REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON STATE DEVELOPMENT

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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At Ballina on Tuesday 26 May 2009

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The Committee met at 9.15 a.m.

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PRESENT

The Hon. A. Catanzariti (Chair)

Reverend the Hon. F. J. Nile
The Hon. M. J. Pavey
The Hon. C. M. Robertson
The Hon. M. S. Veitch

CHAIR: Good morning. We welcome everyone, particularly witnesses, to this public hearing of the Standing Committee on State Development inquiry into the New South Wales planning framework. This is the fourth of our public hearings at regional locations. The Committee will be holding its last regional hearing in Albury on Friday. Before we commence hearing evidence I would like to make some comments about procedural matters. In accordance with the Legislative Council guidelines for the broadcast of proceedings, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. The guidelines for the broadcast of proceedings are available on the table by the door. I should remind everyone that any messages for Committee members or witnesses must be delivered through the Committee clerks. I remind everyone to please turn off their mobile phones.

KATE MARTINE SINGLETON, Strategic Planner, Ballina Shire Council, PO Box 450, Ballina, and

MATTHEW JAMES WOOD, Strategic Planner, Ballina Shire Council, PO Box 450, Ballina, sworn and examined:

CHAIR: Before we begin with questions, would you like to make an opening statement?

Mr WOOD: We would, please. On behalf of Ballina Shire Council we would like to thank the Committee for the opportunity to address the hearing and also welcome you to Ballina. We are happy to answer questions as we go but we have a brief opening statement that we would like to make. Our council's submission focuses on two areas of concern and they really relate to the introduction of the standard local environmental plan [LEP] instrument and also the application of part 3A of the Environmental Planning and Assessment Act. That is where our opening statement will focus.

In terms of local plan making and the introduction of the standard instrument, in principle council supports the introduction of measures to reduce the complexity of the planning system in New South Wales and sees that as a really positive step, so taking those steps is a really good move forward. However, given the wide variety of history, planning issues, community values and expectations that have built up over time, council believes that it is very important that the reforms that are undertaken ensure that those differences and those historical contexts are taken into account in terms of the plan-making process.

In this regard we consider it is fundamental that the department and the standardised LEP approach recognise those basic differences between localities, whether they are rural or metropolitan, whether they are coastal or inland—those types of things. Specifically in relation to the standard LEP process, we would like to make the following points and in terms of context, council is currently at the section 64 stage; so we have requested a certificate for the exhibition of our plan from the department. That is where we are up to.

We are of the view that the standard instrument process is suffering from a range of inconsistencies, a lack of clear policy direction and a lack of technical direction from the Department of Planning and that is creating a range of technical flaws as well in the LEP process, which make it difficult to implement. That is also generating a great concern that a new instrument may contain gaps when implemented, which will lead to a range of positions needing to be defended, primarily by local government and most likely in the court. So we can see there are a range of issues that will flow on from the technical problems that we can see in the plan.

We are also of the view that there is a lack of communication engagement and rationale in relation to the policy directions that are being given in relation to the standard instrument and that lack of communication and engagement, we think, is failing to then draw in the range of skills and depth of knowledge from local government within New South Wales, which could contribute, we think, quite positively to the LEP renewal process. We also think the standard LEP appears to be generating a range of duplication and rework quite consistently. What I mean by that is it seems that many councils are solving the same problems over and over again whereas perhaps one clear direction in relation to those issues that come up could make it a lot easier and save a lot of time and resources. We think that makes the process fairly resource hungry.

Without that clear and consistent direction and serious effort to address those inconsistencies in the standard LEP process, there is a lack of incentive for some councils to move forward with that program and to implement the reforms. Given that many councils have LEPs that operate quite well, there could be a reluctance to move forward with a plan that is known to have issues with it when the existing plans work quite fine. That

may impact on the rollout of the instruments over time. The last thing I wanted to make clear, notwithstanding those things we have raised, is that Ballina Shire Council has an excellent working relationship with the Grafton regional office of the Department of Planning. That departmental office has provided excellent guidance where they are able to. We also see the regional officers of the Department of Planning being integral in terms of moving forward with positive steps in the rollout of both the LEP process and the reforms more generally.

CHAIR: Do you want to add anything to that, Ms Singleton?

Ms SINGLETON: I will. I will talk briefly about the introduction of part 3A and the issues that Ballina Shire Council has with that. The introduction of part 3A of the Act dealing with major infrastructure and other projects, and indeed the introduction of State environmental planning policy [SEPP] 71 prior to part 3A, has caused significant concern for Ballina Shire Council. The Department of Planning is heavily reliant on council staff for administrative assistance, the identification of adjoining owners, for example, and the preparation and management of exhibition material. Council staff are involved heavily in that process. The department also relies heavily on council staff for their input into the assessment process, including the application and interpretation of controls and also the preparation of conditions of consent.

The department also lacks sufficient in-house technical expertise, particularly in relation to engineering, environmental health and ecology and often relies on council staff for quite detailed assistance in this regard. The significant resource implications for council from the introduction of part 3A without any fees or allocation of funding to compensate council for this is of concern. Also, in order to meet the sometimes quite tight deadlines imposed by the department, council staff must set aside other duties, which therefore leads to delays in the determination of local applications.

In Ballina council's experience, departmental assessment of part 3A projects has not led to any improvement in determination times. Council's determination times were similar, or in some cases better, than those that seemed to be being achieved by the department. In our view the introduction of the part 3A process has not actually produced any better planning outcomes and the community in general are very confused about the process.

There is no evidence that the introduction of part 3A has stimulated investment or employment beyond what might have been otherwise expected in the local area. In conclusion, the numerous changes to the legislation have added to the complexity of the development assessment process and the reforms have failed to achieve their intent in terms of simplifying and streamlining the planning process.

CHAIR: You may have already touched on part of this, but your submission notes your concern about the functions that councils must perform with respect to part 3A proposals. Can you expand on your concerns and do you believe that council should be reimbursed by the Department of Planning for the work it undertakes with respect to part 3A?

Ms SINGLETON: The work performed by council officers is not dissimilar to that if council were actually the consent authority. The applications require input from a planning officer—an ecologist usually—an engineer, an environmental health officer and administration staff, as I mentioned, for the preparation of exhibition material and taking inquiries from the community, so it is very resource intensive. As I also noted in the opening statement, the time frames given by the department are often very narrow and matters need to be reported usually to the elected council to gain direction, so the time frames become very narrow and other work programs need to be set aside. It has been a major concern of Ballina Shire Council and a number of submissions have been sent to the department about concerns the lack of reimbursement in terms of the resources that need to be spent on assisting in the processing of part 3A applications.

CHAIR: So you believe you should be reimbursed fully for that sort of stuff?

Ms SINGLETON: Council's position is that some reimbursement of those resources should occur.

CHAIR: Your submission lists some examples of developments or projects in your area that were centrally managed by the Department of Planning, namely, the North Angels Beach residential development, the Pacific Pines Estate master plan, the Survey Street residential development, the Ballina Gateway mixed use development and the Ramada Hotel. Were these developments able to be progressed more expeditiously and is council satisfied with the outcomes?

Ms SINGLETON: I do not have actual specific information but I could take on notice that question about the time frames. Generally, our position is that the time frames were no quicker than when council has been the consent authority with similar scale development in the area. In terms of the outcomes, having had personal involvement with the Pacific Pines Estate master plan process and having knowledge about some of the other applications, I would say that whilst generally council was reasonably comfortable at the end of the day, there were particular issues that council was not happy with, the way they were addressed and the outcomes. We could certainly provide some further specifics about each of the projects and the particular outcomes that councillors and council staff had concerns about.

CHAIR: If you would not mind taking that on notice and getting back to the secretariat with that? Incidentally, if you do take any questions on notice or we send you further questions, please return the answers to the secretariat within 21 days of the date of receiving those questions?

Mr WOOD: Sure.

The Hon. MELINDA PAVEY: Your submission notes that council has always encouraged enabling development of a minor scale to occur without the need for consent to be obtained. Why did your council take this approach?

Mr WOOD: I think historically council had the view when it constructed its planning instruments in the 1980s that it wanted to have flexible determination and that it provided for greater diversity in the shire. Many things have taken place that have required a lot of resources, but I also acknowledge that there were a range of things that did not require a lot of resources to be assessed against and therefore they could proceed without the consent process having to occur. So some things were allowed to progress through the system without consent. It was about providing opportunity and diversity, but also balancing resource needs in terms of resource use on those types of development that would require the best effort.

The Hon. MELINDA PAVEY: Your submission notes that it has been council's strong preference to produce and implement development control and design criteria at a localities level. Why do you favour this approach, and will you continue with this when you develop your new LEP?

Mr WOOD: The council's position has been one that strongly favours place-based development for some time now, and that relates to council's commitment to encouraging community involvement. Over time council has consistently gone out to its different localities and looked for direction in its localities in terms of what community expectations are and how people feel about the place. Council has continually tried to reflect that in its planning instruments, and the intent is to do that in the rollout of the standard instrument. We are finding that difficult, though, because of the standardisation process. In a nutshell, clearly council is restricted by the desires, expectations and values of each of the communities of the shire.

The Hon. MELINDA PAVEY: The 2007-08 local development performance monitoring report noted that for Ballina complying development certificates made up 9 per cent of its total determinations. How do you explain that result? Will the new housing code see you increase this percentage even further?

Ms SINGLETON: Anecdotally—and some evidence would suggest that—with the low take-up of complying development, private certifiers are being used at the local level in the lodgement of development applications. Some of that concern would appear to be around making sure they get it right to some extent.

The Hon. CHRISTINE ROBERTSON: Are they doing that to cover their backs?

Ms SINGLETON: That is right. I guess at the moment the present responses would indicate that they will continue to lodge development applications for developments that typically could be addressed as complying developments. The certifiers have certainly been busy, but they are not issuing complying development certificates; in a lot of cases they are lodging applications for simple developments.

The Hon. MELINDA PAVEY: Mr Wood, may I go back to your opening statement? Your evidence was very similar to that of many councils across New South Wales we have also heard from. Could you expand on your impressions of the regional office in Grafton and how you perceive they are received within the structure of the Department of Planning—in other words, the bosses in Sydney—and how you feel they could play a stronger part in the process?

Mr WOOD: In terms of the Grafton regional office, as I said in my opening statement, we have found their advice, support and guidance to be exceptionally good, but that obviously occurs within some boundaries. From council's perspective, we probably perceive the Grafton regional office to be somewhat of a satellite of the department's central office in Sydney. I think the effect of that has been that although there has probably been the technical expertise and willingness within Grafton to provide quite good direction in terms of the LEP rollout, and other political processes for that matter, those issues are required to go back to Sydney eventually. Some advice will then come back to council. If the advice is contrary to council's position, it is sent back down the ladder. We think there could be some benefit in allowing the Grafton regional office to make decisions and provide direction, given that they are familiar with the councils with whom they work. In particular, the Grafton regional office has long-term, experienced staff who have worked in the region for many years. We are of the view that this is a way of improving the resources and the efficiency of the process.

The Hon. CHRISTINE ROBERTSON: Our terms of reference are about looking forward into the future of the planning process. Do you have any ideas on strategy and policy issues in relation to future change to the planning process? Do you think we should rewrite it? Do you think it should be amended, or what do you think?

Mr WOOD: We do not have a position necessarily that says that the Act would need to be rewritten in order to improve the system. Rather, I think the key to improving the process, at least in the short term, is to enhance communication between those in the profession—between State and local government and also the planning professionals—as well as to look forward. I do not think there is a magic solution to the structure in New South Wales. It is a complicated system that has arisen over many years. In that respect, I would not say that it is necessarily a case of rewriting the Act. But I think there is a further step that is required where the virtues of those who practise in New South Wales are harnessed in a more definitive way to determine a problem, rather than piecemeal or ad hoc solutions to issues as they arise.

The Hon. CHRISTINE ROBERTSON: We have heard evidence from a considerable number of people involved in the planning process who seem to have a fairly high contribution into the process. Are you indicating that the representation of country people is not good enough, that the Shires Association is not giving back the feedback to the people affected? Is this what is happening?

Mr WOOD: We have an excellent interface with the Grafton regional office. There is obviously a transition that that goes through, and that has the potential to determine the things that are put forward.

The Hon. CHRISTINE ROBERTSON: Every member of this Committee is from the country, so we are a little biased. Do you have any idea who the planning persons' representatives are on the big consultation bodies?

Mr WOOD: The only people we are aware of that have an interface directly in Sydney are from Taree. We are not aware of particular council involvement in the planning area.

The Hon. CHRISTINE ROBERTSON: Have the Taree people been keen to push Taree's position?

Mr WOOD: I believe they have an interest in a wide range of matters, but the northern part of New South Wales is quite enormous and Taree is a fair distance away. It is difficult to make representations on behalf of what is a large region.

The Hon. CHRISTINE ROBERTSON: As far as strategic planning within regions is concerned, do you have a concept of which region you would delineate to? If the structure were not confined to western New South Wales and bits of Sydney, Wollongong and Newcastle, what would you perceive your region to be?

Mr WOOD: The far North Coast Regional Strategy is where council's overarching priority is identified by the State, and council is generally supportive of that.

The Hon. CHRISTINE ROBERTSON: As a council, you participated in putting that together?

Mr WOOD: Yes, council participated quite actively in the construction of the far North Coast Regional Strategy where it was able to.

The Hon. CHRISTINE ROBERTSON: When you are doing your LEPs, do they reflect what is in the regional statements?

Mr WOOD: Yes. As council prepares its new LEP, the far North Coast Regional Strategy has been a basis for that and council has been bringing the plan in line with the requirements of the far North Coast Regional Strategy. Council has been trying to implement those statements, and again is generally supportive of that.

The Hon. CHRISTINE ROBERTSON: Do you know if the far North Coast Regional Strategy reflects the State Plan?

Mr WOOD: From my experience with the implementation of the far North Coast Regional Strategy I do not see many links between the State Plan and that strategy, but I would not necessarily consider that to be a bad thing. I think they are fairly separate or different documents.

The Hon. CHRISTINE ROBERTSON: How was the far North Coast region defined? Was it defined by community interest, where the health services and other services existed?

Mr WOOD: I think the far North Coast strategy reflects what was historically the region. I am not aware that it relates to where health services and other services were based.

The Hon. CHRISTINE ROBERTSON: What do you consider to be the interrelationship between planning and building controls? That is one of the terms of reference we are supposed to look at, to see if it is healthy to have that all bundled together or separated off.

Ms SINGLETON: Since the reforms in 1998 when private certification was introduced, as I noted earlier, at the local level our experience is that certifiers themselves are preferring to use councils. As planning becomes more complex and as the controls become more complex, the housing codes themselves, as they have been produced now, are so complex that a lot of traditional building surveyors by trade are having difficulty with some of the merit-based issues. The application of the codes to the local areas has become so complicated that people are still preferring to use the development assessment process rather than the other options available for certification.

The Hon. MICHAEL VEITCH: Who owns the airport?

Mr WOOD: Ballina council owns the airport here.

The Hon. MICHAEL VEITCH: Are there any land use issues surrounding the airport?

Mr WOOD: Council has historically not had too many significant difficulties or problems in the localities. Council has a longstanding set of Australian noise exposure forecast [ANEF] contours that have been applied fairly consistently, and that seems to have provided a decent buffer around the airport. Of course, development is starting to encroach as Ballina expands, but at this point the council is committed to the application of those ANEFs and the appropriate guidance that goes with that, and has identified a range of uses that are not appropriate in the vicinity of the airport. Therefore, at the moment the interface seems not to be creating too much conflict.

The Hon. MICHAEL VEITCH: In your view what is the broader community's understanding of the ANEF process and how it is applied to Ballina airport?

Mr WOOD: I would say in Ballina shire the understanding of the ANEF process, and the application of noise contours and those types of things in planning controls, is probably not well understood and is probably only relevant to those people who are very close to the flight path—where they have a notification on a certificate or they receive advice from council that they are in that proximity. There are very few properties that are affected by that in the shire. I would think the broader community has a limited understanding of that issue.

The Hon. MICHAEL VEITCH: Do you think the ANEF process is a good land use management tool?

Mr WOOD: I think the ANEF process is a good core of that process, but I think there are other opportunities to further expand on what those types of issues mean and also to provide a range of different information that is more meaningful to the community. So rather than applying contours and technical things like ANEFs perhaps there are better ways of representing whether or not noise is perhaps at a level that would be annoying or disruptive to an activity, for example. So rather than saying someone is in this contour—indicating how many times a day you would expect to be upset by the noise from that airport—it would be an improvement tool.

The Hon. MICHAEL VEITCH: We have heard evidence for and against this proposal so I am interested to get your views on it. It has been put to the Committee that the raft of environmental legislation in New South Wales could be better served by having umbrella legislation that identifies the hierarchy of controls and priorities. What is your view on that, and why?

Mr WOOD: I think in New South Wales, because we have a range of different tools now in terms of natural resource legislation, there is certainly a level of complexity for people working outside the planning system to understand and grasp, so it becomes very insular in terms of the people who understand that. There would certainly be opportunities to streamline how those different pieces of legislation work together, and perhaps better connect them into the planning tools we have and the primary planning legislation, whatever they might look like in the future. For example, in my experience it is challenging to apply things like the Native Vegetation Act and the Threatened Species Conservation Act with respect to the planning legislation that we have and local environmental plans because there are a range of technical issues to work with, but there are also a range of potential inconsistencies and difficult things to interpret and that creates, I guess, a difficulty in implementing the intent of some of those documents. So I would think there is an opportunity to streamline that and possibly an umbrella-type document may be of assistance in that regard, but then I do not have a strong view about that.

Ms SINGLETON: I concur with what Matt has said. I think at the moment as practising planners, without generalising too much, there are a number of planners who are quite experienced and who really do not have a thorough understanding of the way the different pieces of legislation sit together. As we worked through the preparation of the draft LEP we have really had to come to terms with the interaction between some of the pieces of legislation and, as Matt says, there are certainly inconsistencies there. There are certainly communication problems, probably between government agencies and councils in terms of who is in charge of what and what process someone might need to follow. For example, a general inquiry from somebody in a rural area about tree removal might mean someone spending half a day poring over the Native Vegetation Act and speaking to various government departments to try to get a handle on whether or not something actually requires consent, what consent process, and from whom. In terms of what the solution is that maybe one, but it certainly needs something with the various SEPPs and pieces of legislation that apply today.

The Hon. CHRISTINE ROBERTSON: Do you know if the Federal and State conflict in any way?

Ms SINGLETON: Off the top of my head I could not say whether the Federal and State conflict.

Mr WOOD: From my experience I have not seen a great deal of conflict between the application of, say, the Environment Protection Biodiversity Conservation Act and the New South Wales law. But having said that, we do not have a lot of applications or processes in Ballina shire that trigger the Federal legislation so we have limited experience there.

The Hon. MICHAEL VEITCH: Does Ballina council have pre-development application lodgement meetings with developers? Do you sit down and go through it before they lodge?

Ms SINGLETON: Bearing in mind we both work in the strategic planning section, the regulatory services section does have a pre-lodgement process available and I must say from my experience—having worked in a number of local governments up in this part of the world—it is very encouraging generally of people coming in and having meetings and consultations prior to lodging applications, and supportive of that process.

The Hon. MICHAEL VEITCH: It has also been put to the Committee through our series of inquiries that it would be handy if there were an electronic tool where if you had a parcel of land identifier you could log onto the Internet and run your cursor over that particular parcel of land or enter the number of the parcel of land

and up would come all of the planning controls that apply to that parcel of land. Do you think that would be a constructive way forward, and what are the difficulties in achieving that?

Mr WOOD: I think the application of electronic tools to assist the planning process would be a very positive step forward. I think tools similar to that are used in Queensland, for example, where you can access a certain level of information and certain layers of information, if you like, whether that be natural resource type information or technical planning type information—I find that quite a useful tool. It is not an easy thing to implement though, I do not think, and there is a range of issues in terms of the resources to actually make that happen and the technical ability to maintain that, whether that is at the State or local level. Also I guess the accuracy of information would be something of concern because once it is out there in electronic format it is easily accessible to the community. I also think that there are some things that will still, no matter what our legislation looks like in the future, require some level of consideration by a planner or somebody with technical skills because the system is fundamentally merit based, so some things are not black and white, if you like, and some things are not easy to simply say this applies or does not apply. But I think there would certainly be a level of information that could be reasonably provided and that would be an excellent start.

The Hon. MICHAEL VEITCH: In light of your comments about your strong support for an electronic type thing, does Ballina council have electronic lodgement arrangements for development applications?

Mr WOOD: At this stage I do not think Ballina council is applying an electronic process for lodgement but council at the moment does apply an electronic tracking process so once applications are lodged people are able to go online and find out where their application is up to and view the information that relates to certain applications, whether that be as applicant or as somebody who is interested in the particular application.

The Hon. MICHAEL VEITCH: My last question relates to housing affordability. Has Ballina council had any experience with low-cost affordable housing developments and, if so, what was your experience?

Mr WOOD: At the moment, off the top of my head, I do not think council has had a great deal of experience with particular projects that relate to the provision of affordable housing, if you like, but council at the moment is taking steps to prepare an affordable housing strategy with a view to identifying mechanisms and tools—whether they be planning based or other—that can assist in supporting and promoting affordable housing outcomes in the shire. The shire does have a fairly large proportion, relative to the housing stock, of government housing and so I guess the experience of Ballina council is more about that existing housing rather than new housing being provided.

The Hon. MICHAEL VEITCH: How are you going about developing that affordable housing strategy? What is your process?

Mr WOOD: The process for the affordable housing strategy is fundamentally based on engagement with relevant stakeholders. So there is a strategy that has been prepared in draft form now that has been discussed with the elected council for the purpose of in-principle support to move forward. The next step is basically to engage State agencies and other providers in the community—for example, community housing trusts and those types of organisations—to look at the various options that have been canvassed in order to put those back to the elected council in order to identify which strategies are preferred for Ballina shire. It is meant to be an inclusive and open process at this point.

The Hon. CHRISTINE ROBERTSON: Some councils and shires have quite deliberately encouraged developers to do developments deliberately on affordable housing. Has anybody approached you on this issue or is it such a growth area that it is not perceived necessary by the developers?

Mr WOOD: I have not had any experience with particular proposals coming forward in Ballina shire that aim to provide affordable housing in any sort of a great range or diversity. That is not to say there have not been any, given that I am not an assessment officer in the development application process, but I cannot think of any.

Ms SINGLETON: There have been specific examples of applications, for example, the mobile home park estate type—

The Hon. CHRISTINE ROBERTSON: No, I am talking about smaller blocks and cheaper built houses with less—it has not been approached. Your sociodemographics indicate that many of the persons who move here would not qualify for public housing and many of the persons who live on the North Coast in toto cannot afford a mansion.

The Hon. MELINDA PAVEY: What do you qualify as the standard for affordable housing for the shire?

The Hon. MICHAEL VEITCH: What is your definition of affordable housing? What is council using to develop that strategy?

The Hon. CHRISTINE ROBERTSON: What does it mean?

Mr WOOD: I guess the council at the moment as part of the process of developing its affordable housing strategy is trying to partly answer that question—

The Hon. CHRISTINE ROBERTSON: It is too early.

Mr WOOD: It is a good question to answer. But having said that, in a general sense it is obviously a consideration of housing that is probably around the average or less, in terms of its cost, but also that is integrated. What I mean by that is that the council at this point has not indicated a desire to separate affordable housing and plonk it over in this corner but, rather, to look for options to make affordable housing part of the wider community and integrate it into different areas of the shire.

The Hon. CHRISTINE ROBERTSON: Which is hard then because they are competing with the land values—a big ask!

Mr WOOD: That is really the purpose of our strategy. I think the council identified a couple of years ago that it really needed to address the very questions you are asking and try to quantify those in terms of what it means for Ballina shire and the community here, and perhaps the broader North Coast, in consultation with our neighbouring councils. We are still working on it.

The Hon. MICHAEL VEITCH: When you talk about the "average", are you talking about the average cost for Ballina or for the region or for the State?

Mr WOOD: When I was thinking of that I was probably thinking more around the Ballina area but probably for Ballina and relative to the region it is relatively high, so again it is a question that the council really has to grapple with in terms of where we are going to aim our concept of affordable housing in the future.

The Hon. MELINDA PAVEY: What is the cost of an average block now, $250,000 or $300,000?

Mr WOOD: In that order, say $250,000 in the southern parts of the shire and as you go north towards Byron it is probably more like $300,000.

The Hon. MELINDA PAVEY: How much stock is there?

Mr WOOD: In Ballina shire we have quite a large—

The Hon. CHRISTINE ROBERTSON: Empty land or houses?

The Hon. MELINDA PAVEY: Available empty land.

Mr WOOD: In Ballina shire we have quite a lot of zoned land that is available for development that is not at present being rolled out—

The Hon. MELINDA PAVEY: People are sitting on it, are they not?

Mr WOOD: That happens a little. Council also has a lot of land planned for roll out over the longer term. So we have a strategy in place where we have substantial development areas such as the Cumbalan release area, which is planned to take the proposed population under the far North Coast Regional Strategy—or a great

proportion of that. So the council's view is that it has ample land either zoned or identified to meet its current targets by virtue of the far North Coast Regional Strategy, but as far as lots on the ground available for sale and the building of dwellings, there are very few in Ballina shire at the present time.

The Hon. MELINDA PAVEY: With the Ballina bypass almost finished—you have dual carriageway now from Brisbane down to here—is that changing the makeup of the shire? Is it putting extra demand on the shire with people moving from Brisbane to here, people commuting and those sorts of issues?

Mr WOOD: I have not seen a great shift as yet but we would expect, in terms of the things we are planning for, to see some influence from south-east Queensland over time. Certainly in our strategic documents, and in considering where our new LEP is going, we are considering influences from south-east Queensland and the potential for the issues that come from that region, as well as the population from that region to interact with ours. So it is certainly on the agenda.

The Hon. MELINDA PAVEY: You are only 1.5 hours now from the Gold Coast airport?

Mr WOOD: It is about an hour from the northern part of the shire.

CHAIR: What would the Ballina council like to see from the outcome of this Committee's inquiry?

Mr WOOD: From my perspective, one of the things that I think would be really beneficial as an outcome from the inquiry would be a suggested approach or set of approaches that would clarify the planning system in New South Wales but more so provide for improved collaboration between local and State government and also provide whatever the direction is, but a clear direction; having an outcome that would spur the Department of Planning and the other natural resource agencies that are involved in planning to identify a particular direction, whatever that direction may be, and then implement that direction with the best of its resources, so that rather than chopping and changing and doing small changes or ad hoc changes over time, choosing a strategic direction, choosing the objectives and policy that supports that, and then implementing that approach. I think that would be great.

Ms SINGLETON: And just to add from the elected councils' perspective, I think a key outcome they would like to see is that in the elected councils' view there has been an undermining of their decision-making power with the delegation of the various—

The Hon. CHRISTINE ROBERTSON: Through 3A?

Ms SINGLETON: Through 3A and also now with the new system of various planning assessment commissions [PACs] and joint regional planning panels [JRPPs]. From the elected councils' point of view, they are answerable to the local community and from council's perspective we have the resources and the technical expertise to adequately assess and determine applications in the local area and I think it is very important from the elected councils' perspective that that taking away of power from local council ceases from the elected councils' point of view.

The Hon. MICHAEL VEITCH: In light of that, how many development applications would you have above $10 million?

Ms SINGLETON: I cannot answer that off the top of my head. I think there might have only been one in the last few years but, of course, the major projects SEPP calls up are a number of really varied scales. Three-lot subdivisions in sensitive coastal—

The Hon. MICHAEL VEITCH: I was talking about ones being taken away from the local councils and going to the panels?

Ms SINGLETON: I could not give you a figure but I would say it is not particularly high. I guess from the elected councils' perspective it is yet another undermining or eroding of their decision-making or their ability to make decisions for the local community.

CHAIR: Could you comment on how closely aligned your LEP is with the area catchment management authority?

Mr WOOD: In terms of Ballina shire, Ballina shire is a small component of the Richmond River catchment. Our LEP is basically the lower catchment end of that, so it is a relatively small area of the catchment, although we have a substantial area of floodplain in the lower areas. Catchment-wide we have other local government areas like Lismore and Richmond Valley that cover quite a large land area. We are really in the middle and at the bottom end of the river.

The Hon. CHRISTINE ROBERTSON: So what would happen if they decided for catchments to be the region for planning?

Mr WOOD: In principle, the council has, for a long time, supported the concept of the North Coast regional environmental plan, which looks at issues on a regional basis. That is not catchment-based, but the concept of regional planning and having some level of consistency, whether that be on a region or on a catchment basis, would be a principle that council would support. That would be different, though, to whether or not the council would support decision-making on a catchment basis but certainly in a planning sense, and looking for consistency and planning outcomes for, say, the Richmond catchment, that type of thing is something we have explored in our LEP process in the construction of the new plan with our neighbouring councils, absolutely.

The Hon. CHRISTINE ROBERTSON: So a mixture, perhaps, you are saying?

Mr WOOD: Maybe.

CHAIR: The association between the council and the catchment management authority—good, bad or indifferent?

Mr WOOD: In my experience, council has had a generally good working relationship with the catchment management authority, although in a planning sense as strategic planners we do not engage the catchment management authority very often; only on rare occasions. It seems they have a much stronger working relationship with on-ground delivery type activities in the council—things like rehabilitation of natural areas, that seems to be where the council has the strongest relationship with the catchment management authority.

CHAIR: And that relationship has been pretty good?

Mr WOOD: Yes.

CHAIR: Thank you very much for attending this morning. Your evidence has been greatly appreciated. I hope the rain has not affected you too badly. If you get a little bit too much rain you can send it down to my area in the Riverina. Thank you for your contribution this morning. It has been very helpful.

(The witnesses withdrew)

JAN BARHAM, Mayor, Byron Shire Council, PO Box 161, Byron Bay, affirmed and examined, and

RAYMOND DARNEY, Director of Planning, Byron Shire Council, PO Box 219, Mullumbimby, sworn and examined:

CHAIR: Good morning and thank you for your attendance. Welcome to this inquiry. 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 we start with questions, would either of you like to make a brief opening statement?

Ms BARHAM: Thank you and thank you for the opportunity to appear before this inquiry. First of all, I apologise because we have been a bit busy lately with the disaster—

The Hon. CHRISTINE ROBERTSON: A bit of water.

Ms BARHAM: A bit of water, and a major issue that is relevant to this inquiry, which is coastal erosion and some of the processes that help or hinder us in dealing with that. Council has already presented a substantial submission on this, so I would like to focus on some other issues that are relevant and present those more from a community perspective. I will focus on the relationship that local government has, particularly Byron Shire Council, with the planning laws in terms of us being able to develop contemporary local environmental plans and in relation to the terms of reference where we have some concerns about the current situation.

An important thing for Byron shire is that we have been a bit of a renegade council in some ways in that we have been at the forefront of environmental protection, at the forefront of recognition of climate change and the protection of coastal areas. Some of the terms of reference that look at climate change and natural resource management are of great importance to us. But we have had some concerns in recent years with the ongoing changes to the planning Act and how they have hindered us in being able to have contemporary planning laws.

Since the changes in 1998 to the Act—and Mr Darney will talk about the implication of those—but issues like State environmental planning policy [SEPP] 71, brought on in 2002, and I am not sure if other councils are making you aware of this, but outside the metropolitan areas where people are very focused on part 3A of the Act, we have actually had those ministerial powers imposed upon us since 2002 with SEPP 71, the coastal protection plans, a lot of developments were taken away from council's control at that time and that has created quite the opposite of what was intended, I think, by the changes—inconsistency, lack of thorough assessment of local provisions and some unfortunate outcomes with development approvals that were given.

So, with all the talk about approvals being taken away from councils, we have actually had that happening in regional coastal areas for some time. But of great importance to us is developing a planning rule that is suitable for our local area and we were ready to do that in 2002 after extensive work. The Government at that time halted us from proceeding by determining that they were going to prepare a new model, which was planned first.

CHAIR: Could you speak up, please? People in the audience are having trouble hearing you.

Ms BARHAM: Council was not able to start preparing a new local environmental plan at that stage, despite having done significant work because the Government then introduced a new plan. That went on for a couple of years and then that was shelved. We were told there was another new concept, being the standard template. I personally sat as a Local Government Association [LGA] representative on the Department of Infrastructure, Planning and Natural Resources planning group talking about the idea of a statewide planning template, and in some ways I am in support because there are a lot of issues that are standardised, but the real need for local government, particularly rural and coastal councils, is a need to have local provision.

We strongly defend our right to have local provisions because I think we have done a very good job of being a local council that has made planning laws that are specific to our area and our community's desires to protect the natural environment and have strong views about appropriate development. That process is still

continuing with the template. I would like to table a document here, which is a unanimous resolution of council about some of our concerns with the current template and where we feel that the Government has not allowed local government to have its right to self-determine and to provide for the community's desired future outcome.

Document tabled.

That is a major component. That is all listed there in reference to your terms of reference. Particular issues are climate change and environmental protection. We are actually putting forward to the State that we would be going backwards with our planning laws if we complied with the template. It reduces the number of environmental planning zones, it does not provide a coastal zone, which we have previously had and it has been very important, as is evidenced now, and there is no contemporary position on climate change in the template, which seems unbelievable considering that the New South Wales Government has had manuals that have prescribed climate change since the late 80s with the coastline manual, coastal policy, the floodplain manual and all of those had forward recognition of the impacts of climate change back that far and now they have been lost.

Affordable housing is another big issue for us. I understand that the New South Wales Government is required to comply with some Council of Australian Governments reforms, asking each State to address affordable housing but at this present time councils are still requesting that the Government provide us with their capacity to have provisions for affordable housing in our local environmental plans. We seem to be at odds on those issues. I want to express concern about the complications that Byron shire has with being an iconic tourism destination.

I sat on the panel for the regional strategy to have recognition of our campaign to not be forced to take up a level of future development because it actually will have an economic impact on it. Part of our attraction in an economic sense with tourism is the fact that the character of our area is low key, environmentally protected and does not have an overdevelopment model. We hope that the Government will continue to recognise that we are actually of State and national importance as a tourism destination and for that we need to be able to determine our own local provisions. The community has been incredibly disadvantaged by some of the planning changes that have happened over time. We have a very active, very informed and educated community when it comes to planning, and unfortunately they have been left out of a lot of the planning decisions. We do appreciate their input, because they have been part of the development of Byron shire.

My overarching thing is that I believe we have earned the right to have our self-determination in planning laws, and the current practice of the changes to the planning Act has left us without that. We are willing to conform to general principles with definitions and zonings, but we appreciate that we should be allowed to determine and defend those local planning provisions. That is what it comes down to: whether or not you can defend in court any of your local provisions. We have always had to do that, since the 1979 Act. We have competently done it; we have won 95 per cent of our court cases. In the 5 per cent where we have lost it has been about the uncertainty between some of the inconsistencies that exist in the State Act, not our local provisions. I think we are well armed and willing to take up that challenge of protecting our local identity, and I would like to think that the Government will allow us that right. I will ask Mr Darney if he can pick up on some of the details.

Mr DARNEY: The Environmental Planning and Assessment Act was gazetted in 1979, so it is now 30 years old. That is about the same time that I have been in local government as a professional planner. What have we done in 30 years? We have gone backwards as far as simplicity is concerned. In the last couple of years there have been a myriad of changes to the Environmental Planning and Assessment Act, to the extent that there is not a practitioner in New South Wales—that includes local government people and some of the people who are in private practice in private planning consultancies—who does not believe that what has been done has made it too complicated. Mum and dad, the simple developer, and even more complex developers all have too big a hurdle to get over to get an approval.

My belief is that the Act needs to be rewritten, that you need to start again. You need to be honest with regard to the objectives of what you are trying to do, and I will go to that in a moment. I will take you back to 1968. This is the shire of Byron interim development order. This was made under the Local Government Act. It would have been the first planning document, I presume, in Byron shire at that time. It is three pages. Have a look where we are at now with regard to the level of complexity we have gone to. I am not saying it should not be more complex than it was, but it does not need to be where we are.

If I may take you to the objectives of the Environmental Planning and Assessment Act, which as I said was gazetted in 1979, going from the back and coming forwards. One of the objectives of the Act was to provide increased opportunity for public involvement and participation in environmental planning and assessment. I believe that what we have done quite recently, probably in the last two to three years, is gone out backwards with regard to public participation. I am not saying that is not right for simple applications; it probably is the right direction. But you need to change the Act. We need to be saying that is not an objective any longer. This objective of 5C is no longer relevant and 5B is to promote the sharing of responsibility for environmental planning between the different levels of government in the State. Local government is the level of government in the State. We are going backwards as far as that integration and support from the State Government is concerned. I believe that local government is not having the relevant amount of sharing that was in the original objectives of the Act. I will hand that document to you, to put forward the concern about the direction we have headed in the last couple of years.

As I said, I believe that most practitioners who are participating in the field—and I have a lot of experience, and a fellow who was listening in here, Steve Connolly, a practitioner from Lennox Head, has the same beliefs as I have: that we have made it so complicated that the normal person cannot easily go through the system. As much as the Government thought it was doing the right thing with some of the methodologies, such as complying development et cetera, to get there we have made things too complicated. We need to go back to square one and rewrite the Act.

That is about all I have to say at this time. I will raise one issue with regard to the myriad of decision-making authorities. We have about four or five now, moving to about eight or nine under the new provisions. That includes joint regional planning panels, independent hearing and assessment panels [IHAPs], et cetera. My belief is that when you rewrite the Act—and you should do that—you need to decrease that. If we are going to have joint regional planning panels—and I can see the reason to do that—that probably should be the authority that is above the individual shire. If you have major developments, council developments, State-significant developments, and any other development that needs a greater input than the local council, that joint regional planning panel probably should be the authority. They are going to have expertise and they are going to have government appointments, as well as your two local council appointments. I think that is the way to go, and to not have some of the other levels that are fair in decision making, that is, the Minister, IHAPs, et cetera.

CHAIR: On page 2 of your submission you outline a number of difficulties identified with the zones and definitions included in the standard instrument LEP. Have any of these concerns been addressed since you made your submission?

Mr DARNEY: No, they have not. Our LEP is with the Department of Planning. We have yet to receive any feedback from them. Mayor Barham did point out quite well, in particular, the coastal erosion that is there today. We have police on the beat trying to work out what to do with regard to people's houses, et cetera. We asked the Government whether we could have a similar zone to what prevailed in most coastal councils for the last 20 years, that is a 7F (1) and a 7F (2) zone. We were not given any satisfaction there.

The Hon. CHRISTINE ROBERTSON: Can you tell us what that means?

Mr DARNEY: They are specialised provisions for a special zone along the coastline that allows the council—and the State Government if it is making the determination—to restrict the type of development that is built close to the coastline.

The Hon. CHRISTINE ROBERTSON: It is a defining zone?

Mr DARNEY: Yes. It has special planning provisions that restrict development.

Ms BARHAM: The problem we have with the standard template is that limitation of zones. Now we are trying to squeeze something that we have had there for 20 years. In terms of fairness, in 20 years everyone has been subjected to that zone and the requirements of that zone, and now we are trying to squeeze the coastal zone into an environment zone, and they just do not fit. You cannot do that sort of overlap. This reduction of zones and supposed simplification is actually making it more complex. Good planning then addresses your land-use issues. You have the coast with special provisions, so why not maintain a coastal zone, particularly now that the Government has released its sea level rise discussion paper, which addresses some of those concerns? Our submission to that raises the same point: If you are going to address an issue then create a standard provision that deals with it.

The Hon. MELINDA PAVEY: With regard to the homes we are talking about, did you say the police were down there this morning?

Mr DARNEY: Yes.

The Hon. MELINDA PAVEY: When were they built?

Mr DARNEY: Probably over the last 30 or 40 years. Some are older than that.

The Hon. MELINDA PAVEY: The Government has not given approval of those zonings over the past decade or so?

Ms BARHAM: No. The provisions were put in place by the State Government, not by the council, back in the 1980s. Throughout the implementation of those coastal zone areas, it has been a joint relationship between the State Government and the council. It has been with concurrence of the State. But, as you are probably aware, in Byron Bay we have—

The Hon. MELINDA PAVEY: You are just loved to death—that is your problem.

Ms BARHAM: We are loved to death, thank you. I do not normally say that. We have also attracted very highly-profile and wealthy landowners who are not shy about saying, "We are going to lobby the Minister. We are going to lobby the Premier." Last time we had an event they were lobbying the Federal Government. They got action taken—which actually breached the then planning rules—to have works undertaken by work for the dole people, which was a provision in place then. This is the trouble that we as a local government have: we are dealing with big players. And part of it is because of the way it is seen that local government is treated: that we can be overridden and stepped over, and that people can go straight to higher authorities to get what they want. I think that is an unlevel playing field.

Mr DARNEY: Probably in the last 20 years we have all recognised the problem on that coastline. We had the appropriate tool, the 7F (1) and 7F (2) zones—

The Hon. MELINDA PAVEY: Where do you say that particular coastline is? Belongil?

Ms BARHAM: Belongil. That is not the only affected area, though. There are other areas, such as New Brighton and South Golden Beach, but the property owners there are not as high profile or vocal. In the 1980s we actually lost a whole settlement due to coastal erosion—not climate change, not any freak situation, just the normal climatic conditions that exist in the subtropical area, where you are subjected to cyclones. Now everyone likes to call them east coast lows. But this is a normal weather pattern for this part of the world. That is why those provisions, which the State put in in the 1980s, were absolutely at the forefront of good strategic planning.

Mr DARNEY: What we are saying is that the new provisions in the new template LEP with respect to that particular issue are not as good, in our opinion, as the previous provisions that had been there for 20 years.

The Hon. MELINDA PAVEY: One of the councils that have given evidence to us has said the standard LEP takes away the ability to improve environmental outcomes. They gave the example that they were able to keep a stand of trees under their own LEP and make other blocks around it smaller, so that they could keep this stand of gum trees. Can you give me an example of an area within your council area where the standard LEP would fall short of improved environmental outcomes?

Ms BARHAM: We have a very high-profile one. Despite a lot of the stuff that gets reported, we work very successfully with developers who want to work with Byron council because they see that it is a pretty good place and we have done a good job. And the tables have turned, particularly around environmental protection. We have a development in Byron where we had recognised an endangered ecological community, a cypress pine forest, just south of Byron Bay. The developer approached us and said they wanted to work with us, because they had looked at our biodiversity conservation plan and seen that there was something significant. We were able to work with them to get a good outcome on a merit-based situation.

If we were under a template the rules would just be the rules, and under the new provisions they would probably be able to go straight to a planning panel or straight to a Minister. That ability to work locally and

work within what we are doing—we would not have that same protection assured. We have had some developers come to us saying, "We will alter the way we present our DA so that we do not need the provisions of the State, because we actually want to work with you." I put forward a strange thing that has occurred in the last few years, where some applicants want to work with us and change their developments to work with us so we can negotiate good outcomes, so they can then get a stamp of approval and proudly use it as part of their promotion—that they have a Byron Shire Council approval and they are on the record as promoting the good outcomes that we have been able to achieve. This one involved Katie Page, right next door to the Byron development, where we did have some difficulties previously and Katie came along and worked very cooperatively with us. But in a template situation, that would not be possible.

Reverend the Hon. FRED NILE: Mr Darney, you were saying that you believe the process has become more complicated. The Government argued that the changes simplified the process, especially for single developments rather than large developments. You do not believe that?

Mr DARNEY: I was thinking about it on the way down. I believe that it probably does work effectively in the outer suburbs of Sydney, where you are trying to do single housing and perhaps dual occupancies on standard allotments without the constraints. The constraints are being taken out of those areas by the work that is done by the developer. When they do the subdivision they remove the problems that are on the site. The complying development provisions probably are quite relevant in the metropolitan area. You would need to talk to those people as to whether it is more effective.

But it is not more effective in rural shires, and it is not more effective in coastal shires where you have a myriad of constraints. The mayor has already pointed out coastal erosion, but we also have bushfire issues, we have heavily vegetated areas, and we have acid sulphate soils. We have a lot of issues that need to be addressed, and the complying development provisions do not really apply to those areas. In our areas it has not been an advantage and I think from mum and dad's perspective, living in a rural area, they are more and more dependent on some expert advice to try to get through it—that is the downside of it. For the project homebuilders in Sydney et cetera, building single-storey and two-storey dwellings on those standard lots, I think it is probably quite an effective tool.

In my advocacy I would not recommend getting rid of complying development. You either have complying development or the old building application system that was here in the past; something simple for those simple applications still needs to be there. But we need to have the rest as such that people can see through it and get through it without having to go to a highly paid consultant. The council will give the advice it can give, and we do that as part of our service, but even for our people we need more and more training to get through that system that has been given to us by the Government over the past 20 years.

Reverend the Hon. FRED NILE: You are arguing for the legislation to be reviewed or rewritten—a new bill. We have had other councils say: We have all these new procedures and we are just getting used to it so please do not change it suddenly. If there were a change, would you have any sort of timetable in your mind? Would you like it done instantly or would you say: Give us two years to settle down what we have got while we do a rewrite?

Mr DARNEY: I think that is quite a relevant point. I think what we have done over the last few years is knee-jerk reactions trying to facilitate development and trying to make sure that the economic health of New South Wales prevails—and I can understand why you would want to do that—but while we are doing that we have made it too awkward. I believe you are right, that we probably need two to five years to come up with something that is simpler, more straightforward and more to the point, because we are not being honest at present. We are saying these are the objectives of the Act but we have moved away from them. We have moved to something that is more economically driven and more money orientated—and I do not have a problem with that either—but at the same time we should recognise the truth and fix up those objectives and write the Act in accordance with what New South Wales believes is the right way forward.

Reverend the Hon. FRED NILE: You indicated that you are happy with the joint regional planning panels, providing there are council representatives. There has been some criticism obviously of the panels?

Mr DARNEY: Yes, my council is not happy with joint regional planning panels but I can recognise if you are going to be trying to have another authority instead of the Minister for Planning, IHAPs or whatever, let us just have one. Let us not have another four or five of them—as we put in our submission to you. If we have to have that body let us have the joint regional planning panel and make them the experts. Have your three regional

appointees—the director of planning from Grafton and two other appointees—and then in each council area you would have two council-appointed people, so you have five people. Get the level of expertise and put all of those applications that are bigger, or more complex or should not be determined by your local authorities if you think the local authorities are not doing the right job, and have that one opportunity for that to be carried out. Instead of some going to the Minister for Planning, some going to IHAP and some going to the joint regional planning panels you just have one.

Ms BARHAM: If I could just add a point. There was always a provision for call-ins, when the Government introduced all these new powers for call-ins and overarching control but what they were not doing at the time was taking into account requests for call-ins—the Ministerial powers were always there. When SEPP 71 came in a lot of that was about some inappropriate coastal development that was going on but the Government could very easily have dealt with that by setting up a small group of assessors of the requests for Ministerial action. At the time I spoke with the Director General of Planning, Jennifer Westacott, who was very interested in the idea that instead of complicating the matter, just create a filter through to the Minister, in terms of assessing whether the requests that were made were bona fide, to allow the Minister to take that action. But since then we have done all these other things.

There is another point that has happened with the changes to the Act that is happening in our area—I do not think it is the same everywhere but we have seen it—where you get serial development applications coming in or serial applications undercomplying. So if the neighbours who are not getting notification because there are simple processes where they can go off to apply to get certified, you get these incremental builds going on and people might find that next door has been purchased, particularly on the coast, by someone who just every now and then has new works happening. So you never get this holistic overview of what is happening. The serial processes that are created are heavily impacting local communities.

Mr DARNEY: I would like to add to the reply I gave to Reverend the Hon. Fred Nile with regard to why you do not want too many determining authorities in the bill. I was telling the mayor when we were sitting out the front, with regard to three major, probably fairly iconic and rich, tourist-type developments here in Byron shire—that has been in my four years there—one went to the Land and Environment Court, one went to the previous Minister for Planning for determination and one was through Byron council. Three competitors for tourist developments went in three different directions and they got three different sets of approvals—three different section 94 contributions et cetera—applying to what should be a level playing field. Those three developers if they had got upset, and one of them did not develop because they ended up not having sufficient funds to do it, but they got three different decisions. With regard to contributions et cetera it is quite unfair. If they were smaller developments and had to compete level they would not be starting from that level playing field because they got three different decisions with regard to the conditions and the development contributions that were imposed upon them by the three different authorities: Byron council, the Land and Environment Court and the previous Minister for Planning.

Reverend the Hon. FRED NILE: Do you agree that the panels have some value if there was an intention, as stated by the Government and by the Minister—because of the allegation of corruption in developer donations going to political parties—that the whole plan was to move the approval process away from the Minister, the Minister was to be disassociated from it? Do you think that aim is being achieved or not?

Mr DARNEY: I would not like to comment on that. I have been in the field for 30 years and I do not see much corruption. I do not think the previous Minister made poor determinations. I just think it is not consistent and not a level playing field, that is all I would say. Some people have been given an advantage to some other developers that went through a different process, either by the Land and Environment Court or by their councils. The mayor might have a different opinion about that but I certainly have not. I have been around for a long time and I have seen decisions that are just not equally weighted.

Ms BARHAM: I will make a comment on that because there is one high-profile development that did go via a ministerial approval and the transparency allows you to see that the independent advice that was given to the Minister to provide for the assessment of the determination was ignored. The ecological advice was independent and concurred with council's submission and position and a lot of our community representatives, and was totally ignored in the determination. Our fear is that the understanding of the importance and the integrated nature of some of those inputs cannot be properly understood by people removed from the local authority.

The way to do local planning, and particularly the way we have approached it, is very much integrated. So threatened species and biodiversity is assessed across whole-of-council operations—from our flooding issues, our acid sulphate soils, and our sea level rise—and we look at it so broadly that no-one removed and not familiar with it would be able to ever undertake or realise the importance of those assessments. That is what we have seen. I think in all fairness council is elected to determine on behalf of a community and part of that is the faith that they have that there is history and understanding of what has happened before. If you would like an example of where I believe good process has not happened, where the so-called independent advice has not informed the outcome, I am happy to provide that.

Reverend the Hon. FRED NILE: Can you send that to the Committee? I would appreciate it.

Ms BARHAM: Yes. I can send that through.

The Hon. CHRISTINE ROBERTSON: Your submission talks about the issue of conservation zones and you have spoken about that. From your perspective would you be able to expand on the term "conservation zones"? It is the issue of one conservation zone versus the multiple issues. This has come up before—it is not a new issue for the inquiry—but the Committee has not had a descriptor of the kind of conservation zones you would be considering requiring to be registered?

Ms BARHAM: Under council's current planning system we have seven environmental zones. We are now required to try to squeeze those into three—

The Hon. CHRISTINE ROBERTSON: Yes, I understand that concept. It is the seven zones I want to get a handle on.

Ms BARHAM: The seven zones range from absolutely no development allowed in those areas—some of the water catchment zones, high conservation value, part of corridor protection—down to other zones that do allow certain types of development, and there are three zones that allow varying degrees. So you have got according to your biodiversity assessment—and ours is all based on strong science—what is allowable in certain areas. So the conservation factor of environmental zones is backed up by good science that has considered the importance of those particular areas.

The Hon. CHRISTINE ROBERTSON: Would it be an impost upon you to provide us with a list of the definition of those zones?

Ms BARHAM: I actually have our current planning LEP with us. I can hand that in and you can see for yourself.

The Hon. CHRISTINE ROBERTSON: Is that still confidential or is it public?

Ms BARHAM: It is our current public document.

Mr DARNEY: With regard to the broad environment, the zones that are provided in the template LEP, if the Department of Planning and the Minister gazette somewhere the words we have incorporated in our draft LEP then, aside from the coastline, I think the provisions that are in the template LEP can work. We have mapped corridors et cetera and included them in the appropriate environmental zone. With regard to the issue you are talking about, with regard to that cypress pine development, there is a zone called environmental living now, where you can live with your environment. We have zoned that area "environmental living" and the only issue that would come up there is with regard to lot size et cetera. In the template there is not a lot of room for variation of lot sizes but the actual E1, E2 and E3 zones that are provided in the template can work for us, except on the coastline.

Ms BARHAM: Or in circumstances where exempt or complying development—wherever that might go—might allow private certifier approval in those zones. Our experience is that some of those private certifier approvals do not comply with the rules and once it is signed off—

The Hon. CHRISTINE ROBERTSON: Are you saying that is because in the standard LEP there is not enough definition in relation to the individual zone?

Ms BARHAM: That is right.

The Hon. CHRISTINE ROBERTSON: I have another question in relation to the affordable housing issue. Your recommendation talks about adequately considering housing affordability by State and regional plans and strategies. We are not really talking about public housing stocks because that involves totally different access persons. It is about the persons on low to middle income, access to housing for those humans. Does your council area work on that as an issue?

Ms BARHAM: We have been doing affordable housing strategies and work since 1996.

The Hon. CHRISTINE ROBERTSON: Would you describe what that means?

Ms BARHAM: What we try to do within the strategies is create incentives for private developers to come in and work with us, where we have the provision to provide density bonuses—allow them to have a greater level of development on the site as long as part of that is dedicated to affordable housing. So we have gone through a lot of processes to try to work out how we can have those concessional opportunities.

The Hon. CHRISTINE ROBERTSON: Does that mean they have six posh units and five standards? I am trying to get a handle on what that means.

Ms BARHAM: If a parcel of land would normally only allow six units on it, we might say the concessional rate, if they are willing to dedicate for affordable housing—allow another two on the site, but have those secured as affordable housing. So, for a developer, it means that the density can be expanded but we fulfil some affordable housing delivery.

The Hon. CHRISTINE ROBERTSON: If a developer came along and said, "Look, I've got enough land; you've approved it for housing but I want it to be divided into smaller lots so that we can actually build affordable homes on that development", what sort of path would they go through?

Mr DARNEY: Well, they cannot do it at present. In our draft provisions that we sent to the Department of Planning in the LEP we provided certain areas that we believed that our density bonus is appropriate for affordable housing and they would make an application in the normal course, but a percentage of the site would be given over to a local housing provider, that is, one or two units would be put over to a local housing provider—

The Hon. CHRISTINE ROBERTSON: Community housing?

Mr DARNEY: Community housing provider to rent out as affordable housing.

The Hon. CHRISTINE ROBERTSON: Homeless persons you are talking about?

Mr DARNEY: No, that does not resolve the homeless issue.

The Hon. MICHAEL VEITCH: What is your definition of affordable housing? What is the definition that your council uses?

Ms BARHAM: It is 30 per cent of income to mortgage or rental; standard provisions around housing affordability and because we have the highest value property outside of Sydney—

The Hon. CHRISTINE ROBERTSON: That is right but your sociodemographics indicate you require—

Ms BARHAM: There is a very small percentage of our population that brings attention to the area but it does not actually mirror what our real circumstances are. So what we have tried is to have a very robust strategy that addresses the need and then try to find those incentives because the bonus for developers is that we can only seek that provision for X number of years so after that it would return to them as a bonus. We have put 10 or 15 years to say that they would be dedicated for that social housing need. We have just done one project for a developer where he has signed up to a planning agreement.

The Hon. CHRISTINE ROBERTSON: I understand the process you are using. Your plan has areas where housing possibly could happen in the future?

Mr DARNEY: Yes.

The Hon. CHRISTINE ROBERTSON: You have blocks of land?

Ms BARHAM: Yes, and we are seeking the clauses in the template to be able to have that trigger so developers know if they come in, to come and work with us.

The Hon. CHRISTINE ROBERTSON: So, in the same way you have a paddock of trees, you can do this; it is the same policy that if you put in this many houses that go to some community housing project, you can do this many units?

Mr DARNEY: In particular areas.

The Hon. CHRISTINE ROBERTSON: I understand.

Mr DARNEY: Going back to the earlier question, there is an equation or methodology for working out in your particular area what is an affordable housing rent and I think it was $150 or something like that. I do not have it here, and we did a pretty big study as to what is affordable in particular areas. Further to what the mayor said, almost every major centre within our shire is in the top 20 of housing unaffordability. Despite the area being renowned as being a fairly rich area, it has a severe problem.

The Hon. CHRISTINE ROBERTSON: It has a very high level of socioeconomically disadvantaged humans, and families earning $50,000 a year do not qualify for community housing unless there are specific criteria. The inference is that those people are in western Sydney but a lot of those persons live in country New South Wales and I was wondering if there had been any forward planning on those, not flats for community housing but forward planning for houses for people on low incomes?

Ms BARHAM: If you would like our documentation on that I am happy to provide that as background information to what we have put forward, because we have done the work.

The Hon. CHRISTINE ROBERTSON: I think that would be useful, thank you very much.

Ms BARHAM: We are also taking on the responsibility of providing affordable housing ourselves on council-owned land.

The Hon. CHRISTINE ROBERTSON: What would happen if development of 10 houses were to go in? Would you have issues with your communities?

Mr DARNEY: Yes, in some areas we would.

Ms BARHAM: In some areas we might.

The Hon. CHRISTINE ROBERTSON: Not in our backyard, please.

Ms BARHAM: I did attend a meeting—

The Hon. CHRISTINE ROBERTSON: This is not about Byron shire; this is an issue across the country New South Wales.

Ms BARHAM: There is a lack of understanding about the affordability thing. Very often people come back and they assume—I grew up in a working-class area, in housing commission. I know what it is like. A lot of people fear that rather than look at the social circumstances. That is why what we have proposed is the marbling aspect where you mix things up. The idea of creating a zone of social housing has been proven.

The Hon. CHRISTINE ROBERTSON: No, it is not social housing. Okay, thank you.

Mr DARNEY: With respect to that, what is put to me by the general manager and by our people in the finance department is: Why is it a local government responsibility at all? The mayor has expressed her social

obligations with respect to that particular issue but my belief is that public housing, et cetera, can be part of a component of what local government does but it should be a State responsibility.

The Hon. CHRISTINE ROBERTSON: I am not actually speaking about public housing; I am speaking about access to cheaper homes for the general population.

Mr DARNEY: Our objective is to try to encourage some smaller and more diverse housing opportunities. If you go into a normal subdivision even in Sydney the houses are a lot larger than they need to be. Our objective really is to try to encourage variety and some smaller houses.

Ms BARHAM: And if you do not constrain it we have seen people go to the Government to seek approval from the Government claiming that they are going to do affordable housing but I am yet to see anyone deliver it because if they are not constrained why are they going to resist the temptation when they can sell a block of land in Byron Bay for $500,000? Why are they going to do anything but? That is the reality of dealing with development when you have Byron as a bit of a prize, a trophy area. You need those planning instruments that do constrain.

CHAIR: That would be the same, though, if council owned land and said, "Right, we will now put this aside for affordable housing." The reality is that once it changes hands how can you control it?

Ms BARHAM: That is right, you cannot constrain it. What we will be doing in the supply that we are working on is rental supply. We know there is a great need for rental housing in our area.

CHAIR: You would then be going another step where you are actually in the market providing housing?

Ms BARHAM: Yes.

The Hon. CHRISTINE ROBERTSON: To the community housing organisations?

Ms BARHAM: Yes.

Reverend the Hon. FRED NILE: You would be the landlord?

Ms BARHAM: Yes. I know it is an interesting challenge for local government but we feel we have to take it on because the need is so great.

The Hon. MICHAEL VEITCH: I will not dwell on affordable housing because Christine has done a lot of work on that, but just how successful has that strategy of yours been? How many affordable houses, under whatever definition, have been constructed?

Mr DARNEY: We have not had any yet. We have provided for it in our draft LEP. Council has some land that it will develop itself adjacent to the council chambers in the Mullumbimby town centre. That cannot be done for another 1½ years until the sewerage is completed and upgraded in Mullumbimby. To be truthful, there is probably nothing on the ground. We have done one approval for a major boarding house but that has not been commenced yet either.

The Hon. CHRISTINE ROBERTSON: That is social housing; that is different.

Ms BARHAM: There is a lot of talk. The Property Council talks about the problem with affordable housing being the lack of land release but where does council take its responsibility if you do all the other things under strategic planning? Byron Bay particularly is built on a swamp. If you were looking today you would never build there. It is constrained by flooding, acid sulphate soils and the environment. To make more land available to meet this objective of affordable housing is a bit of nonsense really because without the constraints applied you are actually going to put people at risk in the future.

The Hon. CHRISTINE ROBERTSON: We are not trying to push you into normalcy; we are trying to get a handle on difference.

Ms BARHAM: For other councils I understand the circumstances are different.

The Hon. MICHAEL VEITCH: Earlier in your opening statement, Mr Darney, you spoke about your proposed hierarchy of approvals, the joint regional panels. Are you able at a later stage to provide us with a one-page schematic of your hierarchies?

Mr DARNEY: I have mapped it. Yes, I will send it in as I believe a determination of authorities could be there that could work.

The Hon. MICHAEL VEITCH: We have asked for one-page schematics before and we have received several pages trying to explain it.

Mr DARNEY: It would be like the 1968 Act.

The Hon. MICHAEL VEITCH: Reverend the Hon. Fred Nile was talking about a rewrite of the Act. As you can imagine, there are 155 councils in New South Wales and there are about 100 different views on this. We have also discovered there are 155 councils and all of them operate the best of any in the State: it is just the way it is in local government. It was put to us that the Act should be rewritten, but there should actually be a separate assessment Act, a separate planning Act and umbrella legislation for the raft of environmental legislation to provide clarity about their processes. Is that a possible way forward?

Ms BARHAM: I sit on the Local Government and Shires Associations as Vice-President General and we have had a number of these discussions about what can be done. I remember clearly the 1979 Act and Mr Landa, and the joy of having a planning Act that we were really proud of as being world class. I would like to think that New South Wales was ready to go back to that point; for none of us to think that we know it all but to get a group of independent experts in their field and let them advise as to how we could have a world-class planning system.

We have found from some of our research that New Zealand has a very interesting planning Act that covers everything from the environment to planning but then has a breakdown of different sections that deal with overarching powers whereas in New South Wales we have so many different Acts that create complications. It would be a fabulous exercise to get a group of experts to advise on a contemporary planning system that incorporates all the constraints and land use issues into one overarching model and then some subset sort of arrangement. It has become complex but it is important that the detail is there but the conflicting and inconsistent nature is definitely a problem. There are better minds than ours that could address it, particularly some of the legals, who have been in court for the last 30 years challenging all this. To send them away with the task of writing the best possible thing they could for New South Wales would be an interesting exercise.

The Hon. MICHAEL VEITCH: A room full of solicitors is not a good thing.

Mr DARNEY: Just to take that a little further—and I must have had similar thoughts last night—you could have either two sections of an Act or two separate Acts, the first section being the development assessment Act. I would put all those environmental constraints and other referrals into that development assessment Act. So instead of three separate Acts you would have two: one for strategic planning and one for development assessment. The problem with development assessment at present is a complying development exempt, et cetera. There are myriad of things. You need to put them together in that one scenario and look at the environmental attributes, flooding, et cetera, in that development assessment Act, so instead of having a third Act, you have two Acts: one for development assessment or one for strategic or regional planning, whatever your call is for LEPs.

Ms BARHAM: That is essentially how the New Zealand Act does it. It incorporates all the environmental issues and then has a breakdown in sections of the different parts, which is probably sensible because we have conflict from the threatened species Act to the planning Act and people are trapped between the two with different ministerial directional concurrence and dual consent approvals. The native vegetation Act is so complicated for people now that it is time for a new way forward.

The Hon. MICHAEL VEITCH: Have you had much interaction with the Commonwealth legislation?

Ms BARHAM: In terms of the Environment Protection and Biodiversity Conservation Act?

The Hon. MICHAEL VEITCH: Yes?

Ms BARHAM: In some circumstances our biodiversity falls under the Environment Protection and Biodiversity Conservation Act. Unfortunately, that is where some of the external approvals have ignored those powers where we received reports from this draft that list those responsibilities and checklists where you can go along, stay within those categories and they can be appropriately addressed. It is an added complication in terms of seeking approvals or concurrence but necessary if you honour the importance of those values.

The Hon. MICHAEL VEITCH: Throughout our hearings we have heard various views expressed on how it should be applied. In some parts of the State people are opposing, for example, wind farms. The basic view is: "I don't care where you put them, but don't put them here." Some people are also opposed to large-scale solar generation, on the basis of reflection issues and so on. In the writing of the new Act and the legislative framework, how would the State accommodate developments of State significance such as those? Literally, people do not want them next door.

Mr DARNEY: My opinion is that if you have this overarching joint regional planning panel in the northern region, say from below Grafton up to the border, those five people would be charged with determining that type of application. I do not think it should be a political issue; I think you look at the environmental issues. We have approved a small wind turbine in the Byron shire. Unfortunately, it blew down the other day, just after we finalised the final approval on it.

The Hon. MICHAEL VEITCH: Councils now have applications for up to 100 towers.

Mr DARNEY: And you can understand that. I have worked in coalmining areas. I worked at Lithgow for nine years. There is another side to the environmental attributes of the coalmine as well. You are going to change your landscapes with wind turbines, but in my opinion they certainly have a better effect on the environment than a coalmine.

Ms BARHAM: Are you particularly interested in those alternative energy and State-significant developments? Is that why you have given those examples?

The Hon. MICHAEL VEITCH: I have given those examples because that is where State-significant developments are now moving towards. A number of these things are being put forward in proposals. I think it is the new area of State-significant developments. But people do not want them. It is hard to argue about the benefit to the broader community. If we are going to propose a rewrite of the legislation and a way to move forward, how do we rewrite that State-significant development opportunity? I take on board Mr Darney's view that perhaps a redefined JRPP may be a way of doing that.

Ms BARHAM: If it was specifically about those alternative energy things—I think it is a bigger picture issue. I think there is a need for better education and commitment from government. You cannot say, "We are going to lump this on a community here. It is meeting our environmental trends. But at the same time we are going to allow more new coalmines in the Hunter." I believe that people are savvy enough now that they want to see real commitment, and you cannot have it both ways. If there was a real commitment from government about meeting that challenge of climate change and greenhouse emission targets—and these are things of utmost importance—I think you have a winner. People will go, "Well, okay, that is for the public good." It is the lack of consistency—people are not seeing the big picture of these things. If it is of State significance that these developments proceed, where is the State significance about a genuine commitment to move those things forward to make a holistic commitment? I think the community is cynical on a lot of that. All of a sudden, we see it. All of a sudden, everyone becomes a greeny if you want to oppose something—and that is unfortunate—rather than people having a genuine commitment to shared publicly good outcomes.

Mr DARNEY: That is one of the prime things I think you need to do when you rewrite the new Act. You need to make sure that climate change, et cetera, is made a clear, high-priority objective in that so that when you do your assessments—I know that the neighbour is not going to like it—you are looking at that objective of trying to be supportive of development that should negate some of the climate change situations we have at present. You would write it into your objectives as No. 1 and No. 2 objectives, to make it a high priority. I know that people are going to object, but it is going to be the way of the world I believe.

Ms BARHAM: "State-significant" has problems in that there is a loophole there where people can claim that anything is of State significance. For example, it might be a tourist facility worth $5 million plus. We have had a problem with tourist facilities devaluing their construction price because it reduces how much they

pay. But if they feel that it is going to give them an easy ride to a development approval all of the sudden it will be worth $5 million. That is the problem. We have another area of land that has been put forward for development, and we understand the developer is going to the Government and claiming that it is State significant because it is a greenfields housing estate—on a floodplain.

The Hon. MICHAEL VEITCH: With regard to the standard instrument, we have received a raft of various views about this—from those who think it is good to those who are saying it is absolutely disgraceful, that they do not want it. At one of our hearings it was put to us that the instrument is probably not a bad idea but it should have been broken down into one for the metropolitan area, one for coastal areas, and possibly one for rural areas, and that that would have been a much better way of having a standard instrument. They were not suggesting that the standard instrument should be thrown out; they were simply saying it was probably a good idea but it needed to be broken down. Can we have your views on that?

Ms BARHAM: I totally agree on that. I put that forward in 2004 when I sat on the committee. It is often the case when you are in regional areas that everything that comes out is metro-based, and we are so different: we have different considerations. I support the idea of there being standardisation of some things. If you look at the amount of time and money that has been wasted on differing definitions being argued in court, or zonings, I think where you can have consistency it is really good. But do not take away our right to have our local provisions. We will stand up and defend those in court, because that is what it comes down to. That means the requirement is back on us if we have local provisions. We have to have the evidence to back up why we have done it, and we have to meet so many objectives to have that in there.

I think it has been overlooked that the Government has taken away that right, saying, "Here is the standard LEP." We have had to apply for local provisions, and we have not had the answers yet. But to take away that right from local government communities to be willing to stand up to defend what you want for your future character, and you have to back it up with evidence, I think that is unfair. I will accept standardisation where it is a good thing—and I do think it is a good thing in some areas—but do not put a square peg into a round hole and think it is going to work.

The Hon. MICHAEL VEITCH: We have had evidence from someone who has had their LEP approved and even amended under the new system. What they have said, though, is that they have collected all the information and all the data in the community, they have developed a plan, it then goes off to the Department of Planning, the legal people get hold of it, they change it, it then goes to Parliamentary Counsel, and by the time you get it back the legal speak has removed the local flavour. How do we overcome that? You are saying it has to meet the legal requirements. But if that is what happens when we put it in legal hands how do you overcome that?

Mr DARNEY: We have not got ours back yet, so we cannot give you that answer.

CHAIR: How long have you had it there?

Mr DARNEY: Since Christmas time. I think you are on the right path: that for regional or rural development it needs to be different. I think what they did with the template is very metropolitan-centric. For instance, I cannot believe the Department of Agriculture supported the template situation when, since 1967, they have advocated specific living areas, agricultural areas, for rural farms. That has been there for over 30 years. The new template does not even go to that. It does not go to flooding. The whole of the North Coast, and probably a lot of New South Wales, floods. But there is no provision in there for flooding, and there is no provision for bushfires.

We would have a more consistent approach, even with our local provisions, if we had a more regional or rural orientated plan, if some of the definitions you need for caravan parks and things like that were in there, and if flooding and bushfires were addressed. The normal things that we deal with day by day, that could have been covered, are not covered in the template. Ballina, Tweed, Lismore, Byron, Grafton, et cetera, could all have had a predominantly similar LEP. We have now all gone in with trying to get our own local provisions. I do not believe it was ever the direction that the Government should have taken. It should have just said, "Let's have one for Sydney, one for the coast, and one for inland New South Wales."

CHAIR: How closely is the current LEP aligned with the catchment management plan?

Ms BARHAM: They have not included catchment management provisions in the LEP. It was mooted some time ago that there would be recognition of catchment management teams and priorities, but currently they are not in there.

The Hon. CHRISTINE ROBERTSON: Did you confer with them when you were putting your plan together?

Ms BARHAM: Catchment action plans are more about day-to-day implementation, not so much planning rules. That is where you go back to things like water catchment protection zones, where you have limited uses allowed in those areas.

CHAIR: Given that we have the catchment management authority there, I would have thought you would have had some consultation with them before you submitted your LEP.

Ms BARHAM: We have a memorandum of understanding with the catchment management authority, the Northern Rivers one. But it is not so much about planning. I think there is a misunderstanding about their role and our role.

The Hon. CHRISTINE ROBERTSON: Some of them perceive that they could take over and do the regional planning processes.

Mr DARNEY: The catchment management authority?

The Hon. CHRISTINE ROBERTSON: Yes.

Mr DARNEY: It has never been raised, and it has not been an issue. We did not really address the broader catchment when we did our draft LEP; we looked at the protecting water bodies.

Ms BARHAM: The environment, our biodiversity. Most of the work that the catchment management authority does in our area is the implementation of their catchment action plan themes, which are about the protection of waterways and the natural environment—their implementation of on-the-ground interaction with property owners to achieve those outcomes. Planning is a very different thing if you are starting to look at structures and the built environment. Strategically, I would absolutely support better protection for those areas. There is a complication at the moment about environmental regeneration works in the zoning. That conflicts.

CHAIR: You do not have constant dialogue with the catchment management authority?

Ms BARHAM: Our staff do, but it is about on-ground implementation works, mainly through our extension officers, who work with our landowners, who are also working with the catchment management authority on projects, on-ground works, and property vegetation plans.

CHAIR: Thank you for your contributions this morning. The Committee would appreciate it if you could provide your answers to questions on notice within 21 days.

(The witnesses withdrew)

(Short adjournment)

MR KEN EXLEY, Director, Environmental Development Services, Richmond Valley Council affirmed and examined:

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

Mr EXLEY: I can give you a very brief one. Richmond Valley Council is located in this beautiful area of the far North Coast. We have been identified through the regional strategy as a potential growth area. In fact, the regional strategy identifies that council in the future will have to accommodate up to 9,200 additional dwellings over the next 20 years—so that is a fairly large target for us. The current population in Richmond Valley is about 16,000 people. So, in effect, over the next 20 years we will be more than doubling our population to accommodate the strategy. So development challenges have been quite profound for us. The area covers from the coast—so we have the coastal concerns—as well as the inner area, which is mainly dominated by rural, commercial industry and particularly transport.

The Committee has before it a submission that we have prepared so I will not dwell too much on the issues raised but I would like to focus on those particular areas that probably require further clarification. One of the concerns of council is the strategic planning process. Currently the strategic planning process is really not supported or enshrined in any legislative process. An example of that occurred recently with council in relation to a development application for two chicken farms—quite large developments probably in excess of $1 million each. Now chicken farms require—

The Hon. CHRISTINE ROBERTSON: Eggs or—

Mr EXLEY: Meat.

The Hon. MELINDA PAVEY: Was that an expansion of existing chicken farms or—

Mr EXLEY: No, these are two new operations. They were being located in areas that were bound and adjoined identified future residential development areas in our strategies. Council had some concerns when the applications came before us. Our main concerns were that these types of industry require buffer zones and those buffer zones are not necessarily incorporated on the land that the development is occurring on. The buffer zones relate to odour transmission and also pandemic or the impact of chicken flu and bird flu—so they require isolation.

Council did not have the opportunity to refuse those applications. We were negotiating with the developers to try to relocate them further away from our nominated development strategy zones. Both matters went before the court. Council was unsuccessful in expressing its concern about the impact on loss of future development. The courts appeared to really not give any credence to the strategic plans in relation to their future impact and, as a result, because of those two developments we have estimated we have lost about 350 potential residential lots, which have now been sterilised because of development on adjoining land. I feel that the legislation should recognise and somehow give weight to strategic plans. In the current framework little weight or legal support is provided.

The other area where I think additional support could be provided in the legislative framework is development control plans. I know previous speakers have discussed the LEP, and particularly its template, and the constraints and the challenges that councils are trying to overcome in implementing the template document. I think that councils and planners probably are focusing too much on the template document and we should have more weight and focus on development control plans that support the document.

Can I just explain my background? I am a building surveyor and I am also a planner and environmental health officer as well. I have been in local government for 36 years and I have seen a number of pieces of legislation. So I know the challenges between the planning profession and particularly the development assessment profession. These challenges have been reflected in most rural councils. The majority of my staff are

dual qualified—they are either qualified in planning and building assessment or qualified in planning and environmental assessment. That is basically a necessity and reflects the complicated nature of the current legislation. It requires people with specialist and dual skills to interpret, implement and work through the current bundle of legislation we are dealing with.

Getting back to the development control plan issue, development control plans give council the opportunity to scope and define and critique local issues in relation to development, development requirements such as type of land use densities. Unfortunately, again, the legislation does not give any power or weight to development control plans. The courts consider them when they are subject to appeal but they are open for challenge and are not given due weight during that process.

The bundle of legislation that we currently work through, as I have mentioned, is quite overpowering in some respects. It is quite challenging to keep up to date with the current changing climate. I think it has reached its use-by date and we should basically start again. I know the Committee has mentioned it has been discussed in relation to dismantling the current system and having a number of discreet systems. One of my recommendations would be legislation that focuses on strategic planning processes and endorsing that, and the other would be on the development and assessment process. So we would have two bundles.

The Hon. CHRISTINE ROBERTSON: Separating them but working together?

Mr EXLEY: Separating them but working together. An example I suppose, and we often forget, is that we have a national standard at the moment in relation to the Building Code of Australia. That code has been in for a number of years and it works quite well. Sure, it has some shortcomings in some areas but it demonstrates that we can undertake developments and work under a national environment. That building code is quite accepted by the community. However, one of the things within the building code is that it is quite restrictive and codified. From my discussions with the development industry, I think they are more comfortable with a codified approach. They have some certainty before they commence the development application process. They have a better understanding of what the outcomes will be. While it seems to be more bureaucratic in the weight and the volume of the document that they have, I think it also would give some certainty.

The current process, which has been implemented under the complying development regime, can be used by developers to cherry pick opportunities. An example recently is a development that is a complying development, fully complies, and was submitted as a complying development to slip under the guise of height requirements and boundary setbacks. That development was endorsed and approved—it was fully compliant—and straight after that approval development applications were submitted to amend that proposal. The result was that the building was higher than the current requirement and was closer to the boundaries than the current requirement and then it was amended after that process to increase the footprint of that building. It was a difficult task for council.

The Hon. CHRISTINE ROBERTSON: I do not understand the process. We understand about the first development approval but we do not understand how they can then just say, "We want to change it now."

Mr EXLEY: Once they have development consent through the code complying development process they have their construction certificate and then they can come forward and amend their application.

The Hon. CHRISTINE ROBERTSON: Without approval?

Mr EXLEY: No, then it goes through the development application process but you have already got consent in relation to the footprint of the building and height of the building—

The Hon. MELINDA PAVEY: So you are going to push it even further?

Mr EXLEY: Yes. What they do is then push the envelope a little bit further. So they cherry pick what path they want to go.

The Hon. MELINDA PAVEY: They get their bare minimum and then they push harder?

Mr EXLEY: They get more than the bare minimum because if the code allows for a height which is currently restricted by a development control plan they get the benefit of going above that height restriction, so

they get that consent, and then they can amend their application later on to basically change what the original building was for.

Reverend the Hon. FRED NILE: But council would reject that, would it not?

Mr EXLEY: No, the council cannot reject it. If a building comes forward and it complies—

Reverend the Hon. FRED NILE: No, the amendment?

Mr EXLEY: Well, it would be difficult grounds to reject it if the amendments comply. The challenge would be that the building is already in existence and—

CHAIR: But say if it is a height thing?

The Hon. CHRISTINE ROBERTSON: They get it to a certain level.

Mr EXLEY: Well the height thing is there. I am saying putting additions on the lower height plane but the height plane has already been breached, or changing the footprint of the building in relation to the front boundary setback when the building is already there.

The Hon. CHRISTINE ROBERTSON: So they put it up and then they come with the bits that want extra?

Mr EXLEY: This building is under construction and the bits will be coming forward. So we have those sorts of examples—

The Hon. MELINDA PAVEY: What was the height, sorry?

Mr EXLEY: The difference in height?

The Hon. MELINDA PAVEY: What was the storey?

Mr EXLEY: It was a two-storey building in a coastal location. There were constraints in relation to height of building because of view loss and amenity issues, and that was rigidly enforced by council, but this application managed to usurp that by going through a complying development process, which overcomes us. So developers can currently now cherry pick and control the outcome of the development. Speakers before me identified going through the Land and Environment Court or going through the Minister as a call-up. I would imagine there would be numerous examples of all this. So the legislation needs to be tightened down in relation to some certainty in the approval process. While some cherry picking may be desirable I think it has to be controlled, and the hierarchal proposal in relation to the planning assessment panels and the review panels I think is well founded to try to control some of that and get some uniformity. But on the whole I think basically the current legislation has reached its time. We have pulled it, we have twisted it, we have reshaped it and we have moulded it but it is leaking. I think the best thing we can do is put it back on shore and build another boat because I am not sure how long we can keep this one floating.

CHAIR: Your submission, which was made in December last year, states that the council believed that many of the recent reform changes would actually make many processes more difficult and time consuming despite the aim being the opposite. Has this proven to be the case?

Mr EXLEY: Yes, it has. As I said, the development application process, particularly for mums and dads, is quite an onerous process. Most of our inquiries—and I think it is reflected in the inquiries that we have in relation to development applications mainly in residential areas—most of those inquiries are made face-to-face. We get very few inquiries through the phone. Mums and dads come in or the developer comes in and sits down with council staff and it is very time consuming but it is quite rewarding in that we get a better application in the end. I think that reflects the complicated and uncertain nature of the beast that we are dealing with.

CHAIR: The 2007-08 local development performance monitoring report noted that for Richmond Valley complying development certificates made up 1 per cent of total determinations. How do you explain that result and will the new housing code see you increase this percentage even further?

Mr EXLEY: I doubt it. We have a number of project builders who operate in the shire, particularly in the residential sector. They have not taken up the opportunity to use the complying development process. They are still going through the development application process. They are quite comfortable with the development application process offered by councils. I think councils in rural areas have a different relationship with the development industry. They are a lot closer in relation to getting access to us as opposed to some of the metropolitan areas of Sydney. Council itself has a higher profile in relation to its officers and when they are moving about the area. They are quite well known and it reflects confidence in the council.

The Hon. MELINDA PAVEY: During your opening statement you made mention of a chicken plant and the sterilisation of 350 blocks of land nearby. What was your involvement with the local regional planning office during that process? Did they support you?

Mr EXLEY: The regional planning office gave support. The Department of Primary Industries was the other agency that we relied on, particularly in implementing their guidelines in relation to the buffer, but in the end when the matter came to court council had to present on behalf of those agencies and that is where the difficulty was.

The Hon. MELINDA PAVEY: You mean the Land and Environment Court?

Mr EXLEY: Yes.

The Hon. CHRISTINE ROBERTSON: So there was only one?

Mr EXLEY: There were two applications on adjoining land. There were two different owners and two different outcomes.

The Hon. CHRISTINE ROBERTSON: Two different outcomes?

Reverend the Hon. FRED NILE: But there was only one involving council. The other departments were not involved?

Mr EXLEY: No, the other departments unfortunately did not come forward when we were in court. We had to present the matter ourselves. Our biggest concern was the loss of future residential land.

CHAIR: Why the two different rulings in the court?

Mr EXLEY: One was a settlement during the proceedings where we negotiated an agreement and the other one was a determination of the court.

CHAIR: So you agreed?

Mr EXLEY: Yes, they were both being heard by the court basically at the same time on the same day in the same court.

The Hon. MELINDA PAVEY: By the same judge?

Mr EXLEY: Yes.

The Hon. MELINDA PAVEY: More broadly then, do you think the Department of Planning at a regional level could play a bigger part in helping planning processes in the Richmond Valley and do you think regional officers are being heard in Sydney?

Mr EXLEY: I think regional officers could play a greater role but I am aware and understand that, like us, they have limited resources, particularly with the current rollout of the planning reform at the moment. They are very much reliant upon advice from Sydney. They seem to be a funnelling process, where we will funnel it through them. They are not in a position where they can give us clear or decisive comment. They rely very much on information coming back from Sydney.

Reverend the Hon. FRED NILE: So you mean they are actually following through on what they understand as government policy?

Mr EXLEY: Yes, that is right.

The Hon. MELINDA PAVEY: Your submission states that Richmond Valley Council has been taking steps in relation to affordable housing. Can you outline the steps the council has taken?

Mr EXLEY: Yes. We are at the end of the process where we have identified a process called the facilities need process where we actually looked at all the facilities in our community and whether they are needed now and in the future to identify possible alternative uses some of those facilities. Most regional councils in rural areas have a number of halls and other facilities where there are duplications and we are an amalgamated council so we looked at, not necessarily to rationalise but to identify where there is any surplus and that facility need has identified a number of surplus or potential surplus land and facilities that may be able to be offered up for uses for affordable housing.

We do not necessarily want to be the provider of that because it is way beyond our scope but we are more than happy to try to facilitate that, particularly on land that we have identified. Council has underpinned that by adopting an affordable housing policy and also a positive ageing policy, which underpins and identifies that council's main role is to support, identify and utilise land that it has control over, or owns, for those uses and we are going through that process now.

The Hon. MELINDA PAVEY: In terms of your land capacity, we have heard evidence this morning that a block of land in Byron is around $500,000 and here in Ballina it is about $250,000 to $300,000. What would be the range in your area?

Mr EXLEY: Evans Head is $350,000 to $500,000. Some of the higher-value land is probably $600,000 or $700,000 a block in the coastal area. In the Casino area it would vary from $60,000 to $260,000. There is a great variation in Casino.

The Hon. MELINDA PAVEY: How closely would you say that your LEP is aligned with the area's catchment management plan?

Mr EXLEY: Again, the catchment management plan is an action plan, not necessarily a strategic document. The LEP is basically underpinned by strategic plans or strategic direction. While we do take note of the catchment management plan, the lead agency we deal with is the Department of Environment and Climate Change and that has been providing information to council as part of our consultation phase.

Reverend the Hon. FRED NILE: You mentioned a strategic planning process but the Land and Environment Court ignored it.

Mr EXLEY: That is correct.

Reverend the Hon. FRED NILE: What direction did the court give that they must take into account the strategic plan before they actually make a decision?

Mr EXLEY: I think that because most of our strategic plans are for 10 to 20 years and some council areas have greater than that, they look at the question of certainty: Was there any certainty that the development or land release will occur? They then looked at the development and asked: What is the life of that development? With the chicken farm it was 20 to 30 years and I think they made the judgment that the chicken farm will be gone by the time the development occurs, but that is something we really cannot control, development demand, to such an extent, other than depending upon where we release the land. Councils are looking at taking a greater role in relation to providing infrastructure prior to development to encourage development to occur, but they are all challenges that councils are finding financially quite constraining to them.

The problem I have with the strategic planning process and not being enshrined in legislation or protection seems to be at odds with the current direction that the Local Government Act is going where councils are required to do community plans where community plans will have a four, five or ten year life and basically they are strategic documents and they are enshrined in the Local Government Act as a requirement. I am unaware of any requirement in the current legislation that requires council to have strategic plans other than the guiding principles prepared by the Department of Planning.

Reverend the Hon. FRED NILE: How is your local environment plan proceeding? Where it is at the moment and what problems you have encountered in getting it approved?

Mr EXLEY: I started with black hair at the beginning of this process. It is been quite straining. We took the position to sit back a little bit because initially we all started off with great gusto to complete our document within three years. There was a myriad of changes, confusion, information coming back, information coming out of Sydney in relation to wording. We started getting hung up on wording and various clauses. We had a number of regional meetings and they still continue with planners from all the councils in this area and that is hosted by the Department of Planning, but they all seem to be having some frustration in relation to trying to make LEPs capture as much information as they can. I think that is why we have lost the plot a little bit. We should step back and look at development control plans for those local issues. The reason councils have focused on strategic plans is that development control plans have limited support under the current Act in relation to being enforced, particularly being enforced by the court.

Reverend the Hon. FRED NILE: When do you expect to have your LEP before the department?

Mr EXLEY: We have had it in draft form for nearly 12 months. We have not presented that for a section 65 certificate at this stage because we were continually getting changes and updates and the department was advising us to wait and see which LEPs actually come out of the system and to use those as some of the templates, typically the template clauses. As you know, there have not been many that have gone through the system. You are probably aware that the LEP processes, particularly the time line processes, are on hold and there is a new prioritisation being carried out by the department. We have requested of the department that we be one of the front runners so that we can complete our process, the main reason being that we have three LEPs at the moment because we are an amalgamated council, we are in a growth area and we are about ready to go out on request for a section 65, which is the exhibition stage of the document, to get out there in the community and talk about it. Everything has been put on hold until there is some determination in relation to that time line. It has been a fairly expensive process to date.

Reverend the Hon. FRED NILE: Consultants and so on, is it?

Mr EXLEY: No, we have done most of it in-house but we have used some consultants in other areas. We have had to employ additional resources and additional planning staff to gather information. We are a little caught out in relation to the currency of strategic plans because, as an amalgamated council, they vary from 10 years old to 5 years old to 2 years old. We would have liked to have done a whole of local area strategic plan and finalise that process. There has been no time to do that. Our focus has been on developing the LEP.

Reverend the Hon. FRED NILE: And it is not possible to amalgamate that into one LEP rather than the three?

Mr EXLEY: Currently, no. They are a different era, the two LEPs. They had a different focus. The Casino LEP was very much reliant upon support of a development control plan for all the nuts and bolts. The Richmond River LEP was very much of the old style back in the early nineties, which is quite prescriptive, and the Copmanhurst LEP, the one we have picked up, is even older than that one, so it is back in the eighties. They are all different language, different clauses, different zones. It can be quite a battle when we are issuing a 149 certificate to clarify exactly how that one relates. Again we have been focusing on developing one single development control plan, which will have the majority of the information, particularly the development information, throughout the whole shire. But my concern, as I have mentioned before, is that development control plans do not have much weight in the current legislation.

Reverend the Hon. FRED NILE: Apparently the council owns two unlicensed aerodromes. Are there any planning problems in relation to that?

Mr EXLEY: Yes. One of them is a State heritage listed aerodrome, which has caused some—

The Hon. CHRISTINE ROBERTSON: How do you get a State heritage listing on an aerodrome?

Mr EXLEY: The aerodrome was used during World War II.

Reverend the Hon. FRED NILE: It was an air force base?

Mr EXLEY: It was an air force base. It is not now. There is only one building remaining. The runways are currently still there; two are still active.

The Hon. MELINDA PAVEY: Active to recreational pilots?

Mr EXLEY: Yes. In fact, council is going through a rezoning process to cut off a small section of that for a proposed retirement village or nursing home facility through Ballina Homes Life Care Pty Ltd, which is a charitable organisation. That process has been going on now for five years. So it has been quite daunting. One of the major constraints is probably the State heritage listing of the site. Unfortunately, we missed the new planning panel process by about a week. We predated the planning panel process, and therefore we had to rejig and start again when the legislation changed and the planning panel commenced. It has been quite a frustrating process, but I must commend the department of planning. We now have before them a plan that council has endorsed, and they appear to be processing it with appropriate haste so we can finalise that component of our LEP.

Reverend the Hon. FRED NILE: Is it affecting the neighbourhood around those aerodromes, with the planning development of those areas?

Mr EXLEY: Evans Head has probably one of the highest levels of over-60 age group in our shire. Those people need a retirement village, or an aged care facility. The Federal Government has recognised that by the bed allocation to that facility. That bed allocation was done some 10 years ago, but we have not been able to find a site. It was the only site available that we could find. That has had development constraints on Evans Head itself and put a lot of the aged community under some stress. A lot of them do not want to leave Evans Head because they have been long-term residents. The closest facility to them would be Ballina or Lismore, and that is away from their family and their connections. That is why council has been pursuing the retirement village.

In relation to the Casino aerodrome, that is an unlicensed facility. Five years ago council cut that facility in half and it has been developed as a facility for the grey nomads, the Winnebago people. Half of that aerodrome is now used by them. We are currently in negotiation with the Rural Fire Service to establish a regional Rural Fire Service emergency facility air wing at the aerodrome. So they are still active zones.

The Hon. CHRISTINE ROBERTSON: For the water bombers?

Mr EXLEY: That is right.

The Hon. CHRISTINE ROBERTSON: With regard to your regional office of planning, a very interesting issue came up in our discussions with another local government group in relation to government regional bodies delivering a policy and procedural role very well but having little opportunity to deliver strategy from the local regions back to the middle. Could you comment on that issue? It came up as a major issue for another group of local government people.

Mr EXLEY: It is a major issue because, while I imagine the regional office would be fully briefed by Sydney, there is some disjoint in relation to the information coming from the Sydney regional office to councils and going back. I think that possibly has delayed the process somewhat, because the regional office has not been in a position to give clarity in a lot of the issues that are raised, and they have had to be collected and then distributed through that regional office back to Sydney, and then they filter back through. That has taken some time.

The Hon. CHRISTINE ROBERTSON: How would you perceive that the State, in its structures, could deliver a more strategic role for the regional centres? Quite often the strategies are set at the central level and then it is up to the regional offices to adapt them to fit. How do you perceive it could be empowered that the regional offices could also be part of the strategic process?

Mr EXLEY: I think we have been doing it back to front. I think the strategic process should start at a local level and should be supported by the State. That would then feed up into the State level, so that the State, while they are developing their strategies, could also be cognisant of what the local strategies and local issues are. I feel that we seem to be—and I have lived up here for most of my life—very Sydney-centric. Sometimes it is difficult for the bureaucrats in Sydney to understand the issues we have outside the Sydney areas, particularly

with transport, isolation, and communications without community. I do not think that that information, and particularly the community's desires, are currently captured easily by the State as part of its strategic plan.

The Hon. CHRISTINE ROBERTSON: One of the issues for any government body is the perpetual belief that there are a whole lot of red-tape public servants that need to be removed. How do you positively move forward when the regional structures need reinforcing?

Mr EXLEY: I think what the regional structures need is some sort of authority, some sort of opportunity to stamp and reflect the regional needs. I do not think they are being able to quest that back down to Sydney. We seem to be funnelling information down but it seems to be absorbed within the Sydney-centric process by the time it comes back.

The Hon. CHRISTINE ROBERTSON: Are you a component of the far North Coast Regional Strategy, which we have heard about today?

Mr EXLEY: Yes, we are.

The Hon. CHRISTINE ROBERTSON: The far North Coast Regional Strategy then becomes a component of the State strategy, is that right?

Mr EXLEY: Yes, it does. The far North Coast Regional Strategy is one of a number of strategies the State Government has rolled out.

The Hon. CHRISTINE ROBERTSON: That has not happened across the State. Allotted geographic areas across New South Wales have no strategy: they are all isolated.

Mr EXLEY: One of the benefits of the strategy that I saw is that it set a target in relation to the provision of residential housing, or the provision of employment land, which then gave some certainties to councils in relation to their strategic role. As I see it, we have a target of in excess of 9,000 new dwellings over the next 20 years. So we then know with some confidence that we can go out there and try to identify that as future growth, allow our infrastructure to support that, and try to work out the sewer, water and roads to accommodate that increase. Again, it is reliant upon the economy and a whole range of things. But in the past it was more a bidding process where councils used to go forward and say, "We would like to have this population", and we had to argue the merits of that. Now it is the State saying, "You accommodate this." I think councils found that a lot easier.

The Hon. CHRISTINE ROBERTSON: During this inquiry we have heard some interesting definitions of what is a region. So I think this issue bears some consideration. I was very impressed with what you had to say about the planning and building controls issue. Some persons have said that using building controls that are uniform has the potential to create a sameness right across the State, without reflecting the individual communities.

Mr EXLEY: I would not necessarily agree with that. The Building Code of Australia is quite specific in what it requires. That has been in place for some time. Buildings are all unique and different. The footprint may change, and the style may change, but I think those sorts of style-type buildings reflect the communities in which they are placed. Communities have a great influence in relation to what they expect. That is why Evans Head looks completely different from Casino, because of the values and the communities' expectations in those areas. I think the community has a greater influence than legislation does.

The Hon. CHRISTINE ROBERTSON: The building code does not influence the architectural or style design?

Mr EXLEY: No. All it does is set the standards.

The Hon. CHRISTINE ROBERTSON: Several of the submissions, including yours, say a competition policy does not have anything to do with this issue. I find that an interesting comment—not because I endorse competition policy, but I should imagine you would get many applications or submissions that, on the basis of competition policy, you may have to put through even though it may totally change the environment for shops and so on in that local area. But due to competition policy you cannot say, "No, you cannot have this because it will affect the tradespeople there."

Mr EXLEY: Again, it is how it has impacted the community. Some communities strongly oppose certain retailers, whereas others support them.

The Hon. MICHAEL VEITCH: Or fast-food outlets.

Mr EXLEY: Or fast-food outlets. That has not really been reflected in the Richmond Valley. The community has not set a perceived standard, or who should be there. The communities on the North Coast vary dramatically between each local government area. I think that managing that is part of the challenge. But it has not been a major issue for us at this stage.

The Hon. MICHAEL VEITCH: Does your council have a strategy regarding intensive agricultural industries?

Mr EXLEY: We certainly do. We probably have in this area the largest number of chicken farms on the North Coast. I think we have more chickens than cows, even though we are supposedly celebrating Beef Week this week. That strategy was basically underpinned by Department of Primary Industries siting requirements, and it came out of lessons learned in relation to former approvals in relation to complaints about impacts, particularly odour impacts. We have basically dovetailed into the Department of Primary Industries requirements, and they seem to be serving us quite well. Unfortunately, that is why we are disappointed in this case when we are trying to implement those buffer requirements. We were not really given much credit.

The Hon. MICHAEL VEITCH: Airports have the ANEF process. We have heard evidence about how it can be used as an effective land use management tool. But odour is a very difficult thing to measure, particularly as it impacts on individuals.

Mr EXLEY: Yes.

The Hon. MICHAEL VEITCH: You almost need to have committees set up all around the place to measure odour impacts. What was the process your council undertook to determine odour levels to then determine the buffer zones?

Mr EXLEY: There are models you can use in relation to the identification of odour. The current guidelines established the inputs into a desired model. There are a number of consultancies that specialise in that area. The ones we have modelled appear to be fairly accurate in relation to the footprint and impact. We have not had a major problem with that.

The Hon. MICHAEL VEITCH: When it went to the Land and Environment Court was your intensive agricultural industry strategy given any acknowledgement at all?

Mr EXLEY: It was part of our submission in relation to that. We had joint experts look at the odour modelling, and they basically agreed. In the end the footprint was similar to what was put before council as part of the application, so we knew the consequences of that. We had joint assessment experts assess the flu contamination in the buffer zones required in relation to that, and they were quite similar to the standard. But the biggest catch was that that land—which is still farmland at the moment, but in the next 15 or 20 years hopefully it will become residential—the courts did not give that much weight.

The Hon. CHRISTINE ROBERTSON: I live near chicken sheds. Why is noise not an issue?

Mr EXLEY: Most of the impact we have with noise is the noise from cooling systems and from vehicles. As you know, they collect the birds in the middle of the night, while they are still quiet. But again, their consideration is part of the merit assessment.

The Hon. MICHAEL VEITCH: I think you were present when I asked this question of previous witnesses before the inquiry. I know you have two smaller-scale landing strips. Do you have any views about the ANEF as a planning tool?

Mr EXLEY: I think it is quite a valuable planning tool. We used an ANEF study at the Evans Head aerodrome. It has equivalent flight movements—so we overcalculated—it is equivalent to Coolangatta airport. Currently we are lucky to get one plane a day land at Evans Head. There are no facilities there, no fuel, a couple

of hangars there and a couple of light aircraft. When we laid down that footprint we were very cautious. We did not want to have a development that would encroach and make the aerodrome nonviable. It really gave council some clarity as to where the boundaries should be in relation to various land uses. We have done the same at Casino. So we are quite comfortable with that as a tool to ensure there are no conflicting land uses and that the aerodromes are not subject to challenge in the future because of land use around them.

The Hon. MICHAEL VEITCH: What do you think would be the community's understanding of how an ANEF is prepared and how it is used to develop plans?

Mr EXLEY: I think at Evans Head they would be very much aware of it because it was under challenge and question. It underpinned the plan of management process for the aerodrome, as part of the heritage. So we carried out an ANEF study to determine exactly the impacts on adjoining land and what opportunities there were in developing the aerodrome. We had a number of community meetings. We had experts come down and explain in simple terms what it all meant. So their level of knowledge was quite high. I think most of the challenges were challenging the model and the philosophy behind an ANEF study, not necessarily the results of the study.

The Hon. MICHAEL VEITCH: As to your comment that the Environmental Planning and Assessment Act of 1979 has lived its life, has run its course—I think your line was to put the boat back on the beach and rebuild it. Some people have said to the Committee that in their view that does not have to be done but that we should go back to the plan first era. Was that in about 1998?

Mr EXLEY: I do not see that as an era that offered much hope to revisit. It did have, I suppose, some shining lights and there were some challenges there but, unfortunately, it fizzled through that process. It really did not get traction so it is hard for me to say whether—

The Hon. CHRISTINE ROBERTSON: I am sorry, would you elaborate on "get traction"?

Mr EXLEY: It never fulfilled its process. When the plan first process commenced there was some regionalised planning and there was a hierarchy with an e-planning process in relation to that, but they no longer exist. It used to have its own webpage but that has all gone. I think that was mothballed a number of years ago and we have moved on.

The Hon. CHRISTINE ROBERTSON: Did your regional plan come out of that process?

Mr EXLEY: The current regional plan, no.

The Hon. MICHAEL VEITCH: With regard to the e-planning process, it has also been put to the Committee that in moving forward it would be really good if we had some sort of electronic process where people could go on to the Internet, enter a parcel of land identifier, and quite readily then access all of the planning and development controls that relate to that parcel of land?

Mr EXLEY: It would be great. However, the resources required to maintain it, develop it and put it in place I know are beyond Richmond Valley Council to support that process. We were involved with the Red Tape Blueprint process that came out of the Federal Government only a few years ago, to try to streamline and encourage people to use our electronic processes to inquire about their development applications and e-planning was the next stage, but we did not go to that process. The main reason was after we had done a fairly extensive consultation, particularly with the business sector, only 25 per cent to 30 per cent of our business people would use it.

The Hon. MICHAEL VEITCH: At a local level, do you think your council would look to moving towards electronic lodgement of building development applications?

Mr EXLEY: We have the facilities where we can do it now but we have not had any developer that has expressed a desire to do so. We have encouraged them but it requires a great deal of cost to keep those portals open and really there has not been the demand in the development industry. Again, we are dealing with a different community up here. Only fairly recently I had discussions with a developer who has a $9 million development proposed in Casino. That developer has flown up twice from Sydney just to sit down and talk about his proposal, because he required face-to-face contact with council. I think that rural areas do a different type of business than Sydney.

The Hon. MICHAEL VEITCH: You are almost, should I say, a lifetime careerist in this area. Are there any international models we can look at? We heard earlier this morning of possibly New Zealand—

Mr EXLEY: New Zealand is one but New Zealand has not got a State government. It might be a difficult one to implement in New South Wales. I think Canada has been moving forward.

The Hon. MICHAEL VEITCH: What are the good elements of the Canadian model?

Mr EXLEY: I think its simplicity. I think we have a tendency—and I think the Act is a reflection of that—to get too complex. It is just way too complex. I should not need staff to have dual qualifications to interpret a piece of legislation to advise the community on how to go about the process. That does not make sense to me.

The Hon. MICHAEL VEITCH: I think you were in the room when I asked this question previously. The Committee is hearing a lot of evidence from councils who say they go through the process of developing their LEP, with community consultation, all the survey and all the data work, then they send it off to the Department of Planning, which has its own legal branch, and from there it also goes to Parliamentary Counsel. But when it comes back the legalistic words have actually removed the local flavour?

Mr EXLEY: Yes, the colour is gone. We have had the same issue. An example would be the retirement village amendment which was just put up—which is a current LEP, developed in 1992—and we were just changing the zone to a current zone and it has come back from the Parliamentary Counsel with a whole range of different changes. We have had those words, or that table, in existence since 1992 and the Parliamentary Counsel has attacked the whole thing. Unfortunately, that is a process we are getting used to.

The Hon. MICHAEL VEITCH: So if that is a problem, and the Committee's terms of reference are to look at the way forward, do you have any suggestions as to how that can be improved?

Mr EXLEY: Again, I think the way forward is that the Act is very much focused and written by lawyers, supported by lawyers and defended by lawyers. If you drill down and you look at development control plans they are more the statements, the colour, the culture and the recommendations that reflect the local community but, again, they are not called up by the legislation. I think an easy path would be to give development control plans more weight. You could streamline and have stereotype LEP documents and templates, and it would still meet the State requirement, but the development control plans would have all the nuts and bolts. The Building Code of Australia, which is a piece of legislation that calls up a whole range of different components, is where all the nuts and bolts are or where the adjustments are.

The Hon. MICHAEL VEITCH: When we speak about potential models to look at, it has also been put to us that the South Australian model planning process is something we should look at. At one of these forums I was talking to someone in a luncheon break and they said that South Australia itself is just a very big local government area.

Mr EXLEY: That is right.

The Hon. MICHAEL VEITCH: So therefore it may not be a model to look at. Are you familiar with the South Australian model?

Mr EXLEY: The South Australian model is basically one big local government area, when you look at it, which has been tailored to suit their needs. It reflects very much a Federal model. The proponents of the South Australian model are also working fairly hard on the Federal model—it is the same people—so there is some synergy there. I do not necessarily know how it would translate back into New South Wales.

The Hon. CHRISTINE ROBERTSON: When you talk about legislation in relation to strategic plans, are you talking about regional strategic plans or are you talking about strategic plans at every local area?

Mr EXLEY: I am talking about local strategic plans. The local strategic plan also has to reflect and advise and inform the regional strategic plan.

Reverend the Hon. FRED NILE: Is that what you call a development control plan?

Mr EXLEY: No. A development control plan is basically a more detailed set of rules. You have your standard LEP, which is an LEP template, which has what is prohibited and what are the desired character objectives of that zone, but underpinning that are all the requirements such as height of buildings, setbacks of buildings, the colour, the style, density—all those underpin under a development control plan. They are constantly being changed and amended, and currently council endorses them. They go through a public exhibition process and then council changes them—they are always being tweaked and adjusted—but that process probably takes two months to get changes through it. But when there is a challenge the courts look at that as not a piece of legislation but merely a guideline policy and do not always give it some weight.

The Hon. CHRISTINE ROBERTSON: We have heard about the local government planning but not within this inquiry in relation to your social plans and things. What is happening on the ground with the demands of the local government and the planning processes you are supposed to put forward within your organisation? And how are those two sectors of planning process actually integrating to make a whole for you people?

Mr EXLEY: In my role in my department I have building surveyors and I have the carriage of the building assessment, the environmental section, regulatory rangers, strategic planners and community services. So I have all the people who would be involved in both already in one group. Other council structures may be different and there may be some difficulty. Currently our social plan is actually developed within my division. That, under the new local government process, will disappear somewhat and will be incorporated in the community plan. The difficulties will be that synergy in how we get them all together. I think we are going down that process. I know that Richmond Valley Council is really focusing on strategic issues, particularly in relation to its corporate area, and looking at our business practices and they will hopefully reflect in the new regime under the Local Government Act.

The Hon. CHRISTINE ROBERTSON: So having a firm strategic statement makes it easier and more effective to deliver on the actual process and procedure?

Mr EXLEY: That is right—on the ground.

The Hon. MICHAEL VEITCH: It is almost like you are playing all four codes of football at the same time on the same field, is it not?

Mr EXLEY: That is right.

CHAIR: Mr Exley, thank you for your attendance today and for your contribution.

Mr EXLEY: Thank you.

(The witness withdrew)

(Short adjournment)

ANTHONY JOHN THORNE, Member, Urban Development Institute of Australia, PO Box 243, Port Macquarie, sworn and examined:

CHAIR: Mr Thorne, welcome to this public inquiry. Thank you for attending. 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 from the date on which the questions are forwarded to you. Before we start with questions would you like to make a brief opening statement?

Mr THORNE: Yes. My name is Tony Thorne and I am representing the Urban Development Institute of Australia [UDIA] today. The original representative was unable to attend and I just happened to be working in Ballina on a planning study for Ballina council. It is topical for me today to be talking about planning and the planning process. I am a registered surveyor and a certified practising planner. My first degree was in surveying, followed on by planning. I am a director in King and Campbell, which is a multidisciplinary consultancy in Port Macquarie. That business has been there for 40 years and ranges from surveying to architecture, urban design, planning, engineering and landscape architecture.

I work in the planning system on a daily basis. That is probably my primary role in our business. Primarily I represent landowners in their dealings with either council or State Government on development applications or rezoning applications. Probably about 60 per cent of my time is on rezonings at the moment because they are taking a lot longer than they used to. When I say "rezonings", we are talking about the process of preparing local environmental studies and local environmental plans with councils. In doing that we are working in virtually all the local government areas between Great Lakes and Ballina down to New England. We cover that northern region, if you like.

I will raise a few issues to start off with. Comprehensive LEPs is an agenda item that is very relevant to this inquiry. My personal view and experience are that after about three years it has soaked up a significant amount of planning resource and, at the moment, not for a great return. My overall impression and opinion is that I feel it has tried to do too much in one hit and it has tarred all local government with the same brush, if you like. There were some local government areas that really did need to improve their local planning laws but there were a lot, particularly those under growth pressures, that had quite strong planning laws in place, so they did not actually need to be distracted with this comprehensive LEP.

I am sure that since that process commenced our time frame for producing local environmental studies and local environmental plans has blown out considerably. That is definitely going to affect the affordability of housing in new areas. That is happening right now, in my view. There is also, just as a bit of a detail, an unnecessary complication in the LEPs in the comprehensive models. At the time I was the chairman of the Association of Consulting Surveyors New South Wales and we as a group made a couple of submissions on the earlier drafts raising for the first time that bringing development standards into LEPs will overly complicate them and unnecessarily involve State Government when things need to be varied, which they nearly always ultimately have to be at some stage.

These are things like floor space ratios [FSR] and building heights. I know that is a bit of detail but it is an example of what we have done on a performance base quite well for a long time but we are bringing it back into a very prescriptive model which, while it has the advantage of the same rules across the State, also has the disadvantage of being a fairly rigid model to work in what is actually a fluid process.

Another comment is from a regional perspective that there has been a drift towards centralising planning controls in Sydney more so than in regional areas, so that regional officers, from my perspective, do not appear to have the ability to make decisions as directly as they once did and also some of the councils. I believe that is adding to the process. I know some of the delegation that councils had have been withdrawn because of concerns about the conduct of some councils, but, again, a lot of the councils were actually doing their job quite well. It is about having that balance and recognising those organisations that have good processes in place and adhere to good policymaking that do not need to then refer it back to Sydney.

We see that as being a real deterrent to completing jobs. Even when some of these changes have been brought in and when talking to regional officers, some do not even know what the changes are at that time, so it

is that communication that sometimes, if you are going to centralise decision-making, really needs to be backed up with excellent communication, which does not always happen.

The Hon. CHRISTINE ROBERTSON: Such as, "I don't know; we will have to refer that question back". Is that the sort of response you are talking about?

Mr THORNE: Just as an example, when the delegations were removed from councils it changed the process, and the LEP panel was set up—and I understand why that was done—we had matters in the process already. There was no way of knowing where we were. We were lost in the process, in the interim, if you like. It was a bit embarrassing to ring a regional office to ask, "What is happening?" and the answer is, "Well, we don't know. We only found out about that when you found out about it." A better approach would have been to delay that and make sure everyone in the regional offices knew exactly what was going on, even if you still did the same change, so that when it came out it was fairly seamless and well planned.

I know that there are other reasons for doing it that way potentially but I am giving my perspective on that. On the counter to that, recently I went to the launch of this document, which is the mid North Coast Regional Strategy in Coffs Harbour. It was another UDIA function that was attended by the Minister for Planning, the Hon. Kristina Keneally. Coming away from that—and I think my colleagues felt the same—we found it a refreshing presentation and the Minister gave a refreshing presentation on her plans for the planning system for the first time, in my experience, in a long time, putting some time lines on to rezoning applications and part 3A applications—the major projects that the State Government is involved in approval processes for.

I thought that was very positive and I supported the thrust of her presentation. Walking out of the room and talking with a lot of the local government people there, a lot of the guys and ladies were shaking their heads and saying, "Well, that will never happen". I would say, "We have got to make it happen". My view is that again it gets to communication at the right time in the process. I am encouraging our local governments that we are working with to try to interact almost in a format like this with various State government agencies involved in the process to try to make it happen. If you are going to set time lines, the only way that will happen is if you focus on solutions not on process, which is really where the system is at the moment. Probably my overall comment is that it is a process-focused system rather than an outcome-focused system and a process-focused system will never deliver affordable housing and it will never deliver it in a timely fashion.

CHAIR: Do you think the process as it is at the moment can be streamlined or do you think we have to go back to square one and start again?

Mr THORNE: I think there is so much legislation already there that to go back to square one would be a very difficult process, a very difficult act to follow. We have so many Acts of the State that mesh over the top of each other that I believe it is really looking at trying to streamline the process. In some ways I think that is to ensure, if it is agreed, and I believe this is the case, that the Minister for Planning and the Department of Planning are the chief planner, the coordinator, the leader of that planning process—and I am talking now about the LEP process for the rezoning of land—I think they have to play the role of a planner, a coordinator, a driver, if you like, rather than a clerk.

I do not mean that disrespectfully in any way, but in some respects it is a case of: What does the Roads and Traffic Authority say, what does the Department of the Environment, Conservation and Climate Change say and what does the Department of Water and Energy say? They might have three quite conflicting views. It comes back to the council quite often and ultimately the Department of Planning to make a decision. That process of bringing those conflicting opinions together is where we lose a lot of time. Some of them will never be able to meet, so someone has to make a call that you will only get 70 per cent of what you are after or you are not going to get anything of what you are after, or whatever the mix might be.

The Hon. MICHAEL VEITCH: That is an interesting concept because people have said that the Environmental Planning and Assessment Act of 1979 has gone its course, has lived its life and it is time to start again. Correct me if I have misunderstood you but you are saying that the role of the Department of Planning should be more an administrative type of role but the State actually needs a chief planning officer who looks after State significant stuff. Rather than a new Act, you are saying we should have a chief planning officer who is responsible for that?

Mr THORNE: It sounds like I am trying to centralise it, but I am not. What I was talking about is probably more facilitation for a forum so that you bring the competing interests to the table. I am a strong

believer that we can sit back in all our offices and write letters and reports—certainly those reports have to be done and they have to be assessed—but when it comes to the decision-making process of trying to resolve competing interests or conflicting interests it is important that they are brought to the table at a senior level. I guess it is more a committee style than purely planning. But I think someone has to be the boss: someone has to chair it, someone has to have the ultimate responsibility for making a call, and that has to rest with the Department of Planning.

The Hon. MELINDA PAVEY: With regard to the standard LEPs and the amount of research that councils and developers have had to put into that process, we are getting the same message across the whole of New South Wales. Should that process be simply thrown out altogether?

Mr THORNE: I think it could be. You could look at a number of councils where potentially they have not reviewed their LEP for 25-plus years. I think the Act is 1979, so it is a 30-year-old Act. I think there are a number of those. But the ones that have what I call modern LEPs certainly do not need it. So my preference would be to throw it out. I think it is soaking up so much time and so much energy, at both local government level and Department of Planning level, and we have not actually seen a lot come out of it yet. I think two or three have been gazetted after that period, which is not a good report card.

The Hon. MICHAEL VEITCH: And one of them has already been amended.

Mr THORNE: Has it?

The Hon. MICHAEL VEITCH: So we were told last week.

Mr THORNE: I suspect they will get continuous amendment. So you will be back to where you were with the LEPs you have. I work across a lot of local government areas and in a former life I was involved in a development assessment forum which went for quite a few years looking at standardising planning laws across the nation, not just across States. I ended up withdrawing from that. I felt there was some value in it to get different views, but in terms of trying to harmonise a planning system across a nation I thought the effort compared with the benefit was way over the top.

I would say, on a smaller scale, while there is no wall with LGA boundaries, the land uses need to be compatible, and there needs to be some integration across the boundaries. I do not think they have to be identical. When you move into another area you always go to the LEP. And you will do so in the future, even with a comprehensive LEP, because there are some local nuances in each of them, or there are some differences in each of them. You are still going to look at them.

To come back to your question, I think it could be thrown out. If the focus is on, for instance, affordable housing, I think that would be one way of moving forward with that, because affordable housing relies on availability of land, and availability of land relies on a proper planning process to produce suitably zoned land for housing. That is not happening, because a lot of LEPs are being pushed behind the comprehensive LEPs. The comprehensive LEPs are generally like for like; they are not generally strategic reviews. They are not increasing the amount of land available. Generally, as I have been led to believe, if you are in a rural zone now, you stay in a rural zone; if you are in a residential zone, you stay in residential zone.

The Hon. MELINDA PAVEY: From your experience across the LGAs, how much is it affecting housing affordability?

Mr THORNE: I think it is having a significant impact—not just because of the comprehensive LEPs but because of the slowness of the period.

The Hon. MELINDA PAVEY: We have heard evidence today that here in Ballina a home block is worth $250,000 to $300,000 and part of that problem is that a lot of land that has been approved for release is being sat on by developers: people are holding on to it waiting for the prices to rise even further. Then you have blocks in Byron Bay at $500,000. This is not affordable housing to a lot of people. Would you be able to put a figure on all these hold-ups?

Mr THORNE: It is a good question. We have looked at it at a local level in Port Macquarie. We believe that it costs in the order of $165,000 to produce a block at the moment. That is going from farmland to a developed block, without a house on it, with council contributions. The market is a lot lower there than in

Ballina. In 2003 average blocks were selling for up to $220,000. If anyone is developing at the moment they are developing and selling more at around $165,000. And the ones who are developing are the ones who have owned the land for a long time, 25 or 30 years, so the unit cost is relatively minor. So when I talk about $165,000, if I were a developer or one of the bigger developers around and I wanted to buy a parcel of land, rezone it and then develop it I think that is about what they would have to allow for.

CHAIR: That would be the cost of getting the land developed, not the cost of the land itself?

Mr THORNE: That includes an in-globo land value. With regard to the supply issue, that is always a question for regional towns, and it would be in Sydney as well. It is one of those conundrums that are sometimes hard to resolve. What happens with that is that if the land is held in too few hands it creates a cartel situation potentially. I agree that that is really unhealthy, in relation to the market, economic activity, and housing affordability—just all round. That is why we have often argued that you need more land available than what you need to provide the housing, so that there is competition in the market. I have seen it first hand in Port Macquarie, where there was a large release done in the late 1980s and it was really developed through the 1990s, the early to mid-1990s in particular. You had probably 10 different landowners subdividing land at that time. You had a very healthy market and competition. I think competition is a way of keeping a lid on affordability as much as you can.

CHAIR: Supply and demand has always been—

Mr THORNE: Nothing has changed in that regard.

The Hon. MELINDA PAVEY: What are your thoughts on the regional office and a regional structure, rather than a centralised process? How could it be changed so that Grafton could make decisions without referring to Sydney?

The Hon. CHRISTINE ROBERTSON: And feed back strategy to the Sydney level?

Mr THORNE: How could it be changed?

The Hon. MELINDA PAVEY: Yes.

Mr THORNE: As an example, I think the regional office could make recommendations, for instance, about whether an LEP goes on exhibition or not. That is a fairly simple step in the process. At the moment it goes to Grafton, then it goes to Sydney to the LEP review panel, and it gets on the queue with the rest of the LEPs in the State. Then a decision comes back, I assume, straight to the council. I think there has to be some trust in that the council is not going to put it to the State Government, and the regional office has enough skills to be able to determine whether it should go on public exhibition or not. It is not gazetting it; it is putting it out for consultation. I think just that simple step might save a couple of months in the whole process.

The LEP review panel, in my experience, appears to be operating more efficiently than it was originally. There were long delays—maybe that was just in getting a new system in place. But that is just my personal experience; I have had no direct connection or direct liaison with them at all. But just from what I see at council it appears that they are getting replies much quicker.

When we go through the costal process we go to the regional office and they review it, and then it goes to Sydney. Often it comes back to the regional office, back to council, a lot of bouncing goes on to Parliamentary Counsel, and often it bounces back through that system again. Each of those steps involves a mailing period and a handling period. I would think that if the regional office were the control party of that rather than being where the mail passes through—and that might not be fair to them, but again that is an outsider's perspective, because I think there are some very able people in the regional offices. Although, with some of the changes in the last five years, and probably going back more than that, there appear to have been some major changes at times and very experienced people seem to have disappeared from regional offices. From an industry point of view we have often been surprised by that.

The Hon. MELINDA PAVEY: The shortage of planners in the market is also a factor?

Mr THORNE: Exactly.

The Hon. CHRISTINE ROBERTSON: One of the problems with the process that has been brought to our attention frequently during this inquiry is that after the community consultation component quite often the LEP goes back to Sydney, to Parliamentary Counsel, and it comes back almost totally changed through the implementation of legalese. Would it be better if it were to go through the legalese process before the community consultation component? The council persons are saying they get it back and it does not look like what they have given to the community for comment. I am not trying to bypass the regional offices; it is just that it would appear to me that what happens at the Sydney level and at the Parliamentary Counsel level is that the legal boffins put it into language that saves people from travelling to court.

Mr THORNE: I understand the thought behind that. I suspect, though, that it would still end up back with Parliamentary Counsel. It may not have changes made but it might have changes from other forces through the exhibition period. They often do change through an exhibition period, so it ends up back with Parliamentary Counsel. I also believe we should be trying to streamline it to get it onto exhibition so you start that consultation process earlier.

I am continually surprised that Parliamentary Counsel needs to make the changes they make. I do not know whether there is a need for more practice notes about the preparation of the text, what they are actually looking for, so that the officer in Port Macquarie-Hastings Council or Ballina council has that information available to them so they know what they are looking for before they actually write it.

Reverend the Hon. FRED NILE: Apparently, it would be better if there were a legal branch in the Department of Planning, if they handled the LEP rather than the Parliamentary Counsel. Parliamentary Counsel drafts the bills for Parliament. They have a certain mythology, a certain way of thinking. That may be where the problem lies: that when they look at an LEP they think, "How do I make this into a parliamentary bill, and cover every option and every angle, and add all the additional jargon?"

Mr THORNE: I think there is some merit in that, to be honest. I think that, like every industry, planning has its own jargon, and whether that causes a problem in a legal sense in court—you would want to be careful of that, and that is why you would still need to have a legal mind on it. But if it were a legal mind that is very familiar with the planning system and the intent of it, I would support that as being a positive way to go about it.

The Hon. MICHAEL VEITCH: Why does it have to go to Parliamentary Counsel?

Mr THORNE: My understanding is so that from a legal perspective the document is tight.

Reverend the Hon. FRED NILE: To stand up in court to any legal challenges?

Mr THORNE: Yes. You are not having to interpret its intent; its intent is clear. Some of the changes are very minor, and I am sure you are very familiar with that. But from a layman's perspective it seems that some of the changes are very minor.

Reverend the Hon. FRED NILE: You have been using some jargon yourself. We just say LEPs, you keep putting comprehensive in front of it. Are you making a distinction between a comprehensive LEP and a LEP?

Mr THORNE: Yes.

Reverend the Hon. FRED NILE: What is the difference?

Mr THORNE: The comprehensive LEP is the local government area LEP that the State Government has requested that all councils update, amend or replace their existing LEP with the template.

The Hon. CHRISTINE ROBERTSON: It is the standard LEP.

Mr THORNE: It is the standard LEP with the template. I call that the comprehensive. It is the standard template LEP.

Reverend the Hon. FRED NILE: We do not need to have the word comprehensive there?

Mr THORNE: No, we do not.

Reverend the Hon. FRED NILE: It is not a different document? It is the same as the LEP?

Mr THORNE: It is the standard template LEP for the whole local government area, yes. That is what I mean by comprehensive.

Reverend the Hon. FRED NILE: The Committee has heard some criticism about the use of private certifiers. Do you have any views on that?

Mr THORNE: I have not had a lot of experience directly with private certifiers. I am supportive of streamlining the approval process but you still do need the checks and balances in place. Some time ago I had an experience, if you like, as an observer of seeing a private certifier looking after quite a large building in Port Macquarie without visiting it for what I would have thought were enough times to be able to certify it. I think there should be plenty of rigour in that side of it. Having said that, there are a lot of able people in the industry who could work as certifiers, particularly in regional areas, so if you are working in Port Macquarie—that is where your business is based—to do certification up here in Ballina then the chances of a conflict of interest would be negligible and manageable.

But, to answer your question, I am supportive of it but I think there should be good rules and good reporting on it. I think there should also be good training and I think that is probably something that we do not focus enough on. When I say "training" I mean that you are upgrading your training every year. So as a registered surveyor I do that. I have to attend and certify a certain number of hours and we get audited on our hours on a three-yearly basis. So we have a system set up under the Surveyor General where that happens. Planners are moving into that system under the certified practising planning title. So I think certifiers are probably the same, and it is probably even more important.

CHAIR: Evidence has been given to us that it was felt there were some shonky certifiers out there who were creating quite a concern with councils, and people like that, as to whether they should be in the process or not. I think it was more the case of a few shonky certifiers spoiling it for everybody. I agree with you as far as the training is concerned. Is that what you are hearing out there?

Mr THORNE: I think you are right. I think that is about what I would have heard as well. I know personally a couple of very responsible and to-the-detail sort of certifiers operating in our regional area, and I have no problem dealing with them or recommending them. If I could use the example of the surveyors as well, our registration to certify cadastral boundaries is an important part of the State fabric, if you like. A big part of what the Board of Surveyors looks at is also disciplining those that step out of line. It is exactly the same thing—there are only a few. It is only a very small percentage that do not do the right thing and do not conduct themselves properly, but they create a problem for the whole industry. So if you back up training with discipline for those who are stepping out of line, that discipline can obviously involve deregistering them. As a surveyor we can be deregistered and likewise the certifier. They may already have that ability; I am not exactly sure on that.

Reverend the Hon. FRED NILE: The other new development was the use of panels. Do you have any views on the use of the panels that have been introduced now at the different levels?

Mr THORNE: The regional panels are going to deal with developments over $10 million and my immediate reaction to that is that it is very conservative. I suppose if you are going to the trouble and expense of setting up a panel you want them to deal with a body of work. If I use Port Macquarie-Hastings Council as an example, there are a lot of development applications that are dealt with as complying development—I think 70 per cent—so the houses et cetera. The development assessment panel is set up with an independent chair and staff and when we had an elected council it involved one of the councillors but now we have got an administrator and the administrator does not sit on that, so it is just the senior staff and an independent chair. Between them and complying developments they would deal with 98 per cent or 99 per cent of the development applications. It is only when that panel cannot reach consensus that it gets referred to council. So it is a very small number of development applications that are currently in that structure that are going to the council.

I think that panels are needed for when a council is dealing with a council property, there is clear conflict and there should be some independence. In the past that has been dealt with by having a planner or an engineer, or whatever the discipline needed, appointed by council to do an independent assessment. I think that

is probably still too close. So having an independent panel for those sorts of situations is a worthwhile thing. I think that a panel would help some of the smaller councils potentially deal with the occasional big development comes into the town but when I am looking at the bigger councils like Ballina, Coffs Harbour, Port Macquarie-Hastings and Great Lakes, they seem to have pretty good structures already in their decision-making process. So I am not convinced that it is absolutely needed for development applications under what I call part 4 of the Act, under the normal development applications. A three-storey building could be $10 million in an area that has been zoned, it complies with the height limit and is zoned for that use, why do we need to bring three people out of town and two local people to make that decision if you have got the proper planning controls in place?

Reverend the Hon. FRED NILE: Do you think it should be a higher amount?

Mr THORNE: I think you need a higher threshold if you are going to have that.

Reverend the Hon. FRED NILE: What would you recommend?

Mr THORNE: More like $50 million. It is for the very, very large development and you do not have it happen very often. That is just off the top of my head. It would also probably be for very specific types of development. For instance, an extractive industry that has a regional presence and they are very important industries that we cannot do except where the Regional Organisation of Councils [ROC] is and sometimes the local interests are hard to overcome for a council and a panel might be able to look at it in a broader sense than a local council might, but they do not come up very often.

The Hon. MICHAEL VEITCH: Or a wind farm?

Mr THORNE: Exactly, yes. Renewable energy is going to be a very changing industry and something that is going to require changes of us all as to what we think about those sorts of structure and uses, if you like. If it is near the coast, where there is a lot of wind, you can be sure it is going to be controversial.

Reverend the Hon. FRED NILE: Putting your Urban Institute of Australia hat on, have you had any feedback on how the consultative body is working with the stakeholders who are supposedly reviewing this legislation? There was an amendment that I put up during the passage of the bill, because there was some feedback from the planning people and other people who felt there had not been enough involvement, and if there were to be amendments that could be a follow-on process. They could pick up whether there was a need to make changes and so on, or even just in the procedures. Have you had any feedback on that as to whether that is working?

Mr THORNE: I have not personally had that feedback but I would not read that as that is not happening. While our business is a member of the Urban Institute of Australia, my partner is the one who is much more involved in the institute. I do read the journals and go to some of their functions and they appear to be very much in a consultative mode but specifically I cannot really comment.

Reverend the Hon. FRED NILE: Can you check with your partner and perhaps send something to the Committee with his feedback?

Mr THORNE: Yes, I will.

Reverend the Hon. FRED NILE: If there is anything more we need to do to make it more effective?

Mr THORNE: Okay.

The Hon. CHRISTINE ROBERTSON: We have got the North Coast strategic plan and now the mid North Coast strategic plan. Did you have anything to do with the process of the development of the strategic plans?

Mr THORNE: On the mid North Coast Regional Strategy I made submissions on the draft on behalf of a number of landowners, primarily in the Port Macquarie-Hastings area, and we reviewed the text of it as well. So we were looking at the maps and the text.

The Hon. CHRISTINE ROBERTSON: Can you tell us a bit about the process for the development of that document—the philosophy and statement of strategy?

Mr THORNE: That is a very good question because until it became a draft document I had heard about it but I had not actually been aware of any occasion to be involved, if you like, in a think tank or a motherhood big picture thinking session with the department. I did not know they were available, and I will apologise if they were, but I am not aware that they were available. Until last year I had seven years on the executive of the Association of Consulting Surveyors NSW [ACS], so we were very much across most things that were happening with changing strategies or laws in relation to planning and development.

Up until the time of the draft coming out—it first came out just as text and I would say that was a fairly ineffective consultation process because the maps were not attached and without the maps the text is really very much a serious of broad statements which no-one could probably disagree with until you know what land it is attached to. We did make submissions on the maps in particular, much more detailed submissions on that. I was fairly dissatisfied with the process in that our submissions went in, there was zero feedback and we waited a long time before that was adopted, and there were a lot of things that were on hold waiting for that to happen.

The Hon. CHRISTINE ROBERTSON: So there was no interaction.

Mr THORNE: None, and we had a standing process of follow-up probably every two months.

The Hon. CHRISTINE ROBERTSON: You do not know if the local government people had more opportunity for interaction?

Mr THORNE: I think they did. I think the local government people dealt with the regional office directly on that. Look, there was good reason for keeping landowner reps out of some of that because they did not want to promote speculation either. So the local government really kept under wraps what their views were about where these potential planning areas should be—and I can understand. So I think you could have had a bit more non-government feeling put into the strategic document itself. I think also it was a very lengthy process once it went beyond the exhibition period.

The Hon. CHRISTINE ROBERTSON: Across the State this issue of defining regions for such a strategic document to be delivered on has been quite a problem, but it would appear that for the North Coast and the mid North Coast it has been more easily defined to the satisfaction of those inside. You have said you work in New England and the north-west. You must understand therefore the difficulties they have with defining a region. Can you talk to that a bit? Some of the regions that have been plonked on people are bizarre.

Mr THORNE: With the New England work, we have not been involved in the LEP processes much. We have been more involved in doing development applications for a group of retirement villages. I have not got as broad experience with the New England and their problems. I know a couple of fellows who would be able to straight away tell you their perspective, and maybe they have already. I am having trouble answering that question.

The Hon. CHRISTINE ROBERTSON: I was wondering whether you have been able to grasp the comparisons of those who can sit and agree on a region with relative ease and those who have great difficulty.

Mr THORNE: I would imagine the broader the geographical area, the more difficult it is to call it a region. For a whole range of reasons the mid North Coast and the far North Coast have both evolved—I have been up in this area for 20 years and over that time they have really solidified but Taree is the bottom of the mid North Coast and Forster or Great Lakes is the southern end of the mid North Coast and Coffs Harbour—I might be wrong, it might be Grafton—is the very northern end, and the rest of it is the far North Coast. I could imagine that it is difficult in some of those areas. In the New England, they attach them to the western regions.

The Hon. CHRISTINE ROBERTSON: It is all west of New South Wales?

Mr THORNE: Well, that does not work at all, sorry.

The Hon. CHRISTINE ROBERTSON: Our terms of reference talk about the interrelationship of planning and building controls.

Mr THORNE: And you want to know about interrelationship.

The Hon. CHRISTINE ROBERTSON: We are supposed to look at the interrelationship of planning. Some persons have suggested we have two totally separate; some persons have asked us to recommend to have strategic plans of the local area somehow legislated for because they have difficulty in courts because their strategies have not been registered. What are your ideas on the interrelationship of planning and building controls? Are they separate or are they the same thing?

Mr THORNE: I think they have to be related. It depends on the scale of the development. There are certain building works that probably do not need planning approval; minor things like rural sheds and carports, although there are probably plenty of court cases about a carport in a certain suburb. It is amazing how often a minor development can become very controversial between two acrimonious neighbours but, putting that aside just for the moment and looking at the bigger picture, anything that is complying development is very much removing the planning out of the building controls, because you are saying, "As long as you comply with these rules then the planning is finished", so certain setback, certain height, certain setback for windows—there are some fairly clear rules.

I think the complying development is probably the vehicle to distinguish when you do need planning laws and when you do not. The complying development works well. Our office is just seeing that starting this week with the Building Education Revolution projects through the Federal Government and the Department of Commerce. Our architects are involved in a number of schools and they have very much streamlined the planning process and have almost taken it right out.

The Hon. CHRISTINE ROBERTSON: Yes, some of the local governments are very cross.

Mr THORNE: We would never get the money spent if we did not. We wondered when we heard about it and said, "Well, that will never happen", because you will take two years to get your approvals, but that is not going to happen with the complying development provisions of the infrastructure SEPP. It looks like it is going to work. We will tell you in about 10 days.

The Hon. CHRISTINE ROBERTSON: We need to touch wood for this.

The Hon. MICHAEL VEITCH: You said earlier that the Minister had mentioned time lines for part 3A and SEPP significant developments. We have heard from many councils that a lot of the delay in approval processes is around the involvement of a range of government departments: some are worse than others, some are better than others. Councils have time lines now within which they have to process things. Do you think that should also apply to State departments?

Mr THORNE: It is an interesting question because it is a yes-no, I think. Yes, we do need to have time lines but if you have a department like the Roads and Traffic Authority whose main focus is the highways and not that much about development, then the easy answer to comply with that time line is to say no, and that is usually what the first answer is in our experience.

The Hon. MICHAEL VEITCH: What about the Rural Fire Service?

Mr THORNE: They have improved a lot, I have to say, from an industry perspective. When the 2001 rules, the planning for bushfire protection legislation, first came out it was no, no. It was a major change and everyone was getting used to it. They were very careful and their first answer was nearly always no, and their second or third answer was yes but with changes. That is a generalisation. The negative side of a time frame is that you can comply with it but you may not get a considered answer. How do you deal with that? I think you have to have time lines but if it is, say, part 3A, I think the thing the Minister did mention, which I thought was a good idea, was to have not a project manager or an application manager but an application coordinator who is the champion of the application, not being the advocate but saying, "We need heads to get together to make a decision here. Who is going to make this decision? We have got to make it happen." That is the way to resolve conflict. It is almost like a mediation process, in a way. I am not saying mediation but it is making people resolve their differences.

The Hon. CHRISTINE ROBERTSON: A facilitator perhaps?

Mr THORNE: I think it probably needs to be someone from the Department of Planning almost. I can think of a situation where we are looking to have an employment precinct rezoned and we have been working on it for a few years now. It is a very end-on-end process. One would think for employment means we should be

able to streamline that if it is a genuine employment option. It is for a transport terminal on the highway near Port Macquarie, almost midway between Sydney and Brisbane. It has a lot of positives about it, so can we resolve these other things in a quicker process? In those circumstances it needs the ability for someone to come in and be that champion. It does not mean that an LEP amendment for a change in use needs that same thing—horses for courses—but when you can see that it is jobs in a regional area that will bring 300 or 400 jobs, that is massive. It has a noticeable impact on the local economy.

The Hon. CHRISTINE ROBERTSON: That may be 1,200 people.

Mr THORNE: And the income they spend in the area. I cannot emphasise that enough. In a regional area those sorts of things make a very big difference.

The Hon. MICHAEL VEITCH: A lot of the evidence we are getting from local government may well be dated experience. For instance, you have said that the Rural Fire Service has got much better.

Mr THORNE: That is my experience with them.

The Hon. MICHAEL VEITCH: That is really good to hear because that is not what the local government people are saying.

The Hon. CHRISTINE ROBERTSON: Some. People in this inquiry tend to be giving us stories, sometimes from 10 years ago.

Mr THORNE: But with those applications, if you put in rubbish, you get rubbish back. Your application has to be well presented and well thought out and you have to understand the law. If we have had a knock back from the Rural Fire Service we have learned from that. Some people do not accept the new rules as well.

The Hon. MICHAEL VEITCH: There has been some discussion at forums around the potential to go electronic, such as electronic lodgement of applications. This question feeds off a comment of yours. Do you think we are there yet? On the one hand, would councils be able to process at the level and, on the other hand, do you think developers, particularly mum and dad developers, actually have the knowledge base to fill in an application electronically?

Mr THORNE: I do not think the mum and dads are all there yet, but with the large developments there is no problem with that. We do it now really anyway. We give CDs and we would much prefer that. There is nothing I hate more than having large applications that thick which people use as doorstops after they have read them. What are you going to do with them? Sometimes you take about 15 copies of them and it is sometimes $2,500 worth of copying, and colour exhibits. Unfortunately, sometimes it has been State government departments that do not want it on CD. We would much rather have two hard copies, one for approval, one for the record, and then everyone gets the CD and you only need to look at the necessary bit, but you can look at the whole thing if you really want.

The Hon. MICHAEL VEITCH: Do you think local government is in a position to support and manage electronic applications?

Mr THORNE: I think bigger local governments are. Again, I would use Port Macquarie and Coffs Harbour, and I suspect Ballina. I have done a few up here. I believe they would be able to manage that. We give them CDs of our development applications and our rezoning applications. Obviously, if you were going to go down that path of having e-lodgement it would be best to have a standardised format. You would have a process for that and we have gone through that in the surveying industry where we lodge our plans at land and property information electronically now. We jumped into that on the first day but still probably 50 per cent of surveyors, some of the older guys, do not want to change. I think it is a natural progression we are going that way, so probably the sooner the better.

The Hon. MICHAEL VEITCH: Another advancing initiative is where you go on to the Internet, you have a parcel of land identified, you type that into the council or Department of Planning website and up would come all the planning controls that relate to that parcel of land. Is that pie in the sky or is it possible for New South Wales to move to that type of information?

Mr THORNE: I think the information is almost there now, to be honest, between Google, and even the Department of Lands has the six-viewer site. I am not the one in our office who does all that but I know we can get a lot of that information, aerial photos, cadastral, straight from the department. We probably cannot get zoning and planning laws. For some layers of it you would still have to go elsewhere, I think, but you could get your first cut, if you like.

The Hon. MICHAEL VEITCH: Is that something that New South Wales should move towards?

Mr THORNE: Yes, I think that would be helpful.

The Hon. MICHAEL VEITCH: Earlier in your opening comments you spoke about your involvement with planning at the national level. One of our terms of reference is to look at other planning models, either nationally or internationally. Can you suggest any ideas? People have mentioned New Zealand and Canada, and South Australia gets thrown up occasionally.

Mr THORNE: A few years ago I was on the development assessment forum. The two States that seemed to have their act together were South Australia and Victoria, I thought. I am not saying that New South Wales did not have its act together, but it seems a much more complicated process here, because of the different agencies involved, whereas it seems to be much more singular in those other States. That is my perception; I might be wrong on that. I have never lodged an application in either of those States. A colleague of mine is moving to South Australia this week to take up a director of planning role in Victor Harbour. That is certainly his perception: that it is going to be a simpler planning system to administer.

The Hon. MICHAEL VEITCH: Have you had anything to do with developments around airports?

Mr THORNE: No. A little bit around our local airport, but it is simpler because our airport is away from residential areas. No, I have not had the tougher assignments. I imagine they would be very difficult to resolve.

CHAIR: The Committee will be making recommendations to Government about the planning framework and what we think should happen, from the evidence we have gathered. What sort of recommendations would you like to see this Committee present to the Government?

Mr THORNE: Going back to my opening comments, the first one I would say is to abandon the LEP template. I think we are going to rue the day we adopted it. That would be my view. I think there should be at least a rethink of that.

Reverend the Hon. FRED NILE: What will take its place?

Mr THORNE: That is why I was hesitating on that comment, to be honest, because I do not have an answer. I know it is easy to sit back and say, "Look, just abandon that." There might be places where they really do need to reform. What would take its place? What I think may have happened—and again this is a perception—is that someone had the idea of a standard template. That was certainly something we talked about a lot in the development assessment forum: having harmonised planning laws across the nation. At a holistic level, that is a good ideal to go for, so why would you not do it within your State? But I think it then morphed into something where we were trying to control too many things within the LEP. What I would replace it with would be a simpler model. I would pull back from putting so many development controls in it, and put more of the strategic local controls in it.

An example is putting building heights into an LEP, where you then need a variation of the development standard, potentially approved by State Government. Lots of building sites in Port Macquarie—I am thinking of one now where we have had an application from where you have six metres of fall across a property. It allows for multi-storeys, and you can get your basements underneath, but it is very difficult to fit. Unless you pull down the yield of the block substantially it is very hard to fit a sensible building within a flat line. You usually have a bit of give and take, which is based on design.

I would say I would replace it with something that pulls back from putting into an LEP what are essentially design controls, and I would leave that to design. That would be one thing. I think that would speed up the process. If ever there is going to be a standardisation of terms and zones across the State, I think that would speed up the implementation, by making it not so comprehensive.

If I were going to change the planning system, I would be looking to have a process where you resolve some of these issues that are almost insolvable between two parties. The two parties we probably spend most of our energy with are the Roads and Traffic Authority and the Department of Environment and Climate Change [DECC]. They both have their goals—and they are both worthy goals, there is no doubt about it. With DECC there is a current policy of improving the net amount of native vegetation. That is fine on a statewide basis, but when we get down to each individual block of land it is almost impossible to do. We need someone to be the coordinator, the champion—someone to say, "In this case that cannot be achieved, and that is okay. But we have to be able to move forward and do the LEP. But, for all these other reasons, it is in the right place." It is about being able to take those on-balance positions.

I guess what I would like to see is a coordinator within, say, the Department of Planning—I think they still have to play the lead role—where they bring the parties together and there is recognition that, while they have a perspective, it is not the only perspective that needs to be met, and that there needs to be some give and take. I can think of another residential one we are working on at the moment, which started at about 1,000 lots. It is in a part of the Port Macquarie local government area called Camden Haven. As these things are moving along, even though large areas are being rezoned for environmental protection and rehabilitation, we are still getting pushed back further and further. We are now at 800. The infrastructure has not changed, it is almost the same, so it is just getting more expensive per lot. It has already cost $400,000 for our local environmental study. We are not actually at a local environmental study yet; that is being funded through council.

Reverend the Hon. FRED NILE: Is that part of the canal development?

Mr THORNE: No, it is not part of a canal development; it is residential land, immediately opposite the high school. It has all the fundamentals there: it is near a sewerage treatment plant and it is opposite the high school. This is a place where you should have an emphasis on, "This is a good place to house people." Still, we are in a position where we have one of these State government departments saying, "If you want to remove that 10 hectares of vegetation you need to purchase 95 hectares over here."

I am not having a go at them; I am just saying that the process does not resolve those issues very well at all at the moment. We do not have a way of resolving those issues. What we have been suggesting, and what is happening at the local level, is that as we all heard the Minister we said, "Let's try this. Let's get everyone around the table. We will get the Department of Planning, DECC, ourselves and council, and see if we can work it out." If that were the norm my personal view is that that would be a way of resolving it. If bringing those heads together had a way of making a decision as to how to move forward we would streamline the process. Is that too—?

CHAIR: No, it gives us ideas as to how we can arrive at reasonable recommendations, and put them together with everything else we have heard to try to get where we want to go.

Mr THORNE: The strategy you looked at—and I think DECC has a regional strategy that is coming out, and that is going to be about habitat corridors, vegetation corridors and conservation areas. I suspect you will find that that is going to be in conflict with that—

The Hon. CHRISTINE ROBERTSON: They have tried to touch on it a little—

Mr THORNE: I know they have, and there is hatching on some of the investigation areas. But if you look away from those investigation areas, what has already happened with those areas is that we have already excluded the really good vegetation, generally. There will be some patches where I am not quite right on that but generally speaking I think you will find that the high-value habitat areas are already excluded from those areas before investigation—at the council level, where they just say, "We are not going anywhere near that." If you fly over the mid North Coast and the far North Coast, you will see how much of the area is vegetated.

To then apply a no net loss on those so-called fringe areas is where it starts getting really hard to achieve. If there is not a strong coordination between those—more than a coordination; a recognition—if we want our regions to develop we need to have space for people to live in, and still the most affordable form of housing is detached housing. I would like to see harmonisation within the State Government as another change. That goes back to the same theory: that someone recognises that once we have this strategy in place there is a way of resolving the conflicting interests on the edges.

The Hon. CHRISTINE ROBERTSON: One of the witnesses this morning proposed to us that it would be very useful to have the strategic plan in legislation, because they had had a particular court case in which the strategic plan of the local area could not be recognised by the judge in the decision.

Mr THORNE: If it is going to be recognised in legislation it needs to be well thought out. I have an example. We have a regional corridor that DECC has put on its website. DECC did a certain amount of investigation in 2003 when it was adopted. DECC looked at it linking two features in the landscape. I am not having a go at that at all; it is quite a feasible thing to do, but what was missed underneath it was that the Pacific Highway was going to take a huge chunk. There was another major regional road that went through it, there was a large residential area that had already been zoned but was not developed, there was an area that was under investigation already, and there was a large rural residential subdivision that was already approved.

People had an expectation that if they own a block they should be able to build a house on it. So, while a conservation and landscape, big-picture strategy had made some sense, at implementation it could never deliver. Everything that happens in that kilometre-wide stretch gets drawn into that, so it is dying by a thousand cuts. Whereas someone from a body other than DECC—say, at the Department of Planning—could say, "Before that goes on and becomes part of what we have to consider how about we look at some other perspectives underneath that." Does that make sense?

Reverend the Hon. FRED NILE: Yes. The corridor should not have been set aside until they did that.

Mr THORNE: That is right. If they said, "For high-conservation reasons it has to be there", then they have to set in place something else to make it happen. That could be some very unpopular things, like back-zoning land. I am not here to advocate that—

The Hon. CHRISTINE ROBERTSON: We have heard of an example of that already.

Reverend the Hon. FRED NILE: An earlier witness from the Byron Shire Council was having problems with the floor space ratios, saying in this region people are building large decks, balconies and verandas which are not part of the total floor space ratio. Do you think they should be? Do you have any thoughts on that? Would that make it a very small residential house?

Mr THORNE: Possibly. It is an interesting question. I have not come across the problem with that but I am seeing that in our lifestyle as Australians we are eating and living outside a lot more on decks and covered decks, more than we used to. This is where FSRs should be in our LEP—and it is in the template. I think it is more a case of making those decisions based on design. So if you have a clear design criteria and you want to build a deck on a house, or whatever part of the house, then the privacy of the people next door has got to be taken into account. I know that might sound like you are avoiding it but in reality the number does not deliver that. The number will deliver a certain amount of the outcome but the design is what ultimately delivers a good living area in this house and a good living area in the next house. I am not deeply concerned about FSRs not including balconies. It excludes a lot of things—garages and some stairwells. But I think they are compensated because most residential areas only have a 0.5 to 1 FSR anyway and as we go to smaller blocks that is probably still appropriate.

Reverend the Hon. FRED NILE: With two-storeys?

Mr THORNE: Yes.

CHAIR: Thank you for coming to see the Committee at very late notice. You have given us some very good information and hopefully the Committee will come up with recommendations that you will be happy with.

Mr THORNE: Good luck in your deliberations.

(The witness withdrew)

(The Committee adjourned at 2.47 p.m.)