of biodiversity.

Mr RYAN: Regional plans no longer exist because they have been overtaken by regional strategies.

The Hon. MICHAEL VEITCH: Those are regional environmental plans, but we now have regional strategies.

Mr RYAN: Yes. Regional strategies are not regional plans; they are just policies and they do not have to be adhered to. One of the concerns we have is that regional policies are more rubbery than regional plans. I refer to an earlier question that was asked by Mr Colless. Environmentalists are constantly finding themselves in the role of the bad guy. They are labelled as trying to stop development to save a certain species. However, if at the level of a regional plan we had a realistic assessment of conservation and we said, "We will direct development into areas where it does not impact on conservation; we will set aside land and compensate landholders where they live in areas of high conservation value", at a more strategic level we would be covering much of this issue. We would not have the same concerns about extension and the inevitable slide downward that we seem to be experiencing at the moment. That would be a far better approach to take to conservation and to development planning than the system we have at the moment.

Ms REEVES: The other aspect is the importance of resourcing the biodiversity type mapping at an early stage. Unfortunately, New South Wales has not been at the forefront of some of this. In some ways it has been a problem in achieving outcomes, as we are making the decisions at the wrong end of the spectrum. We need more resources to ensure a successful outcome. The Hunter area is a case in point. More detailed work on the biological mapping would have pre-empted some of the need for argument at a later stage. Often that is the case right across the State. The further west we go the more problems there are likely to be.

The Hon. CHRISTINE ROBERTSON: I have in my hand the regional strategy update, which gives us a distinct picture. Pages 10 and 11 refer to implementing the lower Hunter green corridor vision and also to examples of specific development applications that would have interfered with the green corridor. I have not yet read this document as I received it only today, but obviously somebody is interested. The statement that this corridor should exist came from the strategic planning process. We are asking you these questions because we understand the importance of what you are saying. You are saying that nothing is working. Across many local government areas people are trying, through strategic local plans, to make statements about biodiversity requirements. Rather than stating, "This bit of the old Act is no good", we need to have some idea if we are to move forward.

Mr RYAN: You have to take that statement in context. The green corridor in the Hunter, which is the Stockton to Watagan corridor, is something for which people have been lobbying for a long time and undoubtedly it is a good thing. However, it is only a small part of the Hunter. It is not a solution to biodiversity conservation in the whole of the Hunter; it is a good example of what should occur on a broader scale.

The Hon. CHRISTINE ROBERTSON: So a statement has been made.

Mr RYAN: Yes.

CHAIR: Thank you both for appearing before the Committee today and for your contribution to this inquiry. If we have further questions for you we will send them to you through our secretariat and request that you answer them within a period of 21 days.

Mr RYAN: Thank you.

(The witnesses withdrew)

(Luncheon adjournment)

MARK GIFFORD, Director, Reform and Compliance, Department of Environment, Climate Change and Water, and

JOE WOODWARD, Deputy Director General, Department of Environment, Climate Change and Water, sworn and examined:

THOMAS ANDREW GROSSKOPF, Director, Landscape and Ecosystem Conservation, Department of Environment, Climate Change and Water, affirmed and examined:

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

Mr WOODWARD: Yes, thank you, I am willing to do that. I will provide a brief overview of the involvement of the Department of Environment, Climate Change and Water [DECCW] in the planning process. We have both an advisory and approval role, depending on the particular planning issue that we are dealing with. For major developments, these come under part 3A of the Environmental Planning and Assessment Act. DECCW has an advisory role, and that is particularly around pollution, Aboriginal heritage and threatened species impacts, and along with inputs from other government agencies the Department of Planning, or the Minister for Planning, makes a final determination on that.

In situations where an environment protection licence is also required, we would issue and environment protection licence and that would need to be consistent with approval conditions provided by the Minister for Planning. For other projects or developments, that are not part 3A, the department has a statutory approval role for Aboriginal heritage, threatened species and also pollution control via an environment protection licence. Also there are statutory timeframes that are set in place for responding to those timing requirements. We monitor those very carefully in the organisation, with the objective of meeting those. When the timeframes are not met for providing approvals or advice, it is normally for two reasons, based on the analysis we have done: either the application has not provided sufficient information in the first place to be able to make a determination and, therefore, further information is requested in relation to the specific issues that are deficient, or, secondly where the application does not meet what would be considered as acceptable environmental outcomes.

In those cases the option is to either refused it or, and this tends to happen more commonly, to have further negotiations with the proponent to see if there is some way that the environmental objective can be made by varying the application. We also have involvement with the Australian Government, because the Australian Government, under the Environment Protection and Biodiversity Conservation Act, has a national approval role, particularly for threatened species and significant biodiversity that needs to be conserved. About 5 per cent of the part 3A applications in New South Wales fall under that requirement to also have the national Government approval as well. We are working with the Australia Government to streamline that process as well.

We are working at a strategic level also across different levels of government. We work with the Department of Planning. We had been heavily involved in the planning reforms that have been developed over the last several years. That covers streamlining the land release processes, a developing model, natural resource conditions that can go into the standard local environmental plan templates, and providing advice to councils on issues such as sea level rise. We have been working at a strategic level with the Australian Government in streamlining the joint biodiversity approval process. At the moment we have developed with the Australian Government a bilaterals assessment process whereby if issues are assessed in New South Wales, under the Environmental Protection and Biodiversity Conservation Act the national Government can accept that assessment that is done in New South Wales.

As yet we have not got, but are still working with the Australian Government, a bilaterals approval process so that if it is approved in New South Wales it will not need subsequent approval at the national level as well. Also, broadly on a strategic front we have developed two major proposals that have been introduced into and passed in legislation to streamline the planning process. They are Biodiversity Certification and a

Biobanking process. Biodiversity certification is a process that allows the Minister for Climate Change and the Environment to biocertify a large area of land, if the assessment and planning of that land can maintain or improve biodiversity in that area.

That is a very significant initiative. Without that all the various individual developments within a large area of land, such as a local environmental area, need to be assessed individually for threatened species and endangered ecological communities. But when a large area is Biocertified it turns off the need to have all those lot by lot assessments. It allows a much better strategic overview of how biodiversity can be preserved and how planning developments can be identified and, with certainty, given to all the subsequent owners of that land. That legislation is in place, and one area has been biocertified; that was the north-west and south-west Sydney Growth Centres. It was a very large one that provided for 180,000 homes and has before turned off, as I said before, the requirements for all the assessments of individual lots.

That also needs the Australian Government approval under the Environmental Protection and Biodiversity Conservation Act, so we have been working with the Australia Government to do a strategic assessment and approval that it can do under its legislation for the large area. We are trying to convince the Australian Government to be able to give a strategic approval to the whole process, and that will largely turn off subsequent Environmental Protection and Biodiversity Conservation Act requirements as well.

The second large initiative is biobanking; that is an economic scheme whereby land that is proposed to be developed that inevitably will destroy some biodiversity. Generally in such situations what is required is a need for offsets. Under the previous process those offsets needed to be identified and needed to be offsets that would provide a level of protection that would be related to the destruction of the threatened species that would occur. This is a challenge, in terms of finding various offsets and then securing them. Biobanking provides an economic process whereby an assessment is done through a standard calculation process to identify the biodiversity in the area that is to be impacted. The proponent can buy biodiversity credits that are equivalent to that development and that removes the need for the proponent to then have to do further assessments on that land. It removes the need for the proponent to go and find offsets and it removes the need for the proponent to have the ongoing maintenance of offsets that would otherwise be done

The other side of the equation is people who have land of high ecological value can nominate their land to be considered for offset use. They can be paid to maintain their land into perpetuity to provide the offsets for other developments. We can provide much more detail on that if the Committee requires information. Those two initiatives have been legislated and are in process, and we are in the building stage for both of those at the moment.

For climate change we have a very strong scientific capability within the agency. We have been working with various State agencies, academic institutions, universities and local councils to develop up the strategic approaches for how climate change should be built into the planning framework within New South Wales. For example, we have put out a draft policy on sea level rise for New South Wales. We have received public submissions and are in the process of finalising the policy. We have various other initiatives in terms of climate change.

In terms of planning reforms, we have been actively involved in those with the Department of Planning. I suppose one of the messages I would like to leave you with is that the planning reforms have been achieved to date and the way we are tackling them is on two fronts: firstly, through the legislative process where changes have been made and are being made, and secondly, in relation to administrative processes. In terms of the legislative processes, just a couple of examples would be referrals and concurrences. We have had a major review over the last 12 months of all the referrals and concurrences that have been required by our agency through various pieces of legislation. We have removed all the unnecessary, redundant or duplicative ones—so much so that we have now reduced that. 83 per cent of Department of Environment and Climate Change NSW referrals and concurrences have now been removed from the planning process.

We have done a major review of our environmental pollution licensing requirements, and we have now, through regulation change, removed some 700 licences that were deemed as quite low risk and did not require a full licensing system to regulate. They can still be regulated, and are regulated, through a process that does not involve a gold-plated licensing system, so that saves in terms of planning frameworks and also the unnecessary costs and time for businesses.

The second area I want to talk about briefly is administrative improvements that we have made. We have made many administrative improvements in terms of the various bits of the legislation we administer. With regard to Aboriginal heritage legislation, we have streamlined processes there. We have provided guidance for our own staff, guidance material that is now available for proponents. We have been developing consultation guidance material with Aboriginal communities, to streamline that as well. We have done that for various other bits of legislation, including threatened species and other areas.

Even more importantly, with the formation of DECCW now, and its predecessor departments—the Department of Environment and Climate Change and the Department of Environment and Conservation prior to that—we provide a single point of coordinated input into the planning process organisationally, and that is mainly through our regional offices. The way that works in practice is, for planning applications that come into the organisation, our regional offices provide a one-stop shop, where they obtain the appropriate information across the whole agency, from climate change to air issues, to noise issues, to water, to threatened species, native vegetation, waste, and a whole range of things, and then coordinate that and provide that as a unified approach to the Department of Planning or to councils. That is a process that has only been happening in the last few years. We have been improving that as we go. That is a major administrative improvement in terms of streamlining what previously used to be information that came in from what were previous separate departments, and it provides an opportunity for us to do that.

The advice the department provides into the planning system is based on a few principles. One is that we base it on good science. We have the most comprehensive environmental science capability in New South Wales in the department, and it is very important that we use that to the best advantage in terms of providing strategic advice to the people of New South Wales. We do strive to—and I think largely achieve—provide consistent decisions and advice. We realise that any department that is regionalised can end up providing diverse and inconsistent advice and input into planning issues, so we have many processes in place to provide a coordinated strategic advice.

We take economic considerations very seriously into account when we are doing our decision-making. We have an environmental economics unit within the organisation, and we take it very seriously. We take a risk-based approach to our environmental decision-making. For big issues that have a big risk, we will be tough on those issues; for smaller issues with a smaller risk, we may at times be more lenient with those issues. We also strive to seek the most cost-effective solution to issues we are dealing with, rather than simply ignoring that. Finally, we aim to work at the most strategic level we can. If we can deal with issues as a strategic level, as I said with biodiversity certification, that removes the need to spend a lot of time and effort at the next level of detail below that. I am happy to take any questions on those or other issues.

CHAIR: When you identify tracts of land of conservation value, do you check with other agencies and councils to identify any potential land use conflict? What is the department's level of involvement in the development of the regional planning strategies?

Mr WOODWARD: In relation to the first question, yes, we do work with others in terms of potential further uses or potential uses for land. When we assess land, we look at the biodiversity values but we work closely to understand what all the other issues are and feed that into the various processes. Following on from that, in terms of your second question, we work closely with local councils and also the Department of Planning in relation to broader strategic planning—for example, the regional strategies that have been developed so far by the Department of Planning. We have been heavily involved in those as well. We have been preparing complementary plans to go with those, which are regional conservation plans.

The regional conservation plans that we have been developing identify the regional environmental biodiversity resources in the areas, and they have been developed to sit as sister documents to the regional strategies. The regional strategies identify where appropriate development should occur in New South Wales and where biodiversity should be protected, and the regional conservation plans give more detail about the biodiversity areas. When and if there are more developments proposed in some of those areas, that provides a good basis for broader decision-making by local councils when they are doing their local environmental plans and for individual developments.

The Hon. RICK COLLESS: I refer to your comments on the bio-certification process and the example you gave of how it is applied to the north-west of Sydney covering 180,000 home sites. Can that process be applied to agricultural regions?

Mr WOODWARD: No. Biodiversity certification is designed mainly for urban areas. For agricultural areas, different processes are available, such as the native vegetation legislation, property vegetation plans—

The Hon. RICK COLLESS: Which are all restricted? None of those remove the need for individual certifications?

Mr GROSSKOPF: With regard to biodiversity certification in a more rural context, we have put a proposal together in terms of the Wagga Wagga local government area and there has been a recent exhibition of that. It relates to the urban expansion area there. In terms of agricultural development, the Native Vegetation Act does apply. There is not an equivalent of certification under the Native Vegetation Act at this stage, no. We have been working on multi-property vegetation plans. We have been working in the Walgett area, with a number of farmers there, to try to bring together a landscape scale plan, and that has been progressing.

The Hon. RICK COLLESS: That has been ongoing for at least 10 years. Ever since the Native Vegetation Act first appeared, that process has been attempted to be implemented.

Mr GROSSKOPF: Since 2004, that is correct.

The Hon. RICK COLLESS: To my knowledge—and I do have a reasonable knowledge of it—they have not been able to work through all the issues there, despite the fact that the Walgett group have come up with a series of very sound plans, in my professional opinion, that they have not been able to get approved.

Mr GROSSKOPF: The most recent advice I have is that an agreement between the Catchment Management Authority and the farmers has been reached and that some of them now do require approval by the Minister and that process is now being gone through.

The Hon. RICK COLLESS: I look forward to having a closer look at that. Mr. Woodward, in terms of the climate change strategies you are applying, you talked about the scientific background that your people have in this regard. Do your scientists review the science they are dealing with, or do they simply adopt the summary for policymakers that was published by that political wing of the United Nations, the Intergovernmental Panel on Climate Change [IPCC]?

Mr WOODWARD: Our science people do gain their information from various sources. They do get information from the IPCC, indeed, which is in essence the most solid information that is available. Indeed, we also work with others, such as the CSIRO and the University of New South Wales. We have engaged Professor Andy Pitman to do work on climate change profiles across New South Wales at a finer detail than some of the work that has been done in the broad climate models, to identify some of that work and specifically feed into some of the decision-making that needs to happen in New South Wales.

The Hon. RICK COLLESS: I refer to your comments regarding strategic planning for sea level rise. What sort of forward planning timeframes are you looking at in that regard?

Mr WOODWARD: The timeframes we are looking at there are 2050 and 2100, as being sensible timeframes for making planning decisions and also timeframes that there is enough information about at the moment to have some reasonable level of confidence about the sort of levels you should be planning for in future in terms of decision-making we are doing now. It is also important to realise and take note that these will be reviewed as more and more information becomes available. But we believe there is more than enough scientific evidence now about those predictions and it is backed up by the sea levels that are being monitored by on-the-ground ocean level and satellite monitoring for sea level rises to be able to feed that into planning processes in a sensible way.

The Hon. RICK COLLESS: What is that monitoring showing at the moment?

Mr WOODWARD: There are a few things. Sea level rises will occur as a result of three situations: First, thermal expansion of the water; secondly, melting ice; and, thirdly, regional impacts. Various models have been employed by scientists with regard to thermal expansion. They go from low increases through to higher increases—there are roughly six models. For thermal expansion the predicted increase is between 0.26 metres and 0.59 metres by 2100; for melting ice the prediction is 0.1 metres to 0.2 metres by 2100; and for local impacts in New South Wales the prediction is 0.14 metres by 2100. When you add those together you end up

with a bit over 0.93 metres by 2100. The policy we have suggested is that New South Wales planning processes should look at 0.9 metres by 2100. I am happy to table a few maps that provide further background to this.

The Hon. MATTHEW MASON-COX: What is your level of confidence in relation to those figures?

Mr WOODWARD: I do not have that information. However, these are the levels that have been provided through the scientifically peer-reviewed documentation. There is a high level of confidence in the ranges that are provided. The first map shows the predicted sea level rise scenarios. They are the blue, yellow and green straight lines. You will note that by 2100 there are three ranges: a lower, a mid and an upper range. The level of confidence is between the upper and lower ranges. The lower range is around 20 millimetres and the upper range is 60 millimetres. This is for thermal expansion.

The orange line that goes up and down represents the actual measured sea level rises around the world. The science is quite demonstrative in showing that the sea level rises which are occurring and which have occurred over the past 20 years are tracking along at or above the highest of the modelled levels. In fact, the sea level is rising at a faster rate than was predicted. Indeed, the actual sea level rise over the past century has been in the order of 1.4 millimetres per year, but over the past 15 years it has been rising at 3.4 millimetres per year. That is why those levels have been taken.

The next map is the brightly coloured one showing trends in sea level rise. You will note that the sea level rise of the past 15 years is not equal around the world. That is because there are local currents with local temperature differences, and they affect the levels in various areas. This is NASA information. As I said, we do not always obtain information from the IPCC; we get it from all the various sources.

One of the interesting things you will note is that the sea level rises are different on different parts of the coastline of Australia. Indeed, New South Wales shows some of the highest sea level rises around the world. That is quite significant. That sea level is variable based on local changes. You will recall that I said that three factors could influence the rate of sea level rise—thermal expansion, melting ice and local impacts. This clearly shows that the local impacts on New South Wales are significant compared to those in Queensland, for example.

In our calculations for the planning advice that we have released we have used one centimetre as being the local impact of sea level rises on New South Wales. For example, as I said, we have put out a policy talking about planning taking into account a rise of 0.9 of a metre. Queensland has put out a policy saying they should plan for a rise of 0.8 of metre. We are using the same science and we are totally aligned with the other States. On the surface one might ask why Queensland's recommendation is 0.8 of a metre and ours is 0.9 of a metre. I am clearly showing that that is based on very solid science and measured sea level increases.

The next map also identifies regional variations in sea level rise that come from the IPCC assessment report. The final map—the map of Australia with all the numbers—shows the places where the sea level is measured. This is CSIRO information. You will see the numbers one, two and three and that New South Wales is roughly between one and two. The top graph has those numbers and the actual sea level rise. The two red lines largely show the area of New South Wales. That indicates that the sea level increase in New South Wales is significantly higher than in other parts of Australia.

The Hon. MATTHEW MASON-COX: It is interesting how that graph shows that the impact on New South Wales is higher than the impact on Queensland, but Queensland has adopted a lower sea level increase to 2100.

Mr WOODWARD: That is what I am saying. That is because New South Wales is predicted to have a higher sea level rise. That is why New South Wales has adopted 0.9 of a metre and Queensland has adopted a lower level of 0.8 of a metre. We are trying to ensure that decision-makers in New South Wales are well informed and to set up communication to be able to achieve that. We think it would be irresponsible of us or the Government to ignore that information—which is from the scientific world. That is not to say that we are not open or that we are closed to other viewpoints expressed by individuals. There are people who disagree with some of these issues, but they are very much in the minority. However, we think it would be irresponsible for New South Wales to ignore this rather than to take it into account sensibly and to continue to review it over time.

The Hon. RICK COLLESS: What is the cause of the estimated thermal expansion of the oceans? What are your scientists telling you is causing that?

Mr WOODWARD: The view about thermal expansion is that it is due to temperature increases in the world and projected temperature increases.

The Hon. RICK COLLESS: Global temperature increases?

Mr WOODWARD: That is correct, yes.

The Hon. RICK COLLESS: That is what is concerning me. The average increase in temperature that would be required to increase the ocean temperature to expand by an amount that will raise the sea level—that is, the thermal flux required from the air to the oceans—is enormous. The scientific papers that I have reviewed say that it is impossible to get that much heat into the ocean that quickly from the air, particularly when there are thousands of miles of undersea volcanoes that are pumping huge amounts of molten lava into the ocean floor and that has very little impact on the ocean temperature.

Mr WOODWARD: That is a view that you may have. However, it is not consistent with mainstream peer-reviewed scientific literature available now.

The Hon. RICK COLLESS: It is consistent with mainstream science. That is what I am saying.

Mr WOODWARD: It is not consistent with the bulk of available peer-reviewed scientific literature, which is increasing in terms of its confidence levels year by year. We base our view on the majority view across broad science in the world. As I said, it would be irresponsible of us not to do that. The thing that is really important that has added to confidence in this area is the increased accuracy of the information that is available from the monitoring that is occurring and, as I said, the increases in sea levels that have occurred over the past 15 years.

When many of the predictions were made over the past 20 years or more the science was not as solid as it is now and the information about the actual changes was not necessarily being manifested. The monitoring is now showing that not only was that earlier modelling relevant but also that the predictions underestimated the sea level rises that is now occurring. Again, while there are different views—and, indeed, expressed by some significant scientists, and we understand that—in any scientific debate when you talk about the future there will be different views. However, there is enough solid scientific information that is considered mainstream by scientists across the world that it would be irresponsible for New South Wales to ignore it.

The Hon. MATTHEW MASON-COX: Have you done any modelling on the impact on specific areas of coastal New South Wales?

Mr WOODWARD: The level of monitoring that is available does not allow us to come down to individual areas within New South Wales. It is at a level where we can say generally within New South Wales it will be different from Queensland.

The Hon. MATTHEW MASON-COX: Have you talked to the insurance industry about some of the implications for development in the coastal area?

Mr WOODWARD: We have talked to the insurance industry and they have talked to us. They also invest a huge amount of their own research in following up the science themselves because there are no political implications in terms of their decision making. They make their decisions based on cold hard probability and dollars. They follow up their own scientific information.

The Hon. MATTHEW MASON-COX: Are you largely in agreement with the insurance industry in relation to potential ocean level increases along the New South Wales coast?

Mr WOODWARD: We base our information on the scientific literature rather than on various sectors of the economy.

The Hon. MATTHEW MASON-COX: That is fine. I am just asking you are you generally in agreement—I understand what you do—with the insurance industry in relation to the likely increases in sea levels over the 100-year period?

Mr WOODWARD: I do not know off the top of my head at the moment what figures they are talking about, the ones you are asking me to agree to?

The Hon. MATTHEW MASON-COX: I am not asking you to agree to anything. I am just asking you whether or not you are in agreement. Perhaps you could take that on notice so the Committee can get a better understanding of the implications?

Mr WOODWARD: Yes.

Reverend the Hon. FRED NILE: My question relates to an aspect of the sea level question we have been following through. What is the practical impact on Byron Bay or places like that where houses are now falling into the sea? What is the response of the State Government? Are you involved in that issue or do you leave it to the local council solely?

Mr WOODWARD: What we are doing with this policy is putting it out in two stages. First, to put out the numbers that should be considered for strategic planning decisions, and then we will be doing further work to develop how councils can use those numbers in their strategic planning. We have to keep in mind also that there are natural processes irrespective of climate change that cause coastal erosion, and the issues at Byron Bay have been going on for quite a long period of time. Coastal erosion is happening there irrespective of climate change but climate change is likely to exacerbate that. So decisions need to be made about the planning for potential further erosion that is affecting those houses at Byron Bay. Yes, we are working with councils on that and we are looking to try and develop how councils and the State Government can come up with a sensible policy that protects infrastructure and also puts a reasonable amount of responsibility on councils and landowners to make their own decisions about investments in areas that might be subject to erosion or its impacts.

Reverend the Hon. FRED NILE: Obviously a lot of that development occurred sometime ago. Do you have a policy on whether the owners or the council should take steps to prevent the erosion by putting some buttressing et cetera on the coastal rim?

Mr WOODWARD: I would prefer to take that question on notice. I am not the one who is personally dealing with those issues. I want to make sure we have the correct information on that. I can get that information for you on notice.

Reverend the Hon. FRED NILE: Thank you. You have mentioned the Threatened Species Act, and others have raised it also. There has been some suggestion throughout our inquiry that all legislation that impacts on land-use decisions should be consolidated into one Act. For example, would it be possible to separate those sections of the Threatened Species Act that deal with development assessment from the sections that deal with the listing of threatened species? Would you have any concerns with the consolidation of all the legislation under the one Act?

Mr WOODWARD: Our view on that at the moment is that we believe there are a lot of planning reforms that have already been implemented—are being implemented at the moment—as well as the administrative reforms that I have talked about. We really should implement those, bed them down and monitor them to work out what, if any, gaps there are that might need to be fixed by some other measures, such as new legislation. I am not sure that it is appropriate to rush into new legislation now for a new Act on top of all these other ones that are going on. What it is likely to do is to divert all our resources from these changes that we have put in place and start to develop up something new without necessarily monitoring all the changes that we have already made.

Many of the things that I think a new Act would want to achieve we have the ability to do, and we have actually made some changes in an administrative sense. As I said with DECCW, bringing all those natural resource agencies together now, we are providing a one-stop whole of natural resource input into the planning process. So administratively we are doing that even though they are under different Acts at the moment.

Reverend the Hon. FRED NILE: You do not see any need for a consolidation into a new Act or a need to start off with and, if there was such a need, it would be somewhere in the future, perhaps five or 10 years time?

Mr WOODWARD: That would be correct.

Reverend the Hon. FRED NILE: You mentioned about five per cent of part 3A approvals go under Commonwealth approval because of its legislation. You gave the impression that you were pretty close to somehow having an agreement between State and Commonwealth that State approval would mean that the Commonwealth had also approved it. You gave the impression that you had almost achieved that. I thought we were still a way from that. Do you have a timetable? Do you say within a month or six months State approval will automatically give you Commonwealth approval?

Mr WOODWARD: No, I do not have a timeframe on it. We are working with the Australian Government to get bilateral approval in place. It is not in place yet. No, I do not have a timeframe on it at the moment. Our objective in New South Wales is to get it in place as quickly as possible but that does depend on the Australian Government, in terms of their timeframes and their confidence in New South Wales to be able to make decisions that they would be comfortable with.

Reverend the Hon. FRED NILE: That is what my question was getting at: whether the Commonwealth in fact has some reservations about the process?

Mr WOODWARD: There are some things that we have approved and the Commonwealth has decided that they were not satisfied with our approval so they have gone down their own path to do further assessments and to make their own decisions.

The Hon. MATTHEW MASON-COX: Obviously you would agree that is not very helpful to all the parties involved in seeking to get these approvals?

Mr WOODWARD: That is right. Certainly we would love to see a lot more streamlining and a more common approach to remove that duplication between State and the Commonwealth when we are dealing with the same sort of threatened species.

The Hon. CHRISTINE ROBERTSON: Is there potential for the assessment of the review of the current change processes, which are fairly massive from what we have gathered, to form a basis for the assessment of a requirement for new legislation? Much of the evidence we have received has indicated that because so many pieces of legislation are attached to the planning process that it is time to have a full review. Is there potential for the review of the current changes to become a basis for an assessment requirement for a new Act or are we just going to do the assessment and then the next Parliament sits down and puts more amendments up on top, which is what people are worried about?

Mr GIFFORD: I think there is. I think the planning reform process has been going on now for a couple of years. Some of those things are starting to flow through and we are starting to see the effect of them. That will result in a streamlining of some of the processes. There really needs time to bed that down but the logical thing to do would be then to see what the gaps are. Where are the issues still occurring? In order to understand that, we need to be monitoring various aspects of the planning system and those changes are now occurring as well as part of the reforms. So in the finish I think we will be better placed.

The Hon. CHRISTINE ROBERTSON: I am concerned that the potential is that the review of implementation of the new processes will just give us another five, six, seven, eight, nine, ten amendments on the current Acts and increase the confusion and complexity rather than everybody sitting down and bundling up the review process for this and seeing if a resolution can be put forward in the whole, which is why we have been given these terms of reference?

Mr GIFFORD: I guess that is what I was trying to say. We need to work through this current reform process, monitor what is going on, understand what change has occurred and what that means to the overall planning framework in New South Wales. Where are the issues? What does that mean for future legislative change? I think this is the stepping block to that.

The Hon. CHRISTINE ROBERTSON: In toto rather than in bits?

Mr GIFFORD: Yes.

The Hon. CHRISTINE ROBERTSON: Have you got some examples of the regional conservation plans that you may be able to share with the Committee? Are they public documents yet?

Mr WOODWARD: Some are, and some are still under development. I am not sure I have got all of those off the top of my head. The North Coast regional conservation—

The Hon. CHRISTINE ROBERTSON: Just so we have some that match with our regional strategic ones so we can have a look at what that means?

Mr WOODWARD: Yes.

The Hon. CHRISTINE ROBERTSON: Is there any chance of biodiversity certification processes being extended across other areas of the State or are you just delivering on those with development priorities?

Mr GROSSKOPF: At the moment we have certified the growth centres of the Sydney basin, we have exhibited a biodiversity certification proposal for Wagga Wagga, we are working with Albury City Council and we are also looking at some biodiversity certification proposals on the Central Coast and Lower Hunter, and there has been some discussions with Shoalhaven. It is a tool that we are looking to use in a variety of environments and the whole idea is about a consolidated plan for many landowners as a way of bringing together these things at a strategic level.

Mr WOODWARD: If I could add one point? Neither biodiversity certification nor biobanking are compulsory.

The Hon. CHRISTINE ROBERTSON: By local government area or—

Mr WOODWARD: By anyone. They are options that people can take on board that will provide greater certainty and reduce cost.

The Hon. CHRISTINE ROBERTSON: Strategic options?

Mr GROSSKOPF: Yes.

The Hon. CHRISTINE ROBERTSON: Persons from the Nature Conservation Council brought to the Committee some issues and one of those issues related to Sandon Point. I think Sandon Point is off McLean—

Mr WOODWARD: Wollongong, yes.

The Hon. CHRISTINE ROBERTSON: Wollongong?

Mr WOODWARD: Yes, north Wollongong—around Thirroul way.

The Hon. RICK COLLESS: They were talking about Sandon River—

The Hon. CHRISTINE ROBERTSON: No, Sandon Point.

Mr WOODWARD: What was it in relation to? Do you remember?

The Hon. CHRISTINE ROBERTSON: Near McLean?

The Hon. RICK COLLESS: Yes.

The Hon. CHRISTINE ROBERTSON: Sandon Point, I was right. They did not geographically identify it but it is near Maclean and it is in the Clarence Shire. I have got the Mid North Coast Regional Strategy here, which has areas of incredible importance in relation to the environment and biodiversity. They brought to us the issue that Sandon Point has been set aside for development somehow and it is in the courts. I am very interested when I look at the regional strategy that the areas in that particular geographic area that have been marked out as important include Red Rock—they have put it in another area—and then they have got Yamba and Angourie. I think that the conservation persons have a case about Sandon Point—I am sorry that this is personal. I am interested that this regional strategy has come out and the Nature Conservation Council has brought this issue to us about Sandon Point, which is in and out of the courts as to whether there should be an enormous development. Rick, you must have been to Sandon Point?

The Hon. RICK COLLESS: Sandon River.

The Hon. CHRISTINE ROBERTSON: Yes, an area of biodiversity I would have thought.

The Hon. RICK COLLESS: Good fishing.

The Hon. CHRISTINE ROBERTSON: Good fishing—that is exactly right. How does this important document separate that incredibly important issue?

Mr WOODWARD: I would have to take that on notice.

The Hon. CHRISTINE ROBERTSON: Yes, it is an on-notice issue. It is about that particular geographic area and the regional office and stuff. I was just very interested that the regional strategy had listed quite carefully quite a lot and then somewhere like Sandon Point, which is a major issue for development, somebody has already decided obviously it is going to happen. I do not know.

CHAIR: So you will take that on notice?

Mr WOODWARD: Yes.

The Hon. CHRISTINE ROBERTSON: The politics is obvious to me that it has missed the biodiversity question, it would appear, maybe.

The Hon. MATTHEW MASON-COX: The point I was getting to was we had some submissions from a number of local council areas about the need for more leadership on climate change and State Government direction in those areas, be it on sea level, be it on implications for bushfires, global warming, et cetera, and other things. I understand that you have the COAG's climate change adaptation framework, which is helpful in some of these things. There is some work going on in different areas. Can you give us an understanding of whether there is more work for you to do in relation to providing councils with more certainty about State policy on climate change and its impact?

Mr WOODWARD: There certainly is more work to be done and we are in the middle of doing that. There is work that we have initiated with various people, including the University of New South Wales, looking at regional profiles across New South Wales, because some of the impacts of climate change are predicted to be quite different in different parts of the State. On the North Coast of New South Wales the predicted impacts of temperature change and rainfall patterns are different to the predicted impacts in the south west of the State, and the impacts of that would be quite significant on agriculture, for example. We have broken the State up into 13 regions, the State Plan regions, and to get as much up-to-date, scientific information as we can available on those.

For that, we have held forums in each of those 13 areas with local councils to present the information to them to provide it to them as draft information that can be considered for developing a climate change action plan in New South Wales and give them an opportunity to feed back into that. That information has come back from councils and we have been going through another round of scientific information. That is covering also things like bushfires, which are incredibly important, so there has been established a CRC for bushfire in New South Wales at the University of Wollongong with Professor Ross Bradstock. That is very active in terms of looking at climate change impacts on fire regimes in New South Wales as well. That is information that is feeding into this process as well. All that information will be provided back to councils. Some things we are providing out, like the sea level policy, as soon as we get sufficient information on that.

The Hon. MATTHEW MASON-COX: That is out, is it not?

Mr WOODWARD: That is out as a draft. It still has to be finalised. We will be putting out much more detailed information on all those regional profiles and then providing advice for how councils can take that into account in their planning decision. Councils are very keen to get information that they can make their planning decisions because it is very tough for councils to try to make black and white planning decisions on issues that are within the tolerance ranges that I talked about earlier in this presentation.

The Hon. MATTHEW MASON-COX: When do you expect that climate change action plan, which I presume will be all-encompassing, to be available to councils in draft form and in final form?

Mr WOODWARD: That should be finalised before the end of this year.

CHAIR: The Committee might have a few more questions to put to you. We will get them to you and if you could take them on board and get them back to us within the time period that would be fantastic. Thank you for contributing to this inquiry.

(The witnesses withdrew)

(The Committee adjourned at 3.35 p.m.)