REGULATION COMMITTEE

INQUIRY INTO LOCAL LAND SERVICES REGULATIONS

CORRECTED

At Sydney on Friday 27 September 2019

The Committee met at 9:30

PRESENT

The Hon. Mick Veitch (Chair)

The Hon. Niall Blair
The Hon. Mark Buttigieg
Ms Cate Faehrmann
The Hon. Scott Farlow
The Hon. Ben Franklin
The Hon. Matthew Mason-Cox

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The CHAIR: Welcome to the hearing for the Regulation Committee into Local Land Services Regulations. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay respect to Elders past and present of the Eora nation and extend that respect to other Aboriginals present. This inquiry is examining to regulations related to clearing of native vegetation; namely, the Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019 and the Local Land Services Amendment (Allowable Activities) Regulation 2019.

Due to a tight reporting time frame, today is the only hearing we will be holding for this inquiry. Today we will hear from the NSW Threatened Species Scientific Committee, NSW Farmers' Association, a panel of environmental advocacy groups, NBN Co and Local Land Services. Before we commence I will make some brief comments about today's proceedings. The hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with broadcasting guidelines, whilst members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography.

I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence, as such comments would not be protected by parliamentary privilege if an other person decided to take an action for defamation. The *Guidelines for the Broadcast of Proceedings* are available from the secretariat.

Due to the short time frame for the inquiry, we ask that witnesses avoid taking questions on notice. However, if a question is taken on notice witnesses will need to provide an answer within five days of receiving the question from the secretariat. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. To aid the audibility of the hearing I remind both Committee members and witnesses to speak into the microphones. The room is fitted with induction loops compatible with hearing aid systems and it has telecall receivers. In addition, several seats have been reserved near the loud speakers for people in the public gallery who have hearing difficulties. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. I now welcome our first witness, Mr Mark Tozer, who is a member of the NSW Threatened Species Scientific Committee.

MARK TOZER, Member, NSW Threatened Species Scientific Committee, affirmed and examined

The CHAIR: Mr Tozer, would you like to start by making a short statement?

Mr TOZER: I am sure that the Committee is aware that the Threatened Species Scientific Committee was established under the Biodiversity Conservation Act, with the role of determining which species and communities should be listed as threatened and their threat status. Dr Ann Kerle, the chair of the committee, asked me to appear today because I had the primary carriage of the two critically endangered communities that are the subject of the amendment over a period of about four years. I would like to provide a bit of context to the committee's role. The committee recognies that its role is one component of a regulatory framework which is designed to strike a balance between the conservation of biodiversity and other social and economic needs.

The committee also recognises and respects the role of other agencies and bodies in determining how this balance is struck. It accepts that in the adjudication of individual cases there will be some degree of pragmatism required in reaching a conclusion. Notwithstanding that, the committee received the invitation to make a submission and considered it at its September meeting. It determined to make a statement against the amendment as follows: The committee believes that it would be unacceptable to any parties if the decision to confer on these communities a critically endangered status was at the sole discretion of the committee and, in fact, the risk assessment process follows codified criteria drawn from established scientific principles.

Those principles are published and they must be addressed in each and every determination the committee makes. Prior to finalising the determinations, they are advertised and made available for public comment and the committee is obliged to consider all public submissions. In this case, the listings have arisen from a public nomination and the committee has determined that both communities are at a very high risk of being lost completely. In view of that, the committee is of the opinion that a similar level of scrutiny and rigour is appropriate in determining how the locations of these communities are determined and mapped, and how any decisions that affects the communities in any way are established.

In contrast to the process that the committee follows, the committee is not really aware that there is a similar level of rigour and scrutiny brought to those tasks, in particular the assessment of viability which the committee has also considered during its listing process. In view of that, it is not possible for the committee to determine that these amendments are well-founded. Unhappily, the status of "critically endangered" for these communities is inextricably linked with the fact that their distributions are primarily on privately owned land which is subject to agricultural production. This is not an unusual circumstance, certainly not exceptional; it is normal. As such, to use that as a justification for an amendment which specifically allows for more clearing and which reduces the level of oversight does not, in the opinion of the committee, give the appearance that the balance is being well struck.

The CHAIR: Thank you. Your committee does not support the two regulations?

Mr TOZER: It does not support the amendment to the regulations. As I just explained, that is on the basis that there do not appear to be adequate procedures and scientifically-based protocols to determine that any future clearing or impacts on the communities will not inexorably lead to a state of collapse.

The CHAIR: In your opening comments you spoke about mapping of these critically endangered species. What are the issues with the mapping?

Mr TOZER: I would really need to take that question on notice. The provisions of the various Acts are such that critically endangered communities would be represented in map form. That has occurred in one form, but it is not clear to the committee how the boundaries as mapped relate to the determinations as made by the committee. In order to answer your question, the committee requires the maps in a form that is able to be analysed using a geographic information system [GIS] and it also needs some explanation as to how the map was derived. That request has been put to the Department of Primary Industries and Environment on two occasions but I understand that it has not been provided as yet.

The CHAIR: What is your understanding as to why these amendment regulations were brought in? Why were they introduced?

Mr TOZER: The committee understands that because of the increased risk associated with any clearing of critically endangered communities, a different pathway to approval was required and that it was not acceptable to have those activities regulated under the Land Management Code. That pathway, it seems from our interpretation of the legislation, led to a panel which comprised people with both ecological experience and social

and economic and farming expertise, where the various pros and cons of the activity could be weighed. In terms of the amendment to the regulation, I agree with the other submissions that without it these communities would not be considered as they were intended, as sensitive land. However, the amendment to the code provides a filter that was not previously present which allows for instances for the community to be defined out of existence by a process governed by Local Land Services.

The problem the committee has with that is twofold. One, the way the Act and regulations are worded they refer to biodiversity values, which are only a subset of the ecological values of an ecological community—in other words, they determine the viability via the integrity of the vegetation, which can mean it lacks trees or it lacks an understorey or it has low diversity. Such a judgement would not reflect the potential of that remnant to underpin ecological processes and maintain the integrity of the entire system, as would be determined if it was being considered holistically. The committee was not able to separate the amendments to the regulation from the amendments to the code. They have to be considered collectively to understand the full impact of the changes.

The CHAIR: I will now open to questions from the Committee. The questions will be free-flowing.

Ms CATE FAEHRMANN: Good morning. Thank you for appearing today and for your work. What is the consequence of a determination of critically endangered, for a species or an ecological community to be listed as critically endangered under the Biodiversity Conservation Act, as opposed to endangered under the Threatened Species Conservation Act?

Mr TOZER: My understanding is largely gleaned from the review of the Local Land Services Act and the fact that the primary difference is whether the Land Management (Native Vegetation) Code can be applied or not. In my understanding, there is a sliding scale of risk, and critically endangered entities are at the upper end of that risk level. Therefore, there is more likelihood of adverse outcomes following further impacts. The listing as a critically endangered community confers a higher degree of protection and scrutiny.

Ms CATE FAEHRMANN: Your submission says that any clearing is likely to have serious and irreversible impacts on biodiversity values. Please outline to the Committee what the principles for determining what is serious and irreversible impacts are.

Mr TOZER: I can to some extent. The provision to list or to identify areas that might be subject to serious and irreversible impacts is provided for, I believe, in the Biodiversity Conservation Act, which also provides for the head of the environment department to publish guidelines explaining how that might be assessed. The advice I have received is that the guidelines are rated in a similar way as the IUCN criteria, drawing on the same scientific principles, and so there is a very close alignment between any listing by the committee of what is critically endangered.

The Hon. MATTHEW MASON-COX: What is the IUCN?

Mr TOZER: I have provided some abbreviations in my submission. The International Union for the Conservation of Nature is an international body.

The Hon. MATTHEW MASON-COX: Where is it based? Is it a United Nations [UN] body?

Mr TOZER: I am not exactly sure of the affiliation. It has a website and it describes its charter there. It is based in Lucerne, Switzerland, I think.

The Hon. MATTHEW MASON-COX: What is its role?

Ms CATE FAEHRMANN: I think it does have some connection to the UN.

The Hon. MATTHEW MASON-COX: I thought it did.

Ms CATE FAEHRMANN: It does things like species listings and it has been around for a long time.

The Hon. MATTHEW MASON-COX: I would like to understand it to bit better, because this is all new to me. What is it and why is it relevant?

Mr TOZER: Okay. You might remember that in my opening statement I said that it is generally unacceptable and counter-productive if different parties in disputes over conservation or farming or economic development cannot come together and agree to a set of principles. The best way to understand the IUCN is that it has established the principles upon which something could be considered to be critically endangered, so that it is not just that we think so or someone else says it is. When we receive a public nomination we are not obliged to follow it and translate it into a determination. We are required to assess the merits of the nomination. The way we do that is according to those criteria. The reason we do it is because the New South Wales Government can

leverage the opinions and expertise of scientists around the world in order to make the best possible decision on the available evidence.

It also means that any listings that we make become compatible with listings at a global scale. The system is still in development, but ideally it is not just within New South Wales or Australia or Sydney, it is a global scale that we wish to make judgements about conservation risk and prioritise resources, which are not infinitely available. In other words, if everybody makes up their own rules and decides on the threat status of entities independently then the whole system will not work as efficiently and it will not be targeted as well as it could be on those entities that actually require some protection. That is why I emphasised in my opening statement that these determinations are the consequence of this committee, which was established under New South Wales legislation, to provide the best possible advice so that everyone understands the risk.

The Hon. MATTHEW MASON-COX: So we have incorporated all of that through our own legislation into how we determine what is critically endangered. Is that what you are saying?

Mr TOZER: Yes. Firstly, the Biodiversity Conservation Act and the regulations closely mirror the wording used in IUCN principles. I think it is a regulation that provides for the scientific committee to develop guidelines and publish those guidelines. They are available on the scientific committee's website and they draw heavily on the IUCN red list criteria, which are supported by another document.

Ms CATE FAEHRMANN: I am trying to get a sense of the time line of this determination. I have a publication date in the submission of 28 June. Is that roughly the time that you submitted that to government? Is the publication date determined by government or is that when the scientific committee puts it on the website, for example?

Mr TOZER: No, there is a process. The committee advises the Minister—and I am not exactly sure of the process—prior to making a final determination. In this case, there was a delay because of the novelty of the situation, which I believe derived from the fact that under the new legislation this was the first listing for critically endangered community and the implications in terms of providing advice about the location and other matters had not been finalised.

Ms CATE FAEHRMANN: It is the first listing of the critically endangered community under the new—

Mr TOZER: Technically I think it would be on land subject to the Local Land Services Act. There are some other critically endangered communities that are not covered by that Act.

The Hon. NIALL BLAIR: But you do not know the process. Could you take that on notice and give us the process?

Mr TOZER: Yes, I can take that on notice.

The Hon. NIALL BLAIR: Thank you.

Ms CATE FAEHRMANN: I understand that the original undertaking of the committee was to review the conservation status of Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland, which have been previously listed as endangered under the Threatened Species Conservation Act. Please explain to the Committee why the determination was instead for these two ecological communities that are before us today?

Mr TOZER: Yes. It is a process that pre-dates my tenure on the committee. In short, the tension between the advice of the nominator and the wider scientific community was such that the committee was unable to settle on a determination which was acceptable to all parties and, most importantly, able to be interpreted with a degree of ambiguity that was acceptable by all parties. In other words, people were not sure what was covered by the listing and what was not. That problem was compounded by a tendency of stakeholders to focus primarily on the dominant species and therefore extrapolate from the original determination to areas that probably, in my view, were not covered by the original listing.

In my submission I mentioned that the original determinations covered vegetation up around Orange and Mudgee, to the west of the divide. When I joined the committee it was not clear to me taking on this task that all of those could be characterised as a single assemblage of species, as required under the Act. In other words, an assemblage of species has to be a certain bunch of plants or animals or something and if the variation in the instances of that community is broader than a whole lot of other vegetation as well then biologically they should be included.

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The committee was faced with the fact that submissions received suggested that some 42 different vegetation types described in the comprehensive regional assessment process may be eligible for inclusion under the determination. Another scientific publication listed a further 12 communities that it believed formed part of the listed entity. It could not be justified to include all of those things within a single listing and credibly argue that they were critically endangered. The reason for listing these two communities was to make it very clear which part of this massive variation in species composition was actually being targeted by these determinations and therefore exclude other things that the committee did not intend to be covered at that point.

Ms CATE FAEHRMANN: Just to draw on that a bit further, because I think it is in your summary in your submission, was there a different level of risk to the grassy woodlands communities then? Is that why?

Mr TOZER: Of these two?

Ms CATE FAEHRMANN: Yes.

Mr TOZER: The committee assessed both communities to be at the same level of risk but it felt that the risk of combining them in a single entity would again open the possibility that people would start to confer the listing status on other types of vegetation. It was calculated that if the committee demonstrated that a particular level of thematic scale was being targeted—in other words, is this a very broad determination or is it a very tightly constrained determination—then people would be in a position of greater certainty when they were interpreting the information.

The Hon. NIALL BLAIR: What does that mean? Can you just cut to the chase and tell us? Just put it in layman's terms, what does that mean? Are you saying they have to be together or not? Were you worried about people, if one is in existence and not the other, clearing more? Can you just cut to the chase and tell us what this means? I know about this stuff but I am finding it really hard to follow what any of this actually means on the ground. Remember we are not ecologists.

Ms CATE FAEHRMANN: Point of order. I remind the member that the witness before us is from the scientific community. He is not a member of government that is supposed to explain it to the lay person. In terms of your questioning I do not think you have to expect somebody from the scientific committee to have to explain it to a lay person. You are an MP who used to be the primary industries Minister.

The Hon. NIALL BLAIR: To the point of order: I am also a horticulturist. It would help if someone could translate.

Ms CATE FAEHRMANN: He is a scientist.

The Hon. NIALL BLAIR: So surely he can translate for us what he means.

The CHAIR: Back to the questions. Let us get the information. Take on board the comments on both sides and we will go from there.

Ms CATE FAEHRMANN: He only has two weeks left.

Mr TOZER: I think in discharging our responsibility the committee was faced with a choice. We could accept the advice we were receiving that there were examples of this vegetation, this ecological community, all over the place covering lands over a vast area from the border with Victoria all out to Orange and Mudgee, and we could come to a determination that they were all critically endangered, or we could try and be responsible and identify which parts of that we had the evidence to justify a critically endangered listing for.

The Hon. NIALL BLAIR: That makes sense.

The Hon. MATTHEW MASON-COX: I do not pretend to be an expert in this area. Forgive me if this is a little trite. We are talking in relation to the Local Land Services amendment allowable activities regulation under schedule 5A amendment 1 that we are really giving access for some clearing in relation to water supply and gas supply infrastructure, collection of firewood by farmers who own the land that the communities are located on, telecommunications infrastructure and the like. It is very restricted in terms of what the local landholder can do and what infrastructure owners can do in relation to ensuring the infrastructure is in place and maintained. Why is that going to, according to your submission, create a situation where there are serious and irreversible impacts on biodiversity values?

Mr TOZER: Firstly, the committee's submission was primarily in relation to the regulation amendment dealing with critically endangered communities.

The CHAIR: There are two regulations.

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Mr TOZER: In terms of the second one it is not within the committee's purview.

The Hon. MATTHEW MASON-COX: You are not concerned about that?

Mr TOZER: It is not that we are not concerned. Our part of the process is to identify instances in which any further clearing could constitute serious and irreversible impact. That is provided for under the Biodiversity Conservation Act, the environmental head produces guidelines.

The Hon. MATTHEW MASON-COX: Understood.

Mr TOZER: We point out in our submission that this is an instance where it should be considered.

The Hon. MATTHEW MASON-COX: You acknowledge that these activities will create more clearing but you are saying at the same time we should not allow that because of the communities that exist on those lands; that is essentially what you are saying, right?

Mr TOZER: The committee's position is that—

The Hon. MATTHEW MASON-COX: Yes or no?

The CHAIR: Give him a chance to talk.

Mr TOZER: A process is required and was set up under the legislation which the committee can see is appropriate or has the potential to make proper judgements. That is apparently being bypassed by the amendment to the code. As I said up front, the committee recognises that the balance will be struck and that will be determined by other bodies and that there is a need for pragmatism and the position is simply that this needs to be transparent and based on principles which recognise the risk.

The Hon. MATTHEW MASON-COX: So you are on the process?

The CHAIR: Yes.

The Hon. NIALL BLAIR: Just further to that. Are you familiar with the Local Land Services deeds, particularly around the allowables?

Mr TOZER: I have scanned over them in the course of preparing to give evidence but it was not my primary—

The Hon. NIALL BLAIR: Did you read the Local Land Services' submission?

Mr TOZER: I did, yes.

The Hon. NIALL BLAIR: When they talk about without the regulation in relation to part 2 schedule 5 covering the two species in the Monaro and Werriwa CEECs that landholders would be allowed to have the full suite of access through the allowables. Therefore, this regulation provides better environmental protection. Could you agree with that or is that something you contest from their submission as well?

Mr TOZER: In my submission I outlined the process as I understood it under the unamended Act in which the critically endangered communities would have been included as sensitive regulated land and so that outcome was assured under the legislation as unamended. That is the advice that the committee has been given by the department.

The Hon. NIALL BLAIR: These species, in that area, were not mapped as regulated land. Therefore, is there not an argument that they would be subjected to the full suite of allowables?

Mr TOZER: The committee's position is that if the legislation had been followed and, after a finding of critically endangered had been made, the environment department had as provided for in the Act, included those areas under the sensitive category two lands, then they would be protected in the same way that they are now. Of course, since that has not occurred the outcome would indeed be perverse if this amendment was not made, but it is not clear why the original process to include them as category two sensitive land has not come to pass.

The Hon. NIALL BLAIR: So is that why you then listed them?

Mr TOZER: No, all of what we have been discussing comes about as a consequence of us listing them.

The Hon. NIALL BLAIR: So by listing them, if there was not this amendment for those two species, do you agree that a full suite of allowables would be allowed and therefore this amendment, there are two amendments that we are talking about, but the one in relation to those two species provides greater environmental

protection for the species than what the application without that amendment would prove through the Local Land Services [LLS] code system?

Mr TOZER: That surmises that none of the other parts of the Act were followed. The committee cannot see that, if they were followed, that protection would not have been conveyed upon them by being included as category two sensitive land.

The Hon. NIALL BLAIR: I will read you this:

> Without the amendments to Schedule 5A of the LLS Act that are effected by the making of this Regulation, instances of the Monaro and Werriwa CEECs will be subject to the full suite of allowable activities set out in Part 2 to Schedule 5A of the LLS Act. This would reduce the environmental protections for the ecological communities in question, which is inconsistent with the Government's intent to provide greater protection for areas of CEECs.

Do you disagree with that?

The CHAIR: That is the LLS.

The Hon. NIALL BLAIR: That is the LLS submission. That is its conclusion. Do you disagree with that? You said you read their submission.

Mr TOZER: I have read their submission.

The Hon. NIALL BLAIR: So do you disagree with that statement?

Mr TOZER: That statement is true because the critically endangered communities were not included as category two sensitive land as required under the Biodiversity Conservation Act and Local Land Services Act.

The Hon. NIALL BLAIR: So your belief, then, because we know that these species are on farming land basically running from Crookwell right down to the Victorian border, do you agree that is the size of it?

Mr TOZER: Yes.

The Hon. NIALL BLAIR: I think you mentioned earlier in your statement that this is basically always on privately owned land.

Mr TOZER: With some small exceptions, yes.

The Hon. NIALL BLAIR: Which has been farmed for centuries almost?

Mr TOZER: Yes.

The Hon. NIALL BLAIR: What do you think would happen, as you are saying, if you wanted them all as CEECs, what would the application for farming practices be on that land as a result?

Mr TOZER: The committee's understanding is that, following the listing, the environment department head would create a map showing the distribution of the critically endangered entities. They would then be recognised as being required to be depicted as category two sensitive regulated land. That would then mean that they were not governed by the Land Management (Native Vegetation) Code and the committee can only conclude that those are the subject of applications to the Native Vegetation Panel of NSW, which comprises an ecologist, an economist and a farmer. That process then achieves a higher level of scrutiny on any future clearing.

The Hon. NIALL BLAIR: In a sense that whole part of the State that I mentioned from before, from Crookwell to the Victorian border, would then not be allowed to be assessed under the LLS codes and would have to go through the Native Vegetation Panel?

Mr TOZER: That is incorrect.

The Hon. NIALL BLAIR: I am asking you to clarify. That is what I thought I heard you say.

Mr TOZER: No. The committee has made a determination that less than 10 per cent of the original distribution of these two critically endangered communities are in existence, so only that proportion of the land, in theory, is covered. What these amendments are designed to do is allow for a particular process to determine when that has taken place. That process differs to what was intended prior to the amendment and it places the responsibility on officers of Local Land Services. The committee is unaware of the process and the criteria by which they will come to a determination. So in that case it appears, since they no longer go to a vegetation panel, which was convened specifically for this purpose, that the level of oversight and therefore the level of risk has changed.

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The Hon. SCOTT FARLOW: Just one question: One of the options open to this Committee is the disallowance of the regulation that the Hon. Niall Blair has just gone through, in terms of the perspective of LLS and the protections this regulation provides. Would your committee's position be that this regulation should be disallowed, that it should be amended or what it is the position of your committee with respect to this?

Mr TOZER: I understand that the position of the committee is that it would be disallowed.

The Hon. NIALL BLAIR: Is that your understanding or is that 100 per cent?

Mr TOZER: I am choosing my words so as to be clear it is not my personal opinion. I have come here today on the understanding that the committee would, without using those specific words—they did not say to me, "Go down there and tell them it is to be disallowed." I came to advise.

The Hon. MARK BUTTIGIEG: Just to pare it back so my simplistic mind can get a handle of that previous interchange between the Hon. Niall Blair and yourself regarding a suite of areas which were not included under the original pre-amendment regulation, and then the Hon. Nile Blair was saying post the amendment it actually includes those. So the implication, superficially, is that the amendment is actually better for protection, but what you are saying is that as a result of the amendment that then opens up a whole lot of other areas which hitherto would not have been available for land clearing. In simple terms, is that what the argument is?

Mr TOZER: I think the issue is that there was a process in the legislation for dealing with this circumstance. There did not need to be one created because it did not exist. The amendment is required because the process that was originally set out has not been followed.

The Hon. MATTHEW MASON-COX: Process?

Mr TOZER: In the sense that the people of New South Wales are interested in the outcome and want to see how it has been achieved, is the context in which I say "process". It is not just for the sake of it.

The CHAIR: With regard to the mapping, there is a degree of urgency now around getting the mapping done. Would that be true?

Mr TOZER: The committee understands that the department has produced an advisory layer and can only speculate on why that particular course of action has been taken. The committee was advised by the department that, should it make a finding of critically endangered, then those would be covered as category two sensitive lands in the regulatory map. The committee's reading of the legislation confirms that that seems to be the case, so the publication of the advisory layer it is not clear to the committee what the rationale is.

The Hon. NIALL BLAIR: Just a quick question on maps. If a regulatory map went out and was wrong, does that have the potential—let's say some vegetation was not mapped as regulated sensitive category two and that basically then allowed someone to clear that land, would that be of a concern to the committee, if the map was wrong and if it was not picked up on a map? That is the danger of a regulated map, is it not? Because if the map is not 100 per cent right—

Mr TOZER: That is the probably the reason why the committee has historically avoided mapping but the committee takes the point that some of those submissions to the Biodiversity Legislation Review Panel pointed out that the presence of maps would be very useful for landholders. That is clear to the committee that that would be the case.

The Hon. NIALL BLAIR: But this is a two-sided argument, right? Some farmers might say, "You have mapped it incorrectly so I can't clear it." But that flips on the other side.

Mr TOZER: It does.

The Hon. NIALL BLAIR: Those who want to protect it would be worried that if it has been mapped incorrectly and they can clear it. So both parties have an interest in the maps being right. Being caught up with having map regulated or unregulated, if that is not right, then we would have problems for both sides?

Mr TOZER: Yes, but in terms of a pragmatic outcome, the committee sees that the existence of a map, provided it is approximately correct—and bear in mind that it is every single vegetation map produced by the department and anyone else always comes with a caveat that it is unlikely to be exactly right, there being no actual boundaries between vegetation types to discover and map in nature—is an advantage. Instead having complete uncertainty, for a laymen, over where the community might lie there is now some level of understanding of the approximate location. The committee can see that if that triggers a certain regulatory process then that is good.

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If some instances the ecological community may lie outside the mapped area, but those are still, to the committee's understanding, covered by the legislation - you are still not permitted to harm an endangered ecological community or a critically endangered ecological community. Then you have improved upon the original situation where you were not allowed to harm them, but you did not know where they were - now you know approximately where they are and the map, by virtue of the fact that it shows the general areas, can alert people to possible instances that may not be shown on the map. It is never going to be perfect, but that is an improvement.

The CHAIR: This Committee is an unusual panel of parliamentarians in that there are no lawyers amongst us. As I understand it the code is not disallowable but the regulation is. Do they go together?

Mr TOZER: The fact of the matter is that the way this inquiry is constituted, and the way the amendments to the code and the regulation have been made, unfortunately, if you disallow the amendments then the advice of the Local Land Services would be true.

Ms CATE FAEHRMANN: The skills within each Local Land Services [LLS] to determine whether vegetation does not form a functioning ecological community which they will have to do as opposed to scientific committee expertise, do you have concerns about LLS having that level of expertise?

Mr TOZER: The committee recognises that all parties involved in these processes are dealing with difficult issues and there are no concrete answers. We are making no judgements about the skill of Local Land Services personnel. I hope that can be made to clear to them: this is not a judgement on them. It is simply that for the scientific committee to have confidence in this process, it naturally looks towards the guidelines and procedures, and their scientific basis in order to understand that it is the best possible way to go about a difficult problem. The committee has just simply no access to any of that information upon which to make a judgement.

Ms CATE FAEHRMANN: Is this potentially the start of something more occurring, for example, the scientific committee determining other vegetation types as critically endangered and this occurring again in terms of actions by the Minister?

Mr TOZER: Yes. One thing that I did not mention is that the original listing was at the status of endangered and, due to a change in the legislation to add the category of critically endangered, a range of communities that are currently listed as endangered, the committee has determined that there is a case to be answered for whether they warrant being listed at the level of critically endangered.

The CHAIR: Do you say the committee would recommend disallowance of the regulation? That will mean the code still stands unless the Government repeals the code?

Mr TOZER: I think the committee just does not understand why there was a need for either and that the status quo provided a better level of scrutiny and oversight.

The Hon. BEN FRANKLIN: But that is not the question today.

Mr TOZER: I have given my answer already.

The CHAIR: Do you suggest that this Committee should recommend disallowance of the regulation relating to the critically endangered communities?

The Hon. BEN FRANKLIN: Even though you have agreed that it would reduce the environmental protections for the ecological communities in question?

The Hon. NIALL BLAIR: A different process should be followed.

Mr TOZER: Yes. I have come here today to help the inquiry understand the implications. I have stated that the committee feels that they can only be understood collectively. I have also answered that in the absence of a change to the code, yes, the outcome would be perverse if the regulations were not amended.

The CHAIR: The Committee has resolved that answers to questions taken on notice be returned within five days. I know that is a short time but the timeframe of the Committee is also short.

Mr TOZER: Is that five working days or calendar days?

The CHAIR: The Secretariat is nodding and agreeing it is five calendar days. The Secretariat will contact you in relation to the questions you have taken on notice and they will take you through that process.

(**The witness withdrew.**)

CORRECTED

MITCHELL CLAPHAM, Conservation and Resource Management Committee, NSW Farmers, sworn and examined

The CHAIR: Would you like to make a short opening statement?

Mr CLAPHAM: NSW Farmers lobbied very strongly for the repeal of the original 2003 Native Vegetation Act and for a new approach. We fully embrace the Biodiversity Conservation Act 2016 and the approach that it takes in allowing active and adaptive management and the code-based approach that it brings with it. We are fully supportive of that and work with the Government. We do not deny there are a few issues that could be improved on but, as you know, we have been fully supportive of its concept, and we work as collaboratively as we can with government to improve it where we see it needs to be improved.

The CHAIR: The purpose of this Committee is to decide whether it will recommend to disallow or not disallow the two amending regulations that are before us: the allowable activities and the critically endangered ecological communities [CEEC]. Do you think we should disallow the regulations or leave them in place?

Mr CLAPHAM: From what we can see, we think it is entirely consistent for the amendments to be supported, to be consistent with other critically endangered communities. I take note of what Mr Niall Blair said with regards to the allowable activities. This actually brings them into line. It probably minimises what farmers can do but it does bring it into line with the other critically endangered communities. So I think it is entirely reasonable to be consistent in that approach. Given where those communities are, I think it is important that we do have allowable activities for important, essential infrastructure.

The CHAIR: This is the new system. How would this have occurred under the old regime, just so that I have a bit of a comparison of how it would have worked.

Mr CLAPHAM: As I understand it, it would have been similar under the routine agricultural management activities [RAMAs].

The CHAIR: Okay. For *Hansard*, you might want to expand the acronym, RAMA.

Mr CLAPHAM: Routine agricultural management activities.

The CHAIR: Thank you. We will open up the panel for questions.

The Hon. NIALL BLAIR: I can kick off maybe. Let us talk about allowable activities. Under normal allowable activities, what does that allow a farmer to do under the code?

Mr CLAPHAM: Under the code it is—without this—

The CHAIR: Yes, so just the normal allowables?

Mr CLAPHAM: Oh, just the normal allowables but I think, if I remember correctly, you are allowed to—

The Hon. NIALL BLAIR: Clearing fence lines or—

Mr CLAPHAM: Clearing fence lines but you can also quarry material and a few things like that. So some people may consider some activities not to be in line with agricultural management. There are a few more activities in there without—

The Hon. NIALL BLAIR: But that is the full suite of allowable activities—firebreaks, airstrips, gravel pits, powerlines? They are all allowable activities that happen and need to have vegetation managed for safety and farming practices?

Mr CLAPHAM: Yes.

The Hon. NIALL BLAIR: Is it not also the case, though, that the amendment that has been put in under these species constricts that even more?

Mr CLAPHAM: It does.

The Hon. NIALL BLAIR: It reduces even the normal allowable activities because it identifies that these species are more sensitive and therefore provides greater protection for those species than if this amendment was not made to cover those species.

Mr CLAPHAM: As I understand it, that is correct, but I go back to my original statement that it is consistent with streamlining it with regards to other critically endangered ecological communities.

CORRECTED

The CHAIR: Yes, so that means that if a farm does not have a critically endangered ecological community on it, there is a suite of allowables so that farmers can manage their firebreaks and their fence lines. But if a CEEC is identified then those allowable activities are further regulated and restricted because of the sensitivity of that species. Is that right?

Mr CLAPHAM: That is correct. I would also say that the decision to allow an LLS officer to make an on-ground determination as to the long-term functioning and viability of those CEECs is critical to this because, without that, you have the potential to tie people up in more red tape.

The CHAIR: You have had, and I am sure New South Wales farmers have had, a bit of time now to engage with those LLS officers. Is there confidence in the level of expertise and the quality of service that they are able to come onto properties and make those determinations and identifications?

Mr CLAPHAM: Anecdotally, talking to other farmers who have engaged with LLS officers and myself, personally, having engaged with LLS officers, I have been quite pleased with the level of professionalism and also the passion with which they have done their job—

The CHAIR: A lot of these are staff who may even have been under the old catchment management authorities—

Mr CLAPHAM: They have come from all walks of life.

The CHAIR: Environmental backgrounds.

Mr CLAPHAM: I know one who has actually come from a council in weed control but with a great passion for environment and conservation. They are the sort of people you have in your LLS staff.

The CHAIR: So when the scientific committee listed these two extra species and put them in with CEECs—it covers a large area of southern New South Wales—do you believe it was then necessary to make the amendment to then bring that in line with what happens with other CEECs around the State, particularly under the allowables?

Mr CLAPHAM: I think it is logical to do that so that you have consistency. If there is one thing farmers hate it is having different regulations and different dos and don'ts for different things. All that does is tie people up and catch people out in red tape.

Ms CATE FAEHRMANN: Mr Clapham, I assume you are aware of the different listings why ecological communities are determined to be endangered or critically endangered. So you would be aware of the reasons why a particular ecological community was determined to be critically endangered generally?

Mr CLAPHAM: Critically endangered generally, yes.

Ms CATE FAEHRMANN: What would that be?

Mr CLAPHAM: When it is getting very limited in its original, natural state but, in saying that, when we get to grasslands I think it is no accident that you will find the best examples of native grassland on private property. It is not in national parks. It is not in Crown lands. It is not in conservation areas. It is on private property. I think sometimes we need to reflect on why that is. I think farmers are very passionate about their landscape and I think it was evidenced when this issue first came to a head and we managed to kick off the Monaro grasslands pilot. Farmers were quite passionate about conserving the grasslands but the important thing is that they need that bit of latitude in how they go about managing those grasslands.

A particular issue that they face down there is they are in the red-hot area for invasive exotic grass weeds such as serrated tussock and African lovegrass. The reflection of this is also in the Federal Environment Protection and Biodiversity Conservation Act. Where you limit and restrict your management activities as to what you can do and how you can do it, you cut off your nose to spite your face because if you do not allow farmers to effectively and viably control perennial grass weeds, you really do endanger more of the critically endangered community that you have got left because sometimes they have got to be able to go in and viably control those weeds which might knock a bit of grassland in order to save the best of the grassland behind it.

Ms CATE FAEHRMANN: So prior to this amendment that is before us—this regulation, the Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019—the clearing of native vegetation which formed part of the critically endangered ecological community was not authorised under the Land Management (Native Vegetation) Code. Is that correct?

Mr CLAPHAM: I would have to take that question on notice. I am not 100 per cent sure of that one.

CORRECTED

The CHAIR: That is okay, Mr Clapham. You can take it on notice.

Ms CATE FAEHRMANN: That is what the submission of the NSW Threatened Species Scientific Committee is saying, which is a pretty essential point to get clear in this inquiry, as to whether something that was listed as a critically endangered ecological community was not, according to the NSW Threatened Species Scientific Committee, authorised under the previous code. This authorises it but it just places some restrictions around it, which, I think, is what the Hon. Niall Blair says. We have a species that is listed as critically endangered because, as you said, their range is restricted. I think, in scientific terms, they are kind of on the brink of extinction. So is there a point, in your opinion, when something is critically endangered and should be protected?

Mr CLAPHAM: Once it is critically endangered, yes, it should be protected. I think the evidence is that farmers are doing their best to conserve and protect the grasslands that they have in that respect.

Ms CATE FAEHRMANN: But you are also talking about farming activities. Are you suggesting that farming activity will take place without the clearing of the woodlands that are the subject of this inquiry?

Mr CLAPHAM: It depends what you determine is farming activity. Those native grasslands will be grazed.

Ms CATE FAEHRMANN: Anything else?

Mr CLAPHAM: I would think that that would be the main activity on these native grasslands. I cannot imagine too much more happening where farmers want to conserve them.

Ms CATE FAEHRMANN: Therefore why would we not have something in place that ensures that these grasslands are protected?

The Hon. NIALL BLAIR: We do.

Mr CLAPHAM: That is what we have, isn't it?

Ms CATE FAEHRMANN: Sorry, no. Before this regulation was in place, clearing of the ecological community was not authorised.

The Hon. NIALL BLAIR: It is just a different process. When we talk about "allowable activities" they are just a certain number of restricted activities that can happen—

Ms CATE FAEHRMANN: Sure. I understand the restricted activities but beforehand—

The Hon. NIALL BLAIR: This is not clearing a whole paddock. There is a whole other system—another part of the process—to go through for touching large sections. Is that right?

Mr CLAPHAM: I am getting a little bit lost in what you are trying to get at here. I really am.

The Hon. MARK BUTTIGIEG: They have seen in their submission it says:

> The NSW TSSC understands that prior to LLS Amendment (Critically Endangered Ecological Communities) Regulation 2019—

That is the one we are debating now—

> clearing of native vegetation forming part of a critically endangered ecological community was not authorised under the Land Management (Native Vegetation) Code.

Now they are saying it is. I suppose the question is: Can these sensitive ecological communities now be cleared as a result of this amendment, and do you agree with that?

Mr CLAPHAM: As a result of this amendment I do not believe they can be. As a layman, my understanding is that it is only further clearing for your essential infrastructure—for your gas and water et cetera. That is as I understand it. You are not going to clear it for any other purpose that I can see.

The CHAIR: This is to do with the code and the regulation working together. Is that your understanding?

Mr CLAPHAM: These do go together, don't they? You have one to allow the other.

The CHAIR: Yes. There is a technical process here. This committee could recommend disallowance of the regulation, but the code is a different instrument, and the only way you can remove the code, essentially, is if the Government or someone was to move to repeal the code. There is a different process. I could be wrong, but as I understand it the code and the regulation go hand in hand, essentially. This is part of this process.

Mr CLAPHAM: Yes, the code sits above the regulation. The regulation actions the code. That is as I understand it.

Ms CATE FAEHRMANN: I think one of the issues that the NSW Threatened Species Committee was trying to get across from us was the different requirements, if you like, that an LLS officer would have as opposed to the Native Vegetation Panel when assessing the requests for clearing. We know that the Native Vegetation Panel must refuse to grant approval if the proposed clearing of native vegetation would have, I think, a "serious and irreversible impact" on a critically endangered ecological community. What is the requirement, are you aware, of the LLS officer then to either approve or not approve a request for clearing of the critically endangered ecological community under this regulation? Is it as strict as the Native Vegetation Panel? I am assuming not. Are there any requirements that you are aware of that they need to consider.

The Hon. NIALL BLAIR: There is a viability test.

Mr CLAPHAM: The long-term functioning viability. That is what they have to consider. Sitting where I do, as a farmer on the ground, I have far more confidence in speaking to an LLS officer in the paddock looking at it rather than trying to grapple and argue the point with a professional ecologist sitting in an office with a book of what is there, and statistics and figures.

Ms CATE FAEHRMANN: What is the long-term viability test that you are talking about?

Mr CLAPHAM: That the critically endangered ecological community, in the assessment of the LLS officer, will function long term as a community.

The Hon. MARK BUTTIGIEG: Sustainable.

Mr CLAPHAM: Sustainable community.

The Hon. NIALL BLAIR: Can I jump in?

The CHAIR: Yes.

Ms CATE FAEHRMANN: Yes, I am done.

The Hon. NIALL BLAIR: I think we are talking about a couple of different processes. What the previous witness was saying was that previously the process was, basically, if it is listed in there, there is a Native Vegetation Panel that you go to and they are basically removed. They would make usually a determination to sterilize. What we now have is a process. That is why I asked Mr Clapham about the ability of LLS staff. They come on and they look at the farm itself and the activities, and make an assessment then and there about the impact that that activity will have on the vegetation. That is separate again from the allowable activities that we are also talking about here.

The normal allowable activities to clear around fire breaks et cetera, are further restricted now for these species because of one of these regulations that has come in. That is one component. There is also this other process. It is not a free-for-all. If a farmer wants to go through some of the other codes and it is identified that these species are on the farm there is a process, which I am sure we might hear about later on from LLS, about what they do to determine the viability and to approve or not approve. Is that your understanding?

Mr CLAPHAM: Yes. The chairman, in a former life, was a shearer just like me. He would know as well as I do that there is nothing like looking inside a farm gate to see exactly what is going on. If you are a bit intuitive you do not have to ask too many questions or see too much to know when someone is pulling the wool and when they are not.

The CHAIR: Sometimes they did not go through the farm gate. They got to the gate, looked over the gate and thought, "I'm not going in there."

Mr CLAPHAM: My point is to give your LLS officer the latitude to make the decision on the farm, looking at what he is looking at, talking to the farmer and seeing what is going on. I think that gives you are far more practical, realistic and, dare I say, less red-tape infused outcome.

The CHAIR: Mr Clapham, for the Local Land Services Amendment (Allowable Activities) Regulation, the submission from NSW Farmers say that these pretty much were the activities that were already allowable or previously undertaken as a part of the routine agricultural management activities [RAMAs] under the previous legislation. Is that right? Under the previous legislation you could do this, but through a different process.

Mr CLAPHAM: Through the RAMAS, yes.

The CHAIR: Is that right?

CORRECTED

Mr CLAPHAM: That is as I understand it. These regulations will align those allowable activities to the same consistent extent.

The CHAIR: I think that is a regulation. We have got your position on that but we might now spend a bit of time on the other one, which is—

The Hon. NIALL BLAIR: Just before that, I think that if it is a critically endangered ecological community it is a tighter allowable activity threshold.

The CHAIR: Yes.

The Hon. NIALL BLAIR: Just to clarify that.

Mr CLAPHAM: It is.

The CHAIR: That is where I was going. So with the CEECs the NSW Farmers' submission says that you support the amendment "so far as ensuring the environmental standard is consistent".

Mr CLAPHAM: That is right.

The CHAIR: Is that the point that you would like to make from the submission of NSW Farmers around that particular amending regulation?

Mr CLAPHAM: It is. Keep things as simple as you can. Have them consistent where you can so that there are less hoops and traps to catch people out.

The CHAIR: With regard to the hoops and traps that catch people out can I ask you a question about mapping? You were here in the gallery when we were talking to the previous witness about the issues around mapping—the pros and cons that were presented. What are your views around the need for mapping to assist in the implementation of this regulation?

Mr CLAPHAM: Approximately correct is not good enough, nowhere near good enough. We have baulked at maps all the time—and we have done a few dummy runs. The mapping as it stands cannot articulate canopy cover of exotic species from native species, or regrowth from your natural vegetation. Again, what it will do is catch a lot of people out. There is a lot of people out there who farm. They are good farmers. They stick to what they do and what they know. They do not tune into what is going on in Macquarie Street or the land or regulations. If they do not bother to have a look at a regulatory map that comes out that says—it may be correct, it may not be correct. They may never look at it. Where it may catch people out is when the next generation want to buy or do something and they find out that what is actually incorrect was done years and years ago on that and they get caught out.

The Hon. NIALL BLAIR: How hard is it to identify kangaroo grass amongst lovegrass in a paddock with serrated tussock and poa all in the same place?

Mr CLAPHAM: Look, it is bloody difficult. There is native tussock that even as against serrated tussock is very, very similar. Unless you know exactly what you are looking for you cannot pick it. But I can tell you how good the maps were: When we did a dummy run, one particular property had native vegetation and up against that there was black wattle and bracken fern—both native—and all amongst it was blackberry. The bracken fern and black wattle was just pure regrowth and the blackberry bush, they all had her in the regulated category.

The Hon. NIALL BLAIR: The danger for that, though, to—because kangaroo grass is pretty hard to pick up in a paddock full of lovegrass. If the map said that that whole paddock was just lovegrass, what would happen to the kangaroo grass if a map came out showing that it was all unregulated?

Mr CLAPHAM: Well, it would probably go unnoticed and unprotected.

The Hon. NIALL BLAIR: Probably could get sprayed out? Turned into improved pasture?

Mr CLAPHAM: There would be that risk if it was undetected, yes.

The Hon. MARK BUTTIGIEG: I think what he was saying, though, was that the problem is if you do not have some sort of map—you know, if you do not have a compass you do not know where you are going. We have got to start somewhere. That was his argument, I think.

Mr CLAPHAM: And to that end, the map is there in an advisory capacity. I think that, provided the farmer knows what he is looking at and the LLS officer has got in an advisory map there, he has got his compass. Unless you can put out a map that you are going to say is correct and can depict exotic vegetation from native is a start point then you have got real problems.

CORRECTED

The Hon. NIALL BLAIR: That is also the point, isn't it? We know roughly where these species are and we know because of the engagement with LLS when to bring them on farm to actually validate—the danger with a map is it could bypass them coming on farm. If that map—and I will use the point again—is wrong and says you do not need a compass here, if you get that map and it is used as a regulatory map and everything is mapped as unregulated you are actually giving a green light to not engage and maybe go ahead. That is the risk, isn't it? Though you would also be concerned if the map came out and said that everything is regulated on your property and you cannot do a thing. That is the flipside.

Mr CLAPHAM: That is the flipside. That is the side we looked at. We had been concerned that too much unregulated country would be mapped as regulated because the focus of the Office of Environment and Heritage [OEH] always has been to err on the side of caution. That means if there was any question about it, you include it and then prove that it should be ruled out, which puts the onus of proof and the cost and everything back on the landholder to get his map right.

The Hon. SCOTT FARLOW: Effectively the map is all well and good but you need somebody who can interpret it. That is what the LLS officer is there for: To interpret it, come on site and be able to check to see—and it is great for them to be able to have that map to inform their decision-making, but that map is a very dangerous tool incorporated as part of the regulation, as we have heard before.

Mr CLAPHAM: I do not think it should be part of the regulation. I think as an advisory map it is well and good.

The CHAIR: Mr Clapham, can I just ask then—it is a different line of questioning: In your enterprise, do you have many utility easements? Do you have powerlines or—

Mr CLAPHAM: Yes, we have got one powerline.

The CHAIR: How does the utility manage the easement with you? Do they consult with you before they come on, obviously?

Mr CLAPHAM: Yes. Mostly they only come on to do maintenance work on very rare occasions. Mostly it is inspected by helicopter these days, but they advise you when they are going to do that. But if they need to come on then they leave a note to ring them or they contact you and you arrange it.

The CHAIR: When they come on to do some of that work around—so is it a high-voltage easement or is it—

Mr CLAPHAM: There is a high-voltage one. The Mount Piper-Bayswater one goes across the back.

The CHAIR: When they come and do a bit of work around the poles or the tower, what sort of things would they do around that? Do they clear everything or do they—I am just trying to work out how the utility then manages around that pole, essentially on your farm?

Mr CLAPHAM: Mostly any vegetation, any regrowth they just come in and knock down with a chainsaw and leave it. That is all they are sort of worried about. They do not use chemicals or spray or kill anything out.

The CHAIR: Okay. One of the regulations talks about utilities being able to undertake some of their activities. We have got people at NBN Co coming a bit later on. What are the issues that may arise from the utilities being able to—

Mr CLAPHAM: Well, you know, apart from just clearing vegetation the only other thing is maintaining their access tracks to get into their towers and that sort of thing.

The CHAIR: Okay. But they do consult with you beforehand about doing all that?

Mr CLAPHAM: Yes.

The CHAIR: Have you ever had any issues with them about that?

Mr CLAPHAM: No, very little contact with them—

The CHAIR: That you want to put on the record?

Mr CLAPHAM: No, I have not had any issues.

CORRECTED

The Hon. NIALL BLAIR: Just going back to allowables under normal circumstances versus CEEC: It is my understanding that if you have got a CEEC on your property that your allowable activity, some of those distances come right down to I think it is about six metres in some cases?

Mr CLAPHAM: Six metres on fence lines and that, yes.

The Hon. NIALL BLAIR: Whereas it can be between 15 and 40 metres in other circumstances?

Mr CLAPHAM: Depending where you sit on the landscape, yes.

The Hon. NIALL BLAIR: That's right. If we were to disallow the regulation that has been put in for the southern part of New South Wales for these particular two types of species, that would have the impact of allowing more clearing of that species, wouldn't it, if we did not have this regulation come in? Because it would flick over to normal allowables, is that right?

Mr CLAPHAM: Normal allowables. That is as I understand it. I did read the LLS submission and that is as I understand it, yes.

The Hon. NIALL BLAIR: So you would agree that that particular change provides greater environmental protection for those species?

Mr CLAPHAM: It does. From where we sit—some farmers out there might kick my bum for agreeing with it because it does restrict it—but I think the overriding thing is that it gives consistency.

The Hon. MARK BUTTIGIEG: But the Hon. Niall Blair, he was saying that was because the process was not followed properly. What did he mean by that? What process, do you know?

The Hon. NIALL BLAIR: That is what I was talking about earlier. That is the difference between the Native Vegetation Panel versus bringing LLS on. However, we are now talking about the allowables and I am sure we can tease that out again with LLS—

Ms CATE FAEHRMANN: That is the process-intensive veg panel—has not really been formed.

The Hon. NIALL BLAIR: Yes. But this is a whole different thing with allowables, because they have not—if this change is not brought in to collect these two species then we will see—and I am sure that farmers, and this is where you say they might kick your bum, but if you tell them they can take 40 metres they will probably take 40 metres, is that right?

Mr CLAPHAM: Some would.

The Hon. NIALL BLAIR: Yes. Whereas you tell them they can only take six they will probably take—

Mr CLAPHAM: They will take six, yes.

The Hon. NIALL BLAIR: Okay. That is where we can probably firmly say that that change will provide better protection for those species.

Mr CLAPHAM: The critically endangered ecological communities, I would have to agree that it would. But as I say, the reason we support it is because it brings it—

The Hon. NIALL BLAIR: Consistent.

Mr CLAPHAM: Consistent. There is less chance of catching people out to if it is consistent across the board. It is a bit like having six different speed limits going over the bloody mountains. Have three.

The CHAIR: Yes.

The Hon. NIALL BLAIR: We could talk about that, if you wanted! I know you have come from the other side of the mountains, so.

The CHAIR: Yes, that's right. Mr Clapham, thank you very much for your attendance today. You did take one or two questions on notice so this is the bit that I have to tell you: You get five calendar days, five days to respond to the questions taken on notice. The secretariat will be in touch with you about that and the process. They will talk to you and the NSW Farmers about how to organise that.

The Hon. NIALL BLAIR: Maybe direct that to the person sitting behind you.

The CHAIR: Yes, there is someone behind you nodding. I thank NSW Farmers for its submission and I thank you for your attendance today. Safe travels.

CORRECTED

(The witness withdrew.)

(Short adjournment)

RACHEL WALMSLEY, Director, Policy & Law Reform, Environmental Defenders Office NSW, affirmed and examined

CHRIS GAMBIAN, Chief Executive, Nature Conservation Council of NSW, sworn and examined

JACK GOUGH, Policy and Research Coordinator, Nature Conservation Council of NSW, affirmed and examined

The CHAIR: Welcome back to the Regulation Committee inquiry into a couple of Local Land Service amending regulations—the Local Land Services Amendment (Allowable Activities) Regulation 2019 and the Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019. Thank you for your submission and attending today. We will ask for a brief opening statement—a couple of minutes—from each of you or a couple of you. Who wants to go first?

Mr GAMBIAN: I will kick off, if that is alright. Thanks for the opportunity to appear before you today. I think it is reasonable to assume that we all care about the health of our land, our water and the incredible natural assets that make Australia such an incredible place to live in and explore. We all want to ensure that we are managing our landscape sustainably, that we are balancing productive capacity with protections for our unique biodiversity, and that we are not depleting our soils or exacerbating the impact of drought.

Unfortunately, the current regulatory regime does not get this balance right and is allowing rates of clearing of native vegetation in New South Wales that are unsustainable and also rapidly increasing. The rate of clearing of native vegetation for agriculture in New South Wales increased fivefold between 2010-11 and 2017-18. Clearing is occurring at almost double the rate predicted by the Office of Environment and Heritage when the New South Wales land management and biodiversity conservation reforms commenced in August 2017. Approvals since then indicate that the rate has continued to rise rapidly in the past 18 months. This clearing is occurring at the worst possible time for farmers, communities, river and soil health and our native flora and fauna.

We are currently experiencing the most severe drought in New South Wales in 120 years of record keeping. At the same time, climate change is driving a dangerous shift to longer and more intense fire danger periods. Soil carbon is declining in many of our most important agricultural areas. Over 1,000 species in New South Wales are now listed as threatened and the recent NSW Environment Protection Authority *State of the Environment* report recognised the clearing and disturbance of native vegetation as the number one threat to these species. It is in this context that we urge the Committee to consider the regulations you are reviewing.

It is our view that parts of the Local Land Services Amendment (Allowable Activities) Regulation should be disallowed as it will further weaken already lax land clearing laws, contribute further to substantial increases in land clearing rates and put native vegetation and wildlife at risk. We support the retention of the Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation as it ensures the Monaro and Werriwa grassy woodlands will be listed as category 2 sensitive land, but it is our view that the associated code amendments should be repealed as they severely undermine protections for these critically endangered ecological communities [CEECs]. Allowing critically endangered ecological communities to be cleared undermines the Government's stated aim to protect biodiversity.

Currently CEECs are the only vegetation expressly off limits to code-based clearing under the Local Land Services Act, so this listing should have afforded these woodlands increased protection. This is because clearing any remnants of a CEEC is a serious threat to the ongoing persistence of that unique community, especially in already over-cleared landscapes. We urge the committee to use this opportunity to call for an urgent review of the Biodiversity Conservation Act and Local Land Services Act and associated regulations including the Land Management (Native Vegetation) Code. There should also be a pause of clearing under the Equity, Continuing Use and Farm Plan sections of the Land Management (Native Vegetation) Code while this review occurs.

The CHAIR: Mr Gambian, that was a prepared opening statement. Would you be able to provide a copy of that to the secretariat? It will help Hansard put it all together. Ms Walmsley?

Ms WALMSLEY: As you may know Environmental Defenders Office [EDO] is a community legal centre specialising in public interest environmental law. We have had a long history of providing legal advice on laws regarding land management, native vegetation clearing and biodiversity in New South Wales. From the collaborative development of the old Act in 2003with NSW Farmers Association right through to our involvement

as an expert stakeholder in the biodiversity legislation review, we have provided detailed analysis of land clearing, proposed laws and the laws that were made, incorporating feedback including from landowners, our clients, scientific experts and economic experts. During the biodiversity review process we raised serious concerns about the deregulation of native vegetation clearing and the use self-assessable codes to reintroduce broadscale clearing. Two years in, unfortunately, our concerns and predictions have been proven to be correct.

While the focus of this inquiry is on two amending instruments that may seem relatively minor in effect, they must be considered in the context of how the new laws are operating. It has been two years since the new laws commenced and there is broad community concern regarding the clearing of native vegetation under the framework as evidenced by the number of calls to the EDO legal advice line on this issue. It's not just us, these concerns have been validated by recently released clearing figures that show a massive increase in clearing, and by a scathing assessment by the Audit Office. The key point I would like to make to this Committee is that given the huge increase in clearing—from 8,500 hectares in 2011-12 to over 27,000 hectares in 2017-18—and the regulatory failures identified by the Audit Office, we need to be developing ways to strengthen the laws rather than further weaken protections through incremental regulatory and code amendments.

It is alarming that the focus is on technical incremental amendments to further reduce clearing controls, while there are still fundamental parts of the regulatory regime that are missing. Despite being two years in, the key elements are still missing. I would like to draw the Committee's attention quickly to three examples. First, the complete native vegetation regulatory [NVR] map, which is intended to underpin the whole regulatory framework, has not been publicly released in full. The Auditor-General has found that a lack of a complete NVR map was a real risk and identified that it can make categorising land more difficult for LLS staff, particularly in areas of groundcover such as shrubs and grassland. The Natural Resources Commission has found that an incomplete map creates a risk in terms of ensuring providing consistent and accurate advice.

Secondly, there is very little publicly available information regarding the native vegetation panel that was supposed to be established under the Act to determine clearing applications. There is no publicly available evidence that this panel has processed any applications to clear vegetation. This suggests that all of the recent significant increase in clearing is being done under a self-assessable code or an allowable activity with little or no oversight or proper environmental assessment. Thirdly, the mechanisms that were put into the legislation to offer some limits to unfettered clearing, including the ability to declare Areas of Outstanding Biodiversity Value, have not been utilised. The Audit Office concluded that clearing of vegetation on rural land is not effectively regulated and that the processes in place to support the regulatory framework are weak and there is no evidence-based assurance that clearing of native vegetation is being carried out in accordance with approvals.

Given this poor implementation and the substantial increase in clearing rates, it is apparent that the framework is not operating to ensure proper management of natural resources as intended consistent with the principles of ecologically sustainable development. Given the inadequacies and failures of the new laws, any regulatory amendments that facilitate further clearing are of serious concern. I turn to the specific amendments before the inquiry. In terms of the Local Land Services Amendment (Allowable Activities) Regulation, we do not object to the concept of allowable activities that are genuinely minimal-impact routine activities necessary for productive farms.

However, we have concerns about expanding the list of allowable activities, the exemptions being used to justify significant amounts of clearing and the unknown cumulative impacts of clearing under the exemptions, if misused. There are no mechanisms in the framework to monitor and record the amount of clearing that is undertaken as allowable activities and it is difficult to ensure that limitations on clearing are being complied with. Given the broader identified regulatory failures, we have little confidence that allowable activities are actually done to the minimum extent necessary and submit that they are not appropriate in sensitive areas such as buffer zones around coastal wetlands and littoral rainforests.

Regarding the Monaro-Werriwa regulation, we recognise the rationale for the regulation insofar as we understand it is aimed at regulating allowable activities on land as if they were category 2 - sensitive land. However, we have concerns regarding the changes to the Land Management Code, as well as deficiencies regarding the map, including the failure to promptly map newly listed, critically endangered communities in a timely manner. The use of codes should only ever be for genuinely low-risk activities. It is therefore entirely inappropriate for authorising clearing of communities that are at high risk of extinction. We reiterate our long-held position that the code-based clearing should not be allowed in any threatened ecological community, let alone a critically endangered one.

In summary, after two years of the new laws, the findings of regulatory failures and the massive increases in clearing indicate that we should be strengthening the regime, focusing on the fundamentally important missing

pieces, rather than making incremental amendments to further weaken and complicate a confusing and ineffective system. Thank you, and I would be happy to provide this to Hansard.

The CHAIR: That would be good, thank you. This Committee is looking at the impact and implementation of the two regulations. The terms of reference are pretty tight, but what I am gathering from your opening statements is that we should actually be looking at this as a part of the entire suite, not just the two regulations. Is that your view?

Ms WALMSLEY: That is correct. If you look at the policy trajectory for native vegetation in the State, the way it is going at the moment, from the start of the commencement two years ago we have seen a deregulation of clearing, we have seen a massive increase in code-based clearing. That part of the legislation has gone gangbusters. If you look at the latest statistics that have been released—we have them here and I can provide them to the Committee. Just in the last month I think there were 496 new notifications under the code for clearing.

The code part is going absolute gangbusters in the absence of the map and the panel, and all these other elements. The fact that we are looking today, this Committee is looking at a code amendment to further weaken protections to allow code-based clearing of a critically endangered ecological community, that is part of this broader trajectory to reduce and reduce and reduce any protection in the code. It is pretty clear from the statistics that whatever clearing you want to do at the moment is basically being done under a code, with very, very little oversight. The fact that we are focusing on how to weaken the code further is of concern.

The CHAIR: Could you table that for the Committee?

Ms WALMSLEY: Yes.

The CHAIR: Mr Gambian, the submission from the NCC with regard to the allowable activities regulation, you are not recommending full disallowance, your recommendation is that there should be partial disallowance. Do you or Mr Gough want to talk us through that?

Mr GAMBIAN: Yes, that is right, but I will pass on to Mr Gough to talk a bit more about that.

Mr GOUGH: There are only parts of that that we are looking at disallowing. The reason for that being that—we received advice from the Environmental Defender's Office, which is at the end of our submission, in terms of what that specific regulation does, and we are not submitting that the elements to do with maintaining water, gas supply infrastructure should be disallowed. We understand that they were available previously under the RAMAs under the previous Native Vegetation Act. We have two key concerns. One is the expansion of the allowable activities on category 2 – sensitive regulated land to allow for collection of firewood and also clearing of planted vegetation on vulnerable and sensitive land.

That is essentially similar to what Ms Walmsley has been saying that in the context of very serious increases in the level of clearing, but also in the context of a very serious drought, that there should not be an increase to what is allowed to be cleared in these sensitive areas of land. If that needs to go ahead, it should go through the Native Vegetation Panel, which was the original intention of the Act. In terms of the second part, which is schedule 2 of that regulation, that is about allowing clearing of proximity areas for coastal wetlands and littoral rainforests. This is the buffer zones that were created to say that those buffer zones essentially count as category 2 – sensitive regulated land, not just category 2 – regulated.

I do not know if it is worth giving an explanation of the difference to the Committee, but essentially with the sensitive regulated land it has to go to the Native Vegetation Panel of experts to determine whether clearing can occur, which was part of the protections built in to the original Act that were meant to say that where there is sensitive land there needs to be a higher level of assessment going on. We are particularly concerned about the clearing of proximity areas for these coastal wetlands and littoral rainforests. We would submit that a lot of that could be to do with clearing for development, rather than just for agriculture. The arguments around just productive capacity do not necessarily hold up for that.

On the CEEC, the critically endangered ecological communities, similarly. The concern we have is the Threatened Species Scientific Committee came out with a listing of this as critically endangered. Within one month the Government was prepared and ready to come out to say: Here is the context in which that can be cleared. I think you received evidence from them this morning and saw in their submission 90 per cent of these ecological communities have already been cleared. They made it clear in their determination that the biggest threat is routine agricultural practices and clearing for routine agricultural practices. The issue for us and for a lot of conservation groups has been that if you allow clearing of critically endangered ecological communities on the basis that some of them are assessed by a Local Land Services officer to not be viable, you are facilitating the extinction of that ecological community. Under this regulation we do not have experts making that decision.

CORRECTED

The Hon. NIALL BLAIR: Are we, or is the Local Land Services expert facilitating that? Let us be clear, because we will get to the experience and the qualifications. You are saying that that Local Land Services officer is facilitating the extinction or the acceleration of the extinction of that species?

Mr GOUGH: No, sorry. I am saying the regulation is.

The Hon. NIALL BLAIR: No, it is the officer on the ground who makes that determination. Let us be clear. You are saying that that officer is accelerating it?

Mr GOUGH: I am saying that a decision to allow clearing—

The Hon. NIALL BLAIR: Made by the Local Land Services officer?

Mr GOUGH: Yes. On a cumulative basis, if we have got those decisions being made when we have got 90 per cent of that ecological community already wiped out and when the advice from the Threatened Species Scientific Committee is that routine agricultural management practices and clearing are the main threat, that if we allow there to be a loosening of the regulations around whether these areas can be cleared or not, that we are putting those communities further along on the road to extinction. I would submit that the issue is the regulation.

The CHAIR: As I understand it, the code is not a disallowable instrument. For that to be moved it would need to be repealed, as opposed to the regulation. There are the two going together.

Mr GOUGH: Yes.

The CHAIR: Are you suggesting to this Committee that we recommend the repeal of the CEEC regulation and repeal the code?

Mr GOUGH: We are recommending the maintenance of that regulation, because what that regulation essentially does is say that—and potentially the Environmental Defender's Office [EDO], I am basing this on the advice I have received from them, so maybe they can talk to that better—but that that regulation allows the critically endangered ecological communities of these grassy woodlands, Monaro and Werriwa, to count as category 2 – sensitive regulated land.

The CHAIR: You want to maintain the regulation?

Mr GOUGH: We want to maintain that. But the code that was associated with that, we are suggesting to the Committee that a recommendation should go to the Government that that code change, be repealed.

The Hon. BEN FRANKLIN: As per your recommendation 4.

Mr GOUGH: Yes.

The CHAIR: Ms Walmsley, your view on that?

Ms WALMSLEY: Yes, that is right. We want to maintain the regulation because that puts some limits on allowable activities. But the problem is the code part of it. We would suggest that that should also be repealed. Because if you look at the intent of what the legislation is trying to achieve, you do not want to have a perverse outcome where this code change actually creates a perverse incentive for farmers to degrade that particular bit of community because then it would no longer qualify as a functioning ecological community. You would not want those last few areas to be degraded and then they would no longer qualify and then they can be cleared. Because the thing about critically endangered ecological communities, they are often in low condition because there is so little left. That is why the protections need to be a bit tighter, so we would suggest repealing that part of the code.

The Hon. NIALL BLAIR: I just want to clarify. You said it "kind of" adds a layer of protection. Does it or doesn't it?

Ms WALMSLEY: The former part that I was talking about?

The Hon. NIALL BLAIR: You said the regulation "kind of" provides more protection.

Ms WALMSLEY: For allowable activities clearing it treats those CEECs like they are sensitive regulated land.

The Hon. NIALL BLAIR: So it provides more protection.

Ms WALMSLEY: Because they are not formally mapped yet. If they are formally mapped in that area then code based clearing is excluded but because they are only recently listed they are not formally mapped yet. Our understanding is they are not included in the current map review that is happening. So if they were formally

mapped, code based clearing would be excluded. What the good bit of the regulation does is just say they are to be treated as if they are mapped so that that allowable activity clearing is excluded.

The Hon. NIALL BLAIR: I was just picking up when you said it "kind of" provides. It is my understanding that it does provide more protection, not "kind of".

Ms WALMSLEY: It does for allowable activities clearing but then—

The Hon. NIALL BLAIR: Yes, which is the context that you were talking about.

Ms WALMSLEY: The allowable activities clearing—it provides a high level protection for that, but with the code based clearing, with the discretion with the LLS to decide that it is a non-functioning community, that is where the protections are lessened.

The Hon. NIALL BLAIR: Is that the problem—the LLS officers and their discretion?

Ms WALMSLEY: The problem is using an inappropriate regulatory instrument. For a critically endangered ecological community, self-assessed codes in terms of—

The Hon. NIALL BLAIR: No, that is not self-assessed. That is an LLS officer coming on to determine the viability.

Ms WALMSLEY: Sorry, well, the use of the code should be for genuine low-risk activities, whereas if you are clearing something at high risk of extinction, it is an inappropriate regulatory tool for that kind of thing. What we are saying, if a critically—

The Hon. NIALL BLAIR: I would agree if that was the case. But is it not the case that an LLS officer is coming on to determine the viability?

Ms WALMSLEY: Yes, but the starting point is that it is saying you can clear—there is a pathway to clear a critically endangered ecological community. The original intent is that, where there is such a listing, any clearing of that would be done through the vegetation panel and a proper, fulsome assessment.

The CHAIR: Mr Gough, do you wish to add something?

Mr GOUGH: Yes, I think there are a couple of things. One is that when the code was introduced the only thing that was off limits to clearing was critically endangered ecological communities. So there were submissions from a lot of conservation groups that high-quality koala habitat should be off limits to clearing, that threatened ecological communities should be off limits to clearing. That was not taken up and the one thing that was agreed was that if something is listed as "critically endangered ecological community" it is off limits to clearing. The change that has occurred here is to say if a Local Land Services officer determines that that part of the critically endangered ecological community is not viable then it can be cleared under the code.

So we have concerns that when you are talking about critically endangered ecological communities you are talking about highly marginalised and degraded communities that should actually trigger higher levels of protection and that that was the original intent. But there is a separate issue which I think you are getting to which is that we also submit that when we are talking about critically endangered ecological communities, if we are going to go down that path, which we do not support going down, that it should be at least going to something like the native vegetation regulatory panel where you have ecological experts engaged in this. At the moment, Energy, Environment and Science [EES]—the old Office of Environment and Heritage [OEH]—does not have any role in this. So all we have is someone who is a Local Land Services officer—

The Hon. NIALL BLAIR: No, they are the compliance.

Mr GOUGH: They are the compliance, but in terms of determining whether a portion of a critically endangered ecological community is viable—

The Hon. NIALL BLAIR: You have a problem with LLS doing that role. You would prefer that to be with the old OEH equivalent.

Mr GOUGH: We would prefer that it was off limits to clearing, full stop.

The Hon. NIALL BLAIR: Just on that point then, you would prefer that any CEEC means no clearing, full stop—do you agree with that? That is your submission.

Mr GOUGH: Yes.

CORRECTED

The Hon. NIALL BLAIR: So with this new listing of these two extra species from Crookwell to the Victorian border, basically you are saying that that should impact on every one of those properties where we see these species to have no clearing—that is your submission?

Ms CATE FAEHRMANN: In fact, the Threatened Species Scientific Committee when you put that to him did not say that. He said 10 per cent. I am just saying that you put that to the Threatened Species Scientific Committee and he corrected you, so I am correcting you now.

The Hon. NIALL BLAIR: So anywhere from Crookwell to Victoria—

Ms CATE FAEHRMANN: Ten per cent of it.

The Hon. NIALL BLAIR: —if these species are on there, are you saying that they should not be touched?

Mr GOUGH: Yes. But on the other point around who should make the decision, if we have gone down that path we should have people who are experts—we should have ecologists involved in working out whether these things are viable.

The Hon. NIALL BLAIR: Okay. So what if the ecologists or people with the expertise are in LLS—they still should not be involved?

Mr GOUGH: There is nothing within that regulation which says it has to be someone with any ecological expertise.

The Hon. NIALL BLAIR: You have just said that it has to be ecologists or someone with expertise. If those people are in LLS and it can be proved that they are competent, would you have any problem with them making the assessment?

Mr GOUGH: We have problems with the clearing.

The Hon. NIALL BLAIR: Yes, I get that.

Mr GOUGH: It would certainly improve the regulation if it was clear within the regulation that it had to be someone with scientific ecological expertise making that decision. That would definitely improve the regulation.

The Hon. NIALL BLAIR: Okay. It does not matter if they sit in LLS. Are you happy that they just have to be someone who is competent? Can that be done in LLS if they are competent?

The Hon. MARK BUTTIGIEG: In other words it is not the reporting line that matters; it is the expertise that matters.

The Hon. NIALL BLAIR: Or do you have a problem with the reporting line as well?

Mr GOUGH: I do not have a problem with the reporting line, no. But the expertise at the moment tends to sit within the OEH side and also currently we have the Native Vegetation Panel.

The Hon. NIALL BLAIR: We will have LLS here later. We might ask them about it. Because from the people I have met from LLS, some of them who are well and truly experienced in this field, come from the old catchment management authorities. They do not come from a farming background; they come from an environmental background. So we might tease that out a bit later. But that is interesting that that is the view that because they are wearing a shirt with that logo on it you think that there is no expertise in there.

Mr GOUGH: No, sorry, that is not true. The evidence I am submitting is that there is nothing within the regulation as it currently stands which requires someone to have any expertise.

The Hon. NIALL BLAIR: Yes. We got that. But then you said you did not think that that expertise sat within LLS.

Mr GOUGH: Certainly we have concerns that the main authority is the one that has a responsibility for—

The Hon. NIALL BLAIR: I know that part of the earlier submissions were beyond the scope of this but I want to ask a couple of quick questions in relation to some of the broader statements around the policy setting in general. Ms Walmsley, the discussion around how this is out of control clearing et cetera, how long are approvals under the old Native Vegetation Act viable for to be able to be accessed for clearing?

CORRECTED

Ms WALMSLEY: If you had a property vegetation plan under the Native Vegetation Act, that, for instance, could be 10 years. So there are clearing approvals in the system.

The Hon. NIALL BLAIR: That is a property vegetation plan [PVP].

Ms WALMSLEY: Yes.

The Hon. NIALL BLAIR: And there are other clearing approvals that can last for 15 years—is that right?

Ms WALMSLEY: Yes.

The Hon. NIALL BLAIR: Does that mean that some of the statistics that we are looking at currently could include clearing that was approved under the old Native Vegetation Act?

Ms WALMSLEY: It could, yes, but that raises a really good point. The information that is released on clearing figures is very, very hard to determine what clearing is happening where and what system it is under. So there is a problem with reporting. I understand the departments are working on how to do more regular and more useful reporting but the information that is available publicly is very difficult to distinguish. Again that is a compliance issue.

The Hon. NIALL BLAIR: Because of that, though, you could not definitively say that all clearing that is happening is attributed to the new system.

Ms WALMSLEY: I think that—

The Hon. NIALL BLAIR: You cannot because you have just said that there could be clearing happening this year that was approved five years ago.

Ms WALMSLEY: It could be, but that would be a small proportion. There is a very clear spot.

The Hon. NIALL BLAIR: You cannot say definitively all clearing now is happening—

The Hon. MARK BUTTIGIEG: Point of order: The member cannot put words in the witness' mouth.

Ms CATE FAEHRMANN: Yes, that is what he is trying to do.

The Hon. MARK BUTTIGIEG: She has the right to answer the question.

The Hon. NIALL BLAIR: Okay, I will move on.

The CHAIR: It is not budget estimates, so can we calm down.

The Hon. NIALL BLAIR: I have limited time, so I will move on to my next question. How much has been set aside under the new system?

Ms WALMSLEY: So far, the latest statistics say 34,150 hectares. That is not set aside; that is to be set aside. As the Audit Office pointed out, some of those set-asides have been agreed in a time of drought. If you do replanting in a time of drought, that is not going to achieve any environmental outcomes if you cannot water what you have just planted. That is a nominal amount of clearing. We have huge issues with set-asides. What I might say on your former point is that the previous legislation had a ban on inappropriate broadscale clearing if it failed to maintain or improve environmental outcomes. That did actually say no to broadscale clearing, so the increase in clearing that we are seeing is pretty clearly under the new Act.

The Hon. NIALL BLAIR: You say that that is approval to set aside, but that is not the same as clearing, is it not? That is only approval to clear; it has not actually been cleared.

Ms WALMSLEY: Exactly, but the potential is that there are now certifications for almost 300,000 hectares under LLS.

The Hon. NIALL BLAIR: How much of that is invasive native species [INS]?

Ms WALMSLEY: An awful lot. I have a paper that I will table at the end.

The Hon. NIALL BLAIR: Can we agree that invasive native species is different to—

Ms WALMSLEY: This is saying 247,179 hectares is authorised under invasive native species and the majority of that is in the Western LLS region.

The Hon. NIALL BLAIR: Do you have an issue with INS and the biodiversity value of INS?

CORRECTED

Ms WALMSLEY: I think INS has been poorly regulated under the old system and the new system. If you look at statistics under the Native Vegetation Act, there was substantial clearing that was done under the old INS code. I do not think those issues have been addressed well. If you look at the huge amounts of INS clearing now, I do not think that is well regulated still. We are still grappling with how to do that.

The Hon. NIALL BLAIR: Does INS have a good biodiversity value compared to other forms of native vegetation? Have you stood in a monoculture of one species and assessed its biodiversity value, where you cannot see a bird, you cannot see another species? It should be treated differently as far as its biodiversity value is concerned.

Ms WALMSLEY: Absolutely, it should be, but if you read the Audit Office report, they identified serious shortcomings with how it is being rolled out into the new scheme. If you look at the original intent, absolutely there are areas where thinning of INS will give you better biodiversity outcomes—no problem with that. But if you look at the Audit Office report, the way it is being done at the moment, they give examples of one landowner who said they will have minimal disturbance, but they were using a dozer. Obviously, the information they gave in their certificate was that they were going to use some rather different machinery to do this. There is no recourse for LLS to say, "No, that's a bit too much". If you go through the Audit Office report, that give some information about how INS is not working and how that could be strengthened.

The Hon. NIALL BLAIR: You spoke about the oversight of allowables, for example for infrastructure on farms. We have a system to regulate that, do we not? We have the satellite photography and imagery that clearly show if someone has gone beyond the maximum clearance rates. That is certainly part of the compliance regime.

Ms WALMSLEY: Yes, in relation to one of the extensions of the allowable activities—for example the one about firewood—there are some limitations in the regulation. The allowable activity is prohibited if the vegetation comprises or is likely to comprise threatened species or threatened ecological communities or habitats and so forth. That is supposing that the landholder knows that that is a likely threatened species or ecological community. It is assuming some knowledge there, and the Audit Office report finds there is just no evidence saying how that is monitored and what the cumulative impacts might be.

I think there is a real opportunity with the allowable activities to do education for landowners on what kinds of threatened species might be in certain areas, so that they know. If there was compliance enforcement on allowable activities then the burden is on the landholder. If they have made an honest mistake and inadvertently not realised something is a threatened species, that is a problem. There is an opportunity to do outreach and education for landowners so they do not fall foul of that kind of limitation, if it was to be enforced.

Ms CATE FAEHRMANN: Thank you for coming. To get back to the LLS officer going out to assess the viability of areas of grassy woodlands, what are the ecological principles, if you like, that the LLS officer uses to assess the viability? Are you aware of that? What do they use?

Mr GOUGH: I am not aware, and I guess this is why we are submitting that there need to be experts in the ecology making those decisions.

Ms WALMSLEY: I am not aware of any specified process of how that is done at the moment.

Ms CATE FAEHRMANN: You would think that, given that if these are determined critically endangered ecological communities by the scientific committee there would be at least guidelines for how the LLS makes these decisions if it is sending out officers to do that. It is difficult to trust the officers to know what they are doing. I take that the Hon. Niall Blair wants to talk about that at some stage, but it is concerning if that is not included and you are not aware of those principles.

The Hon. MARK BUTTIGIEG: To follow up on and put it another way, the Government presumably accepts that the objective assessment of what is ecologically sensitive is done by an expert panel of ecologists, yet the enforcement is done by people who do not have to have that expertise. That is, essentially, the issue, is it not?

Mr GOUGH: That is an issue in terms of the implementation. We have an issue, as we were saying, specifically with allowing clearing of these things, full stop. But in terms of the decision-making process, it would improve the regulation to make clear the level of expertise or to have this referred to the Native Vegetation Panel.

The Hon. MARK BUTTIGIEG: Notwithstanding the fact that you might have qualified people in LLS, it is not mandatory. That is the issue.

Mr GOUGH: There is nothing within the regulation which specifies any requirements. There is nothing within the regulation that even suggests how the decision should be made within LLS and on what basis.

Ms CATE FAEHRMANN: Can anyone challenge the decision made by the LLS officer? If they allow clearing, is there any mechanism for disputing that? In terms of the reporting, the accountability and the monitoring of these decisions by LLS, I am trying to see how any of it is kept track of.

Ms WALMSLEY: It would be extremely difficult for a third party to enforce that kind of breach of the Act. I would assume that the Office of Environment and Heritage [OEH] is the compliance office that is in charge of looking at that. I understand that they are improving the satellite imagery and the rapid response oversight of clearing as and when it happens. But it is not exactly clear how they would be able to intervene on those kinds of things. As the Audit Office said, the ability for LLS to say no to code-based clearing is very, very limited. In this respect, there is a lack of detail on the process of how this would work, so it is very unclear how that would actually happen.

Mr GOUGH: I would add to that, as we put in our submission, that there are two issues. One is that there is no mechanism we could see for an appeal against the LLS officer's decision. Also, and this is an issue we are finding in forestry, there is no necessity for an assessment of whose fault it is that that a critically endangered ecological community is no longer viable. Similar to some of the remapping of old growth that is going on—

The Hon. NIALL BLAIR: We are not talking about forests here.

Mr GOUGH: This is important context. We have an issue there where remapping is going on potentially of those old growth forest and one of the reasons they could be remapped is because there has been ringbarking. There is nothing within that to say who did it and similarly on this there is nothing to say whose fault it is that a critically endangered ecological community is not viable. It could create an incentive to ensure that these things are not viable so you can do further clearing.

Ms CATE FAEHRMANN: I wanted to make sure that we get more evidence in relation to the clearing in terms of proximity areas to coastal wetlands and littoral rainforest. If you could inform the Committee how that interacts with the coastal SEPP, whether it undermines the coastal SEPP in any way?

Mr GOUGH: We are relying on advice from the EDO.

Ms WALMSLEY: If you look at our submission on page five we talk about the proximity area for coastal wetland. We understand the purpose of that amendment is to clarify that these proximity areas are listed under the coastal State environmental planning policy. We understand the amendment does not reverse any existing provision but it is intended to clarify how the coastal SEPP interacts with this. The effect of what we are seeing here is that there will be weaker restrictions on clearing in coastal proximity areas because they will not be categorised as category 2 sensitive regulated land.

This undermines the premise in the coastal SEPP that these proximity areas are really important and warrant additional environmental protection. We think that is contrary to the intent. We should be doing the opposite, in fact. Coastal wetland and littoral rainforest buffer areas should be designated as category 2 sensitive regulated land to make sure that they can actually be maintained as appropriate buffer zones. You see in our submission we go on to say how confusing it is. I do not know if you have spent much time trying to understand the urban vegetation SEPP but it is very confusing.

We have a lot of local councils come to us because they cannot understand what exactly they are supposed to be implementing. This is another example of the confusion here. It would be great for this Committee or others to actually assess the impacts of this regulation in terms of how much coastal littoral rainforest or coastal wetland land which comes under the LLS code, how much will actually come under an environmental zone or urban zone and how much will come under the SEPP. It is really unclear. Again, we are lacking complete maps. We are lacking clarity to see what the actual impacts will be.

That overall policy trajectory is still to remove and remove and remove any kind of limitations on what might be cleared in environmentally sensitive areas. When we are talking about the CEECs, when we are talking about sensitive regulated areas, these areas identified by processes in legislation because they warrant greater attention and they require greater environmental assessment. The trajectory we are seeing is to treat those areas that have been identified as requiring more looser tools that actually require less rigorous assessment.

The CHAIR: Ms Walmsley, are you saying that if the regulations were to remain in place the Government needs to provide or issue clarifying statements about how the Local Land Services regulations will interact with the coastal SEPP?

CORRECTED

Ms WALMSLEY: Yes, there definitely needs to be more guidance on that.

Ms CATE FAEHRMANN: Ms Walmsley, in your submission you mention the fact that the Government released a new advisory for Monaro and Werriwa to the native vegetation reg map viewer on 2 August 2019. What are the issues with this mapping?

Ms WALMSLEY: The issue with the mapping is the timeliness of it. When the CEEC was first gazetted or declared the mapping did not immediately happen to ensure that that was mapped as sensitive land—the pink bit on the native vegetation map. Our issue was that if you look at the purpose of listing, these are areas that are specifically identified and they need to be mapped as soon as possible to ensure that the right level of land management regulation is applied to that sensitive area. One of the issues we are concerned about here is not only was that not mapped in a timely measure but now we need an incremental amendment to ensure that has some level of protection.

Instead of getting the fundamental mapping right before trying to do this regulatory regime we have got this piecemeal approach. It must be confusing for landholders to have these different layers of maps. Even though there is currently a map review process underway, looking at the map these two bits of the new mapping are not actually included in that process. We asked yesterday about this and they are working on trying to rollout the maps in a more timely manner in a staged process in response to the auditor general. There are issues and it must be confusing for land owners.

Again, when it comes back to what is the purpose of listing a critically endangered ecological community it is to get it recognised as soon as possible because there is not much of these left. So time is important. I know that one of the purposes of listing these communities, I think instead of triggering complicated special treatment procedures like this is, it should actually be a flag for the Government to say that these landholders you are concerned with, how can we give them incentive payments to manage those areas for conservation?

That is where the biodiversity conservation trust should be channelling some money. If you have a CEEC on your land then that is an area where you should be getting biodiversity funding so that landholder can get an income stream to manage that. It should not be a matter of how can you now clear under exemption to a code, it should be how can we invest in that last little bit of CEEC to actually achieve the outcomes that were set out originally in the legislation.

The CHAIR: If these regulations are the not disallowed and they stay in place what are some of the things that you would recommend to Government to enhance or improve them?

Ms WALMSLEY: We will consistently say that code-based clearing should not be done in endangered ecological communities. We have said that from the outset. Our position would not change on that because it is the inappropriate regulatory tool. As I said, there are opportunities with better information for landholders. There are opportunities with improving investment in conservation for affected landholders. The broader fundamental problems need to be addressed, as I said in my opening statement, otherwise we are continuing with inadequate maps with no vegetation panel actually assessing those important sensitive areas. There are so many fundamental flaws that need to be addressed. They need to be addressed before thinking about how to do yet another guidance on this specific incremental amendment. As the NCC said at the start, review the system and fix the fundamental flaws instead of putting out guidance on more incremental amendments.

Mr GOUGH: Going to that first recommendation of ours, that there needs to be an urgent review two years in: One of the key reasons that there needs to be a review of that regime is that when the environment Minister provided concurrence for the native vegetation codes when this change has occurred they did so on the basis of advice that clearing rates for 2017-18 and 2019-20 would be around 15,000 hectares per annum up from about 3,000 hectares per annum. For 2017-18 we were almost double that at 27,000. In the last 18 months notifications of clearing—not the permission for clearing—have been over 50,000 hectares in the last 18 months.

The issue here is what is going on is a long way higher in terms of clearing rates than what was predicted when concurrence was provided by the environment Minister back for the original native vegetation codes. The issue we have been talking about today, there is a whole host of issues that suggest we need an urgent review of this to work out what has been going on and why that is happening. The other factor that is really important is the drought and the level of clearing that is going on in the middle of a drought has really significant impacts on the long run sustainability, soil retention, the health of our landscape.

For that reason we would say the number one would be an urgent review. Our understanding from the Government is that that review is going to occur I think in three years' time—they are looking at it after four years' time, is it? I think it was after five years that they will look at that review, so we want that to be brought forward.

CORRECTED

That would be a good process. But I would also say that in 2003 we had a process where we had farmers, conservation groups and scientists working out what we need to do to manage our landscape sustainably. They came up with three key elements: Catchment Management Authorities, the Native Vegetation Act and the Natural Resources Commission. We have lost the Catchment Management Authorities and a lot of the funding. I accept that some of the funding issues are a Federal reduction in funding, but we have lost that.

The Hon. NIALL BLAIR: We have not lost that. It has just gone into a new agency.

Mr GOUGH: Sorry, having specific agencies that deal with catchment management and also having the high levels of funding that was associated with that from the Federal Government has gone, the Native Vegetation Act has been removed and replaced with something that has clearly allowed very significant increased rates of clearing and we still have the Natural Resources Commission, which is fantastic. But they have obviously done a review of the things. We think that review should come out publicly. It was found out at estimates that that review went on at the start of year. We think that review should come out. There needs to be a broad review and a broad bringing together of groups to say, "How do we revisit this issue to make sure that we do not have really high levels of clearing at the rate that it is going on right now?"

The Hon. NIALL BLAIR: I had good hair in 2003. A lot has changed since then. But you just said, Mr Gough, the rates that are being done at the moment in the drought—what evidence do you have? Remember, the number you quote is approvals for clearing, right?

Mr GOUGH: No, sorry, two things. The 27,100 hectares is based on that woody vegetation clearing data that was released recently. The move for 2017-18 to 27,100—

The Hon. NIALL BLAIR: Just to clarify, you are talking about approvals for clearing or actual?

Mr GOUGH: That is actual clearing. The actual rates of clearing are almost double what the OEH predicted when they provided concurrence.

The Hon. NIALL BLAIR: But you said "in the drought", so what evidence do you have to say that it has ramped up during the drought?

Mr GOUGH: There are two things. There is approvals for clearing, which, as we were talking about, I think they are at 290,000 hectares, but there have also been notifications of clearing.

The Hon. NIALL BLAIR: I get the notifications.

Mr GOUGH: In the last 18 months that has been over 52,000.

The Hon. NIALL BLAIR: I am just saying, because there is a strong argument to suggest that a lot of approvals have not been actioned because of the drought. Farmers' ability to burn diesel or to actually bring people in to even do some of the approval works has been limited because of their lack of income. Do you have evidence to the contrary to back up the claim that you said that the increase in clearing during the drought is something that is happening out there? I have anecdotal evidence from the flip and I would say that there are a lot of approvals that have not been actioned, just like there are a lot of set-aside approvals that have not been actioned because of the drought. I would say it is working both ways.

The Hon. MARK BUTTIGIEG: Those numbers are so overwhelming, though. Even if what you are saying is true, it would only pare it back by a percentage, surely.

The Hon. NIALL BLAIR: Overwhelming to what?

The Hon. MARK BUTTIGIEG: The figures he quoted in terms of notifications dramatically going through the roof.

The Hon. NIALL BLAIR: Through the roof to what? Compared to what?

The Hon. MARK BUTTIGIEG: Quote the figures.

Mr GOUGH: The clearing rate per annum in recent years before the changes was about 9,000 hectares per annum. They were predicting it would go up to 15,000 hectares per annum under these changes in 2017-18. The woody vegetation data from the satellites showed that for 2017-18 it was 27,100 hectares. The approvals for clearing under the code are about 290,000 but the notifications of clearing are over 50,000 hectares in the last 18 months. That is saying to the LLS, "I am about to go and clear."

CORRECTED

The Hon. MARK BUTTIGIEG: Even if all those did not flow through to actualities you would have to think a considerable percentage of them would, notwithstanding what you are saying about lack of income. So it has increased, that is the point, is it not?

The Hon. NIALL BLAIR: But you are using—what was the term you used before? "Overwhelming"?

The Hon. MARK BUTTIGIEG: The figures are overwhelming. They are pretty overwhelming.

Ms CATE FAEHRMANN: From 9,000 to 50,000 pretty much during a drought.

The Hon. MARK BUTTIGIEG: Are you saying there is no issue there?

The Hon. NIALL BLAIR: What I am saying is we have had this debate over many years, right? The old system basically allowed a lot of areas to be locked up and just kept locked up. The farmer was given the privilege of managing all of the invasive pests and weeds that came out of it. There is no doubt this system is a different system to look at, being able to allow them to give approval for certain activities and clearing certain species as well as identifying the stuff that is the high biodiversity value that needs to be managed, incentive payments for farmers to look after it, so there is no doubt the numbers have changed. But I was just curious, coming off some of this language around whether it is off the chart and all this sort of stuff. We will hear from Local Land Services.

I guess I have been a little bit frustrated with the fact that all people are talking about is clearing. No-one is talking about the stuff that is being identified appropriately and conserved or also extra set-asides put aside. But in saying that, the assessments are being done by people who are highly qualified or highly trained to actually identify the stuff that should be conserved. Yes, we can talk numbers but it is also a very big State and there are also some very large landholdings out there and there are a lot of invasive native species.

The Hon. BEN FRANKLIN: Over 80 per cent in terms of the evidence that was just given before about the 290,000.

The CHAIR: Thus ends the sermon.

The Hon. NIALL BLAIR: I am just saying, if we are going to come and start, you know, we need to know a bit of the background.

The CHAIR: If there are no other questions we are going to wrap it up. Thank you for your attendance.

(The witnesses withdrew.)

(Luncheon adjournment)

CORRECTED

JOE DENNIS, General Manager, Government Relations, NBN, sworn and examined

JOEL GINGES, State Team Lead, Land Access and Statutory Approvals, NBN, affirmed and examined

The CHAIR: Welcome to this Regulation Committee inquiry. I thank you for your submission and also for your attendance today. Would either or both of you like to make a brief opening statement?

Mr DENNIS: On behalf of NBN I thank the Committee for inviting us today, noting as a telecommunications network builder and operator the focus of our submission and evidence here pertains to proposed clause 35(12) around allowable activities for telecommunications infrastructure, more narrow to what this is today. The past year has been a significant one for NBN. Nationally we now have 10.2 million premises able to connect to the network with close to six million homes and businesses already on the network. In New South Wales more than three million premises are able to connect to the NBN across our various technologies in the State, representing around 85 per cent completion. Importantly, over 93 per cent of non-metropolitan New South Wales is now able to connect.

As we are near to the end of the build proper by June 2020, however, there is a growing focus on the operation and maintenance of that work. We effectively go from a network builder to a network operator. As you would expect, our customers and the public have very high expectations of the NBN and, increasingly, the availability and reliability of broad-band services being so critical to business continuity and community safety. In maintaining the NBN network we are regularly required to remove tree branches, grasses and plants adjacent to essential telecommunications infrastructure. Whether it is for the purpose of ensuring public safety or delivering peak network performance, we are required to act professionally and sometimes quickly but always in accordance with the law.

I wish to mention that the failure of our network can impact on vital services such as medical alarms, lift phones, critical public services and general telephony services. Examples of the type of maintenance that NBN conducts include the removal of tree branches, impacting aerial cables after severe weather events and trimming of onsite vegetation impacting fixed wireless signals, for example, in regional areas where we have generally got towers based in bushland for visual amenity reasons. But there are many other examples where the ability to trim or conduct minor removal of vegetation is important to our ongoing operations.

We wish to emphasise that NBN always considers the ecological impact of maintenance works and expects employees and contractors to adhere to our established principles and policies. We recognise that vegetation clearance can be a sensitive issue and, consistent with our practices, we welcome the fact that the proposed arrangements clearly define maintenance and require that the bare minimum can be cut, pruned or removed at one time.

The regulatory provisions being discussed in the inquiry have the following benefits from the perspective of NBN. Firstly, the amendments would provide greater surety and directions surrounding permissible activities relating to vegetation removal. Secondly, the amendments will create parity between existing legislative provisions contained within the Commonwealth Telecommunications Act. Currently our carrier powers allow for certain activities to be considered maintenance under schedule 3 of the Federal Telecommunications Act.

The proposal to define telecommunications infrastructure within the allowable activities will create greater certainty and understanding of the requirements to remove vegetation in the operation of the NBN network and that Federal-State consistency has obvious benefits for a company such as NBN Co with such a significant national footprint. Thirdly, NBN Co would be able to undertake vegetation removal without the need for additional approvals allowing for timely resolution of matters impacting our network and this is obvious to provide benefit to our customers who include significant numbers of New South Wales households and businesses. I thank you for allowing us to discuss this important matter. In closing, we provide our ongoing support and are open to your questions.

The CHAIR: I understand from your submission that you are happy to have the added definitions within the Local Land Services, allowable activities, amendment and the clarity provided around essentially the definition of "utility"?

Mr DENNIS: Absolutely. I might throw to Joel Ginges who is our subject matter expert in that land access space. Fundamentally, NBN is very much supportive of the proposed changes. As I mentioned, for example, it gives that State-Federal surety around what we are able to do. We have such an immense footprint now of network across both New South Wales and federally but supportive of what that will open up in terms of maintenance of the network and removing parts of red tape.

CORRECTED

Mr GINGES: The other thing to reinforce is that our network is in existing and well-established telecommunications corridors and alignments, also power easement too through, for example, national parks or rural properties even in metropolitan areas. The purpose of the maintenance clause within the regulation is not to expand on those existing alignments, it is to basically maintain them to their current standards.

The Hon. BEN FRANKLIN: I refer to the Chair's question about definitions and providing an increased level of surety for you—the definitions that are contained within the regulation. Do you have any comments to make about that more broadly?

Mr GINGES: Generally not. I think what has been provided within the proposed amendments provides enough surety for us to undertake our works.

The Hon. BEN FRANKLIN: When you say "proposed amendments" do you mean the current regulation?

Mr GINGES: The current regulation, yes. The definition is suitable enough for our business to undertake our operational activities on a consistent basis.

The CHAIR: Do you conduct wholesale land clearing? This is very specifically to your roll-out of your infrastructure and maintenance thereof?

Mr GINGES: It is not to do with the roll-out itself. I think the delineation here is between the maintenance activities and the build. The build is coming to a close quite shortly but as we operate and maintain the network this is where this aspect of the regulation really will come to benefit our organisation. When we do construct new elements of the NBN network we still are obligated to obtain the relevant approvals and permits with the relevant government authorities so there would be no, kind of, easy out or special provisions for us.

The Hon. NIALL BLAIR: Because of the significance of your infrastructure for public safety and, I imagine, for business transactions et cetera, what is the potential exposure for NBN Co if there were a problem with the network as a result of vegetation that caused an outage? Where does that responsibility sit? Does that differ between vegetation on public land versus private?

Mr DENNIS: In terms of NBN's obligations, as a wholesaler we have very strict contract obligations with our retail service providers—those companies that actually sell services to homes and businesses—and we have very strict provisions about network availability, around 99.9 per cent, so, contractually for NBN, it is vital, in terms of public safety and business continuity, that that network is able to operate to those levels. We would argue that what is being proposed here gives us surety to carry out maintenance and very minor pruning of vegetation that gives us that network surety.

The Hon. NIALL BLAIR: Obviously there is an easement through private property as well to do that. So you would come on and do that maintenance on private property through that easement under the access provisions of the Commonwealth Telecommunications Act to get on—

Mr DENNIS: Schedule 3, correct.

The CHAIR: However, this just clears up the ability to not just come on under the Telecommunications Act but to actually touch the vegetation under the State-based legislation as a result of this regulation?

Mr DENNIS: That is right. For example, we have got 600 fixed wireless towers in New South Wales and many of those would be via easements on private property. We also have them on Crown land, State land and Federal land but, absolutely, as you articulated, that would give us that surety.

The Hon. SCOTT FARLOW: So these regulations are in force. What sort of obstacles have you faced prior to these regulations coming into force with respect to some of these? I know it has sort of been in roll-out mode and now you are in maintenance mode, but have there been obstacles you have faced in New South Wales?

Mr GINGES: Generally not. Our business has a very robust and thorough environmental management plan. That is conducted through the vegetation management guide, which we do have internally within our business, but also the environmental handbook. So a lot of our operational activities rely on avoidance to begin with, so not clearing when we do not have to, but ultimately there are periods where—Look, I cannot give specific case studies because I am not on the ground undertaking the work, but I could imagine where clearance is required, not necessarily above and beyond what is required, but it has to be undertaken. As for threatened vegetation or species, again, what we have kind of reinforced and are reinforcing here today is that they are existing telecommunications alignments, they are existing access tracks, so if it has either fallen on it or is encroaching into our alignment, that poses a significant risk to our business.

CORRECTED

The Hon. SCOTT FARLOW: In your submission you also outlined that a lot of questions have been raised in the past about the New South Wales position and the legislative arrangements in New South Wales. I am just wondering where those questions have come from. Have they come from your contractors, internally, as you look at the rollout into the future? Are they potentially coming from authorities at some of your activities?

Mr GINGES: It has been a mix. There are certainly a lot of queries, internally within the business, as to what can and cannot be done but, as well, we obviously want to take a best practice approach as to how we interact with the natural environment. Our messaging back to staff is going to be in line with the provisions of the legislation but also our internal management guides which we continue to update on a regular basis.

The Hon. SCOTT FARLOW: So this gives you clarity and certainty, effectively?

Mr GINGES: Correct.

The Hon. MARK BUTTIGIEG: I apologise, I was a little late. In terms of supporting infrastructure, I take it that it is largely existing electricity or telecommunications assets that you are using? Is this all predominantly overhead or is it underground as well?

Mr GINGES: It is a mix. So a significant portion of our network is underground. A significant proportion is also aboveground too. We also have other technologies, such as fixed wireless, which are your wireless base stations around New South Wales—there are 576 of those—but also satellite. When we start talking about aerial technologies, such as fixed wireless, there can be encroachment from tree branches and whatnot that does prevent signal being put out to the consumer. That provides degraded customer experience.

The Hon. MARK BUTTIGIEG: Okay.

The CHAIR: That is line of sight stuff, is it?

Mr GINGES: Correct, yes.

The Hon. MARK BUTTIGIEG: I think I heard you answer to one of the questions previously that the pre-existing regulation does not necessarily impede your ability to achieve those things anyway. Does it?

Mr GINGES: Generally not, no.

The Hon. MARK BUTTIGIEG: Is this amendment kind of neither here nor there then as far as you are concerned?

Mr GINGES: I would not say that. I think it provides greater surety to our business, that we do have the backing of New South Wales legislation, that we can undertake these activities.

The CHAIR: But to be clear, your submission says, though, that you are happy with the way the definitions have been crafted.

Mr GINGES: Correct.

The Hon. SCOTT FARLOW: And the added definitions in the LLS amendment, I assume.

Mr GINGES: Yes.

The Hon. NIALL BLAIR: So although the business could operate previously, there was still some uncertainty, so the greater clarification with the definitions provides you with more comfort going forward, in particular, for your business operations and customers?

Mr GINGES: Most definitely, yes.

The Hon. NIALL BLAIR: You may have to take this on notice but what level of engagement have you had with organisations like Local Land Services to help provide that training or the information to staff to be able to understand what the requirements are and some of the obligations? Is that something you have engaged with?

Mr GINGES: That is something that I personally have not experienced during my time at NBN but that is something that we could potentially look into as well in terms of our engagement and how our internal guidelines and reference documents were developed.

The Hon. NIALL BLAIR: Lastly, we have you here today. You may not be able to answer this: Have other communications providers or other utility providers mentioned that this is better for them as well? Or can you only speak on behalf of NBN?

CORRECTED

Mr GINGES: I can only speak on behalf of NBN but, given the similar nature of our network and other networks out there, I could imagine they have very similar experiences too.

The Hon. MARK BUTTIGIEG: Just to try to tease out those balancing questions we are asking, if there was a view that there was a significant effect on endangered ecological habitats and, on balance, it was decided to leave it as it is—in other words, repeal the amendment—are you saying that it would not be a deal breaker for your business model?

Mr GINGES: No. I think to have the backing of the Federal Telecommunications Act and that of State-based legislation and, given the complexities and the level of interest in vegetation clearance in New South Wales, to be on the same page provides, as I said before, that real level of surety and backing from the New South Wales regulators.

The Hon. MARK BUTTIGIEG: I get that it is preferable but if the Parliament was to make a decision that, on balance, we would want to err on the side of more protection for those, then it is not going to break your business model, to be frank.

Mr GINGES: It would not break our business model, however, it would potentially slow some of our maintenance activities where additional assessments might be required.

The Hon. MARK BUTTIGIEG: Okay. Can I just ask one more thing? It is a bit tangential. Given what seems to be the evolutionary nature of this industry in terms of wireless as opposed to fixed infrastructure—fibre and the rest of it—can you see a time where the need for installation of more and more of that hard infrastructure dies over time because of the advent of improved wireless technology?

Mr DENNIS: No, in short.

The Hon. MARK BUTTIGIEG: Okay.

Mr DENNIS: And I can go into some detail on that if you would like.

The Hon. BEN FRANKLIN: It is probably not that relevant.

The CHAIR: No, I was going to say probably—

The Hon. NIALL BLAIR: He is tonguing to go. Look at him.

Mr DENNIS: This is what I came to talk about.

The CHAIR: Yes, well, unfortunately, the regulation for you applies to section 35 (12). If we can just keep it to that. It is pretty tight.

Mr DENNIS: Absolutely.

The Hon. MARK BUTTIGIEG: I think it is a very interesting subject but the Chair has got the call.

The CHAIR: Go and have a conversation.

Mr DENNIS: We are very happy to continue that conversation with the New South Wales Government more broadly about the use of the NBN network.

The CHAIR: Thank you very much. Thank you for your attendance. No questions were taken on notice so you do not have to worry about that. Thank you for being here. Thank you for your submission. Drive safe.

Mr DENNIS: Thanks for having us.

(The witnesses withdrew.)

DAVID WITHERDIN, Chief Executive Officer, Local Land Services, affirmed and examined

The CHAIR: Would you like to make a brief opening statement?

Mr WITHERDIN: Thanks very much for affording me the opportunity to come along this afternoon. The Land Management Framework was established in 2017 in response to the findings and recommendations of the independent Biodiversity Legislation Review Panel following its review of the existing legislation in New South Wales. The review identified an urgent need for clearer and simpler laws governing the management of native vegetation in this State as the old legislation was not working for either the environment or agriculture.

The Land Management Framework was developed after an extensive consultation process that engaged more than 1,000 participants, with the draft legislation put on exhibition twice in a 12-month period. The Land Management Framework recognises the need to grow food and fibre in a vibrant and productive agricultural sector while preserving and protecting our important environmental assets and delivering record investments in private land conservation and threatened species protection. It is about a triple bottom line approach to the management of vegetation and putting farmers as part of the solution rather than being part of the problem.

I have had the benefit of sitting in on the earlier sessions of this inquiry. It is important to realise that there are three key pillars to the framework. The part that LLS undertakes is in terms of the approvals process there. The other element is around the Biodiversity Conservation Trust [BCT] and the record funding that has been made available—$240 million over five years for private land conservation. The other pillar is around the Save Our Species program—$100 million there. You need to look at all of those to really get a balance of what is happening in this space. Mr Chair, if you afford me the opportunity. I did hear a number of statistics quoted by some of your earlier witnesses and I would like to put on record—

The CHAIR: It is in your opening statement.

Mr WITHERDIN: Thank you. Since the reforms commenced back on 25 August 2017, through until 5 September there were 52,631 hectares authorised for treatment of native vegetation. They were through either assessments or notifications to Local Land Services. There were 295,458 hectares authorised for the treatment of invasive native species [INS]. Doing that actually improves biodiversity management of invasive native species through taking up monocultures and so on.

That compares with, under the former regulatory regime, in excess of 400,000 hectares per annum of INS, so we are only running about three-quarters of that. As I spoke about earlier, it is really important to look at the balance in terms of the outcomes. The set-asides that have been approved by LLS—these are high-quality remnant vegetation in perpetuity—are 31,714 hectares. In addition to that there are a further 29,000 hectares in private land conservation agreements by the BCT. So you are looking, in aggregate, at more than 60,000 hectares that have been wrapped up on conservation agreements.

What that says is that the balance is working in this space. What we are here to do today is to look into two minor regulatory amendments that relate to really low-risk activities. I think they are sensible regulation amendments that have a sound basis. Hopefully, as we move through this I will get the opportunity to provide the committee with some clarity in this space, as much as I can. I appreciate that it is a complex space with the Acts, the regulations and the codes. The history of it is that it is a contentious space but I think we are moving in a sound direction.

The CHAIR: Thank you. Was that pretty much a prepared statement?

Mr WITHERDIN: No. A little bit of it was, and then I went right off script. I have to apologise.

The CHAIR: There is no-one on this panel that would not have done that; so that is okay. I will fire off with the questioning. The first thing I would like to ask, Mr Witherdin, is in regard to the Land Management Native Vegetation Code and the amendment and, in particular, right at the very back, No. 5. Have there been any guidelines issued to assist Local Land Services in determining whether vegetation does not form a functioning ecological community that is viable in the long term?

Mr WITHERDIN: We are talking about the Monaro and the CEEC?

The CHAIR: That is it.

Mr WITHERDIN: This is in relation to the code that sits under the regulation amendment.

The CHAIR: Yes.

CORRECTED

Mr WITHERDIN: The approach that has been taken is that our staff work with staff from the Environment, Energy and Science [EES] Group, which replaced the former Office of Environment and Heritage [OEH]—our expert grasslands staff—worked together. They went out into the Monaro on the ground there and, over a period of, I think, three or four weeks, they developed a guideline there. Within the regulation currently there is a viability threshold process already. So they have used that as a basis and built on that. They have developed this assessment in agreement and that process has been independently approved by the Secretary of the Department of Industry and Environment.

Ms CATE FAEHRMANN: Just a point of clarification. When you say "developing it in agreement" who is the agreement between?

Mr WITHERDIN: The agreement is between the relevant scientific experts in that space. I know that there is was a little bit of conjecture earlier about the merits of some of our staff. I can certainly speak to the quality of staff we have, including their qualifications. We have PhD qualified staff. We have probably the pre-iminent expert in terms of grasslands based in the Monaro—David Eddy—down there.

Our team has worked with EES in developing this. I guess these are the best experts in this space who have worked together to say, "How do we identify this?" It is really a difficult space. I have been down there in the Monaro myself. In July I was out there on the ground identifying kangaroo grass and looking at the issues with African lovegrass. There has been some talk about mapping, and that the mapping comes from satellite data. You just cannot pick this stuff up at that scale. You cannot pick it up even just looking over the fence at the paddock. You have to get there on the ground and really go through the detail of it.

The CHAIR: I think, Mr Witherdin, there will be a number of other questions that will help tease out and explore some of those things.

Mr WITHERDIN: Okay.

The CHAIR: The reason I was asking about the code was because, as I understand it—correct me if I am wrong—there is a relationship or interrelationship between the code and the regulation. So if we were to disallow the regulation the code would still stand.

Mr WITHERDIN: Yes, that is my understanding.

The CHAIR: If the regulation was to be disallowed, what would that then look like for your agency? What environment would that create?

Mr WITHERDIN: The only effect of disallowing the regulation is it actually expands the suite of allowable activities. What the regulation does is reduces the suite of allowables. I can point to specific things that have been taken out in limiting the allowables: the opportunity to clear for gravel pits, for private power lines, for airstrips and for firebreaks. They have all been taken out of it. We have actually limited what we can do in that space. It would be my strong advice to not take the regulation away, because it actually provides a high level of protection for the CEECs on the Monaro.

The CHAIR: I am going to open up. This could be the last session for seven weeks so anything is possible.

Ms CATE FAEHRMANN: You said that people were out on the ground for a number of weeks?

Mr WITHERDIN: They spend some time on the ground and then time back in the office and so on. The two teams come together. They are the best experts that we could jointly put together in this space. They come together through a real spirit of cooperation. LLS staff, as much as EES staff, really want to get a positive outcome in this space for CEECs.

Ms CATE FAEHRMANN: Where they developing the criteria, if you like, around what LLS officers will be assessing against to determine the viability or not of the EECs?

Mr WITHERDIN: That's right, essentially like an agreed assessment framework. When that happens—our officer goes out on farm, undertakes that assessment—once that is done that is then independently reviewed within LLS, at one step removed from the officer at the regional scale. That goes to a central assessments team and then has that independent review before anything happens.

Ms CATE FAEHRMANN: What is the central assessment team and what is the independent review?

Mr WITHERDIN: The central assessment team is about having in place a really robust process internally. That provides our checks and balances in the way we do our assessment approvals. Certainly in the

audit report that was mentioned earlier. We got some really positive feedback around the way those processes are working. It provides a really robust approach to the way we work. To my understanding, we have not yet had an assessment request on the Monaro in terms of the new code.

Ms CATE FAEHRMANN: You also mentioned independent review. Are you saying it goes outside the LLS as well?

Mr WITHERDIN: No. That independent review happens within our assessment group. That is internal.

Ms CATE FAEHRMANN: Yes, I take the point. I think "central assessment team" sounds like second eyes over it—it is a good thing—but "independent" would be if it—

Mr WITHERDIN: It is not independent of our agency. It is an independent internal control. However, what we also do and what we have built in as part of this process is a feedback with EES. That information we are learning on ground is feeding back to them. The benefit of the viability testing is actually being out there on ground, is our staff getting out there with landholders on ground and they can identify the CEECs. Unless we get to go through the gate we cannot identify this stuff remotely. We know it exists from Yass down to the border and all over the place in various pockets, but it is only by getting on ground that we can actually identify it.

Ms CATE FAEHRMANN: Is the criteria that has been developed accessible to the public?

Mr WITHERDIN: I am not aware of whether it currently is. I could not see why there would be any concern in terms of having that publicly available. It should not be contentious. It aligns very closely with what is already in the regulations in terms of those viability thresholds. It is the outcome of the best experts in the space jointly working this up.

Ms CATE FAEHRMANN: Yes, probably in terms of the members of the community who may be concerned or have doubts around the assessment process or the decisions made by LLS it does make sense to have a transparent process, including having those assessment criteria publicly available. Would you agree?

Mr WITHERDIN: Yes, transparency makes perfect sense. That is why our data in terms of approvals, notifications and so on is updated monthly on our website. There is full transparency as to what is happening in this space. In relation to this, yes, I agree. That makes good sense.

Ms CATE FAEHRMANN: Say an officer goes out to a landholder's property to assess an application. What happens if the LLS officer says that it is viable, it is a good functioning CEEC, grassy woodland, approval is not given? Are there avenues for the landholder to appeal that decision?

Mr WITHERDIN: I understand that there are, but I am not across the detail of that. I certainly do not understand that it has happened at this point in time.

The CHAIR: You can always take it on notice.

Mr WITHERDIN: I will take that one on notice if that is okay.

The Hon. BEN FRANKLIN: Just a quick clarification: When you say you do not understand that it has happened, are you stating that it is very, very rare if it has ever happened at all? You have not heard of this happening?

Mr WITHERDIN: Yes, I have not heard of it happening.

The Hon. BEN FRANKLIN: So it is not a usual thing?

Mr WITHERDIN: I think it is extremely rare. In terms of the criteria, it is my understanding that that will be publicly released very shortly. It has only very recently been developed as the code has been developed. That will be out there in the public domain.

Ms CATE FAEHRMANN: On the contrary side of it, if anybody has concerns around a decision by an LLS officer—I am sure you get used to saying that very quickly, "LLS", but it is not —

Mr WITHERDIN: Yes, it just rolls off the tongue. Wonderful alliteration.

Ms CATE FAEHRMANN: If there are concerns, either within the agency—is there an ability for the board or senior management to override a decision of a LLS officer, for example? That has not happened either?

Mr WITHERDIN: Certainly not for boards at all. Boards have no delegation within this space, so that is absolutely clear. The approvals sit within the organisation and the specific delegations sit with officers with the expertise to approve things. Even as CEO and head of the agency, I do not have a delegation to approve

applications in this space. The particular people with the particular skills in this space are the ones who do that. Of course there are procedures where people can apply for things to be reviewed, like any sort of complaints procedure.

Ms CATE FAEHRMANN: Just to go down into that a little bit more, because that is the particulars of my question, really. If someone wants to challenge or appeal a decision by an officer, either internally or externally, there are avenues to do that? You are saying that is the—I think you said "delegate", that they have got delegated powers to assess. So somebody—

Mr WITHERDIN: Yes, in terms of the assessment approvals.

Ms CATE FAEHRMANN: —their direct manager, for example, reviews that assessment?

Mr WITHERDIN: It is not the direct manager. In terms of that internal independent process, that assessment happens through a central team that is a step removed. It is off in another area of the business. That ensures a really robust approach to this.

Ms CATE FAEHRMANN: Hang on. I still need to get that answer about the complaints—that is all. Then I am done for a bit. What is the avenue for people appealing a decision to approve and allow clearing?

Mr WITHERDIN: I will take the detail of that on notice, if that is okay, because I just have not had experience with that actually happening. More to the point, once you identify a CEEC, on the Monaro, there is every reason for landholders to want to maintain that and keep that in really good health. If you have a thriving native grassland community there, it is less likely to be susceptible to weed incursion. Because of the quality of that in terms of grazing—grazing can be a beneficial process in terms of maintaining some of these communities better than introduced pastures down there. I have been out on the grasslands with our agronomists. They are working with landholders to preserve these communities. There is a mutual benefit there for landholders and for the environment in this space.

The CHAIR: I want to clarify. What is the local board member involvement, one in the process for assessing the CEEC area? Also, is there any role at all for them in the complaints mechanism?

Mr WITHERDIN: Firstly, to the approval process, there is no role of local boards or the State board at all in this space. That all sits within the operational part.

The CHAIR: I think it is important to make that very clear and have it on the record.

Mr WITHERDIN: We might that abundantly clear: They do not operate in that space. In terms of the complaints process, we report that to our board in terms of key performance indicators around the number and nature of complaints, not around the detail of complaints. All complaints are managed operationally. Ultimately, depending on their priority, they may be escalated to me or may be dealt with at a local or regional level.

The CHAIR: You were present in the gallery so you would have heard this. I want to clarify the interaction regarding the coastal wetlands and littoral rainforests. What is the role of LLS and how do these regulations and the code interact with the coastal state environmental planning policy [SEPP] and other planning instruments along the coast?

Mr WITHERDIN: I will do my best to explain this.

The CHAIR: Feel free to take any of it on notice.

Mr WITHERDIN: There is some complexity around this because they are areas where you end up in a dual approval process, one with us and one with local government, in certain areas. I think the key issue in this space has been what is like that buffer zone around the coastal areas. What was created from the change in SEPP was this 100-metre buffer zone. That is what we have sought to manage in this process because the impact of that is 100 metres out from a piece of sensitive, regulated land, you can be moving well out into what has been productive agricultural land for more than 100 years in some of these places. All of a sudden, we are making it sensitive, regulated land. Often the nature of that land is not high-quality remnant vegetation. We absolutely want to preserve that important wetland but I think to overreach that, you may have an area through a creek, for example, that is all captured within 20 metres and then go and throw hundred metres into the side of that, the impact of that is really a significant overreach.

The Hon. NIALL BLAIR: I want to clarify the process that is now in place to assess the viability on the ground. Firstly, there was an existing set of principles for dealing with a CEEC outside of these two other species on the Monaro. Is that right?

CORRECTED

Mr WITHERDIN: Yes. That exists currently within the regulation.

The Hon. NIALL BLAIR: Then you took that existing set of principles or guidelines. You brought your experts and the environmental section brought its experts and between the two of you, you then built a specific set of guidelines to assess that viability for these species on the Monaro. Is that correct?

Mr WITHERDIN: Yes, for those two communities.

The Hon. NIALL BLAIR: It was not done solely within LLS; it was done with conjunction with the experts from the environment department.

Mr WITHERDIN: It was done jointly and then the agreed process was that once that had been developed, that would then be approved independently approved by the secretary of Department of Planning, Industry and Environment [DPIE] and that is what is in place.

The Hon. NIALL BLAIR: If I got the head of the environment section in here and said, "Were you involved with this process and you are happy then when it went off to the secretary to be signed off", they would probably say, "Yes, we were involved and the secretary took advice from us and LLS and made the decision to sign off on it."

Mr WITHERDIN: Yes, absolutely.

The Hon. NIALL BLAIR: Then that now provides a set of guidelines on the ground that the LLS officers, when they come on farm—I agree you cannot identify the staff from just looking over the fence—and use those guidelines to assess the viability. Is that right?

Mr WITHERDIN: Yes, that is correct.

The Hon. NIALL BLAIR: Then that assessment is reviewed by someone removed from that process, albeit within LLS, to sign off on that.

Mr WITHERDIN: Correct, yes.

The Hon. NIALL BLAIR: Then it is either approved or not approved and then monitored in the normal compliance regime.

Mr WITHERDIN: That is correct. To build on that, we realised that this is early days and this is a new process. We hope to improve it over time. There will be a feedback loop there where the detail from those assessments will go back to Environment, Energy and Science [EES]. We will inform in terms of knowledge of CEECs that are actually there on the ground and in terms of working together to improve that process over time. There is a real commitment to continuous improvement and the way we approach it.

The Hon. NIALL BLAIR: Why were these changes brought in? Are these to provide greater environmental protection and also to truly reflect what is happening on the ground and should be happening on the ground to get the balance right?

Mr WITHERDIN: We started off with the Threatened Species Scientific Committee this morning. It made a preliminary determination and a final determination, which was huge and broad—we are talking tens, thousands of square kilometres in the way it was set up. This was an opportunity then to how we deal with that and implement it operationally without just sterilising the whole of the Monaro but with a real focus on ensuring that we preserve those high viability and high-quality CEECs. I think it actually has been a really practical approach of how we make things work on the ground. We have a more limited sweep of allowables. This is a primary example of where two parts of the department that are now in the DPIE supercluster—we have LLS and the Ag in own space and EES, the former Office of Environment and Heritage—have worked together productively on something instead of being in the trenches and just being at warfare over this.

We have worked together and had a really good outcome. It is a positive thing and it just shows how things should work and hopefully we will work more like that in the future. It certainly highlighted to me this morning, hearing one of the members from the Threatened Species Scientific Committee that there will be much greater benefit if we could great engagement with them. When they put up their preliminary finding, we offered to go and present to them. We made a submission—we offered to get them out on the ground and go through it. That was knocked back. If we had had that opportunity, we could have got a better outcome right up front. We might all be enjoying a beer an hour ago. Anyway, there is real opportunity to learn, improve and do things better. This is an example of where we are working for good environment outcomes.

CORRECTED

The Hon. NIALL BLAIR: The Committee has some choices ahead of it. Let us say if the regulations were disallowed, would that strengthen or weaken the environmental protection now for these species since they have been listed by the scientific community?

Mr WITHERDIN: Certainly on the Monaro, I think absolutely it weakens it, because even in terms of allowable activities, I can put an airstrip in, I can put a gravel pit in without approval, because it is an allowable activity. It limits that. More importantly, we have a sensible outcome here that delivers a really solid environmental outcome but gives landholders confidence as well. I think it would be a really negative outcome from my point of view.

The Hon. NIALL BLAIR: You are saying there is actually nutritional benefits for weight gain in farming practices to keep these native grasses as part of the farming landscape in the Monaro, rather than putting in introduced pastures?

Mr WITHERDIN: Absolutely. That is what our agronomists do down there. I would extend an invite to anybody from the Committee to get down there on the Monaro. We would love to host a visit there, and see firsthand what are some of the challenges there in that country, particularly with weed incursion there. There is no substitute for really touching, feeling things firsthand.

The CHAIR: Earlier today there was some discussion about the qualification sets of LLS employees. Can you assist the Committee in that discussion? The people involved with this on the ground, what are their skill sets?

Mr WITHERDIN: Thanks very much for that question. I really appreciate that. It is noticed in one of the submissions, it brought into question some of the qualifications of our staff. I am very proud to lead a group of immensely capable and qualified people. We have a mix of staff with environmental science qualifications, applied science qualifications, agricultural degrees. We have a number of staff with PhDs. We have an applied science division within our group. In terms of grasslands, we probably have the leading expert in that space on staff. As I said, I would encourage people to get out there on ground and meet with these people, see their passion as well. Our staff really want this reform to work, really want to get balanced outcomes from it.

The Hon. MARK BUTTIGIEG: I think one of the concerns, to tease my colleague's question out a bit, from the NCC was that they were not necessarily questioning the suite and volume of qualified people you had but that there was no actual regulatory requirement for those sort of qualified people to be on the ground.

Ms CATE FAEHRMANN: As assessors.

The Hon. MARK BUTTIGIEG: As assessors.

Mr WITHERDIN: Yes, okay.

The Hon. MARK BUTTIGIEG: What is your response to that?

Mr WITHERDIN: There is certainly not a legislative requirement for that. But in terms of, we have really robust recruitment processes there seeking people, not just with the qualifications, but really solid experience, peer recognition in that space and people who are well respected by landholders who they deal with. We have people on our team who have had decades of experience in this space, whilst LLS has only been around since early 2014. The catchment management authorities [CMAs] before us have been around a long time. Yes, we have a great depth of experience and capability there. Certainly whilst there might not be a legislative requirement I would say in terms of sitting on the Threatened Species Scientific Committee, there is no legislative requirement there in terms of qualifications either. Our people in the field, on the ground, they are the experts, there is no doubt about that.

The Hon. MARK BUTTIGIEG: If it is an accepted premise that in order to get this stuff right you have to have people who know what they are talking about and the current configuration is that is what is actually happening, both in the back room office, if you like, where all the science is done, and in the field, because you have just said they are all qualified people, is there any issue with having a legislative prerequisite for it?

Mr WITHERDIN: The challenge would be how you define that, because it is just so broad. I think it would be really hard to be prescriptive. I think it would certainly be easy enough to develop some core principles, a bit of a framework in terms of what mandatory criteria should be. We have a diversity of staff from a wide range of backgrounds and the strength is there in that team because of that. Just because down on the Monaro we do not have a certain expert there in our Cooma office, we can call anywhere else in the State and pull somebody in. The teams are mobile, they network well and we have really got a great strength and capability there.

The Hon. NIALL BLAIR: Do you do cultural assessments as well?

Mr WITHERDIN: In terms of Aboriginal cultural heritage and so on?

The Hon. NIALL BLAIR: Yes.

Mr WITHERDIN: Yes, we do have some staff.

The Hon. NIALL BLAIR: Is there a legislative requirement for those people to have particular qualifications to do those? Or can they just be someone who maybe has been trained in that area or comes from an Aboriginal background?

Mr WITHERDIN: That is my understanding in terms of how that works. I do not think there is hard legislation around that.

The Hon. NIALL BLAIR: I am just making the point. There are many assessments that we do out in a range of these areas and we do not list the qualifications in legislation or the experience that those people need to make those assessments. They are usually employed or engaged by the agencies with the necessary skills and then trained to the process to be able to do the assessment. Is that a fair assumption?

Mr WITHERDIN: Yes, that is a fair assumption. A lot of the staff who are doing the work, doing assessments, I have to say they have got many high-level qualifications than I do personally in terms of masters degrees, PhDs and so on.

The CHAIR: I want to ask a bit more about the allowable activities regulation. What is the interaction with the public utilities and LLS around the easements? We heard from NBN Co about some of the maintenance requirements, cutting limbs and things like that. Do they take advice and guidance from LLS as a part of that exercise?

Mr WITHERDIN: To my understanding there is fairly limited interaction because by their very nature they are allowable activities, so that affords the utilities the opportunity to do that without approval or without notification to us. There is no general mechanism of engagement there.

The CHAIR: I want to move on to collection of firewood. Why was that included in the way it has been worded in the regulation?

Mr WITHERDIN: That was really just to reflect what happened previously under the Act, under what we know as RAMAs, routine agricultural management activities. It was just to restore that. Essentially, what happened as part of that regulation, when the new regulation was drafted it was a drafting oversight to miss some of these things. All it does is afford landholders what has been an existing right over decades of legislation to collect firewood from their own land for their own purposes.

The CHAIR: It is essentially for the landholders themselves.

Mr WITHERDIN: For the landholders themselves, absolutely.

The CHAIR: The townies coming out to get firewood—

Mr WITHERDIN: No, that is not approved.

The Hon. SCOTT FARLOW: Also on that point, it is essentially a reinstatement of rights that existed previously.

Mr WITHERDIN: That is all it is, yes. It reflects exactly what was in place before then.

Ms CATE FAEHRMANN: In terms of your previous response, did you say that members of the Threatened Species Scientific Committee did not need to have qualifications?

Mr WITHERDIN: To my understanding. I question, "Is there a specific requirement for them to have a qualification or suite of qualifications?" That is all.

The Hon. SCOTT FARLOW: Legislative requirement.

Ms CATE FAEHRMANN: Yes. There is.

Mr WITHERDIN: There is, is there? Okay.

Ms CATE FAEHRMANN: The Biodiversity Conservation Act has Members of Scientific Committee and it has the 11 members appointed by the Minister, it has that two are to be scientists who are employees of the

Office of Environment and Heritage and nominated by the Environment Agency Head, one is to be a scientist who is an employee of, and nominated by, the Royal Botanic Gardens and Domain Trust.

The CHAIR: That is just who sits on the board not qualifications

Ms CATE FAEHRMANN: I am just saying it does say it has to be a scientist. Four are to be scientists nominated by a professional body principally involved in ecological or invertebrate research. A person who is appointed as a member of the Scientific Committee is to have expertise in one or more of the following areas of study: vertebrate biology, invertebrate biology, plant biology, plant terrestrial ecology—We throw these things around, it is pretty important that we clarify that.

The Hon. NIALL BLAIR: He said he was not sure.

Ms CATE FAEHRMANN: And you said, "Good point" and then you raised something else about Aboriginal cultural stuff so potentially we should check that for the record too because we are just throwing this around so this is assumption and, to be honest, sullying the reputation of the Threatened Species Scientific Committee in terms of this evidence. Just be careful.

The Hon. NIALL BLAIR: Who did that?

Ms CATE FAEHRMANN: The inference was—

The Hon. NIALL BLAIR: It was not an inference.

Ms CATE FAEHRMANN: Yes it was. It was very clear.

The Hon. NIALL BLAIR: This is to counter an inference that the LLS staff are not the right people to do the assessment. That was the inference coming from your side and from the previous witnesses.

Ms CATE FAEHRMANN: The justification was that the Scientific Committee therefore does not have science in terms of legislation and you said cultural assessment as well. It is very important that we confirm that there is a hell of a lot of qualifications that they have to have. So LLS, they do not have to have the qualifications. By the way, I think that all of the staff that I have met, that work for Local Land Services—yes—are wonderful people who do great work and who care about the land and, people I have met, they are concerned about the environment and ecology. I know quite a few of them. The point is that the people who are undertaking this assessment, the public has to have faith, including people who are concerned about the environment, have to have faith in the people who are doing an assessment, that they are qualified to undertake that assessment in terms of ecology and they are not. That is not a requirement.

Mr WITHERDIN: Is that a question?

The Hon. BEN FRANKLIN: Are you suggesting they do not have that?

The Hon. SCOTT FARLOW: It is not a legislative requirement.

Ms CATE FAEHRMANN: No, I am just saying, when I say, "They are not" that it is not a legislative requirement.

The Hon. BEN FRANKLIN: Just making sure you are not suggesting that. Just making sure.

Mr WITHERDIN: I certainly take your point around the Scientific Committee and thank you for the correction there. In terms of our staff, there is no legislative requirement for that. I will point to the fact we have recently been through that Audit Office report that has really reviewed all of our processes and the way they work. There have been a whole number of recommendations as a result of that Audit Office report, all of which we have accepted and are in the process of adopting. They looked very closely at our approval and review process and that is one of the areas where we got some of the strongest positive feedback. Whilst there may not be that legislative requirement for specific qualifications, I would stand by the fact that our staff are very suitably qualified and doing an exceptional job. Equally, in the other part of the portfolio in EES, nor will there be a legislative requirement for their scientific staff to have particular qualifications.

Ms CATE FAEHRMANN: Be careful of that. Are you sure? Are you 100 per cent sure of that?

The Hon. SCOTT FARLOW: I would not be surprised if there was requirements in health for instance.

Ms CATE FAEHRMANN: I am just saying be careful if you are not 100 per cent sure of saying that.

The Hon. NIALL BLAIR: The reason this came up is I took a real inference from the NCC that the people doing the assessment, firstly, that they were questioning the guidelines or the process and secondly, the

people doing the assessment. That is why I think it is definitely fair that the LLS say that those people are qualified. They do not have a legislative requirement to say, "To do this job in Cooma you have to have this particular degree" because there are so many science degrees out there, so many degrees in relation to natural resource management. They are all named differently and it depends what institution you went through and what you have.

The Hon. MARK BUTTIGIEG: The point is that there is no special—

Ms CATE FAEHRMANN: We should be having this discussion over a beer at the pub. The questions have stopped for Mr Witherdin.

The CHAIR: Hang on. Hang on.

The Hon. MARK BUTTIGIEG: The inference that you are making now is that you have to have some sort of—

The Hon. NIALL BLAIR: No, I am not.

The Hon. MARK BUTTIGIEG: But you just said there are different science degrees.

The Hon. NIALL BLAIR: That is right. That is an example. I am saying—

The Hon. SCOTT FARLOW: He is talking about what the previous witnesses had asserted.

The Hon. NIALL BLAIR: I am saying let us not dismiss the role of experience and on-the-job training to be adapted to specific locations and tasks.

The Hon. MARK BUTTIGIEG: No. Mate, you do not have to tell me—

The CHAIR: This is a conversation for somewhere else because we have gone through that.

Ms CATE FAEHRMANN: I have another question.

The CHAIR: So do I, you have worn my patience thin. Can I talk to you about mapping?

Mr WITHERDIN: Yes, sure.

The CHAIR: That has also been raised today as an issue and I would like to ask. You get the chance here to correct or add to some of the information that was provided in earlier testimony around the lack of mapping or the requirement for mapping, so LLS' position on the requirement and the current status of mapping?

Mr WITHERDIN: Mapping is under the auspices of EES. They are the ones who produce those maps. I think the barrier to the release of the maps has been the accuracy of them. As had been discussed earlier, if maps are released there are risks on each side if they are wrong. My understanding through the regular engagement that we have with EES is the quality of those maps is getting much better. Very shortly we expect to have a pilot release in a region, test the quality of those with landholders through an iterative process and then a gradual release across the State.

In principle, if maps are accurate it would be great to get them out there, but notwithstanding they have not been there, it has not put a handbrake on this space because what has happened in the interim is it relies on on-ground assessment with our officers out there working with landholders in terms of identifying various vegetation types. We look forward to it happening, it is getting closer. It has been quite a long process but for good reason because it is really important to get this right. Certainly, in the woody vegetation type, they will work well. In a grasslands community like the Monaro, they are probably unlikely to ever work well. In the short-term it is really going to rely on on-ground assessment.

The CHAIR: Why is that?

Mr WITHERDIN: Why is that? Just because of the quality of that remote sensing. You just cannot determine the difference between the native kangaroo grass, the introduced species, the African lovegrass—you just cannot do that at all.

The CHAIR: Without the current maps in place, that does not impact on these regulations?

Mr WITHERDIN: It has an impact. I think in some ways what it has driven, in the absence of that, it has meant that landholders have had to engage directly with LLS. It has had our officers out there, on-farm, doing assessments and working with landholders in terms of developing the best practices. It has really built solid engagement, built trust there. On the contrary, while on the surface you think, "It is a key part of the reform, it is not going to work without it", we have proven, we are over two years in, the reform process is working well without it. We look forward to the maps progressively rolling out on the basis that they are accurate.

CORRECTED

The CHAIR: Speaking of reviews, is there any intention to review these regulations at some stage?

Mr WITHERDIN: Yes, absolutely there is a statutory review required at the three year mark and then at the five year mark. That is August next year—

The CHAIR: These regulations will get caught up in that? I am talking about the regulations.

Mr WITHERDIN: These regulations currently?

The CHAIR: Yes.

Mr WITHERDIN: The two were talking about?

The CHAIR: Yes.

Mr WITHERDIN: I certainly do not think there is any need to review those. I guess that is what we are doing here as part of this process but the overall reform process was what I was talking about in terms of that three-year review.

The CHAIR: These regulations would be captured by that?

Mr WITHERDIN: Absolutely, they are part of that whole thing. We are working on recommendations that have come out of the Audit Office report. We are committed to continually improving and refining the way we do things in this space. It has been a really significant reform. It is rightly a contentious space and we have to continue to get that balance right in the future. That is a matter of Local Land Services working with EIS, working with the BCT, working with landholders, working with environmental groups and stakeholders out there so we can continue to improve and he get the right mix of outcomes. It is not just about the environment or just about agriculture, it is about the two coexisting to get the best outcome for the environment and communities into the future.

Ms CATE FAEHRMANN: Just to clarify or confirm, when a landholder wants to apply to do an activity, clear some vegetation, CEEC, does the Local Land Services officer always have to go to the property to assess?

Mr WITHERDIN: No, they do not. If we are talking in terms of allowable activities?

Ms CATE FAEHRMANN: Yes.

Mr WITHERDIN: Landholders can do that without an approval or notification process. Because of the nature of them they are very limited and viewed from the point of view they are quite low risk in terms of their overall impact.

The Hon. NIALL BLAIR: Can you give us some examples?

Ms CATE FAEHRMANN: Just to continue. In terms of approvals: To approve clearing in grassy woodlands, does the officer have to visit the property to grant an approval.

Mr WITHERDIN: Absolutely.

Ms CATE FAEHRMANN: So every time?

Mr WITHERDIN: Every time, yes.

Ms CATE FAEHRMANN: That is what I wanted to clarify.

Mr WITHERDIN: To identify the existence of a CEEC. Other than the very limited suite of allowable activities, if that was identified, to actually get approval to clear a CEEC, the chances of that would be so remote. Rightfully so. Once identified we should be doing everything to preserve that. That is what we are there to do. The witness from the EDO spoke about the opportunity to link landholders to the biodiversity conservation trust to support that as well. That is one of the key things we can do. Before I wrap up, just to come back to that previous question about a landholder appealing a determination. My advice is that we have not had that happen. More two years into the reform process, in decisions we have made, we have not had one appeal.

The Hon. MARK BUTTIGIEG: You said before that you reached out to the science people and said come out and have a look?

Mr WITHERDIN: To the committee, yes.

The Hon. MARK BUTTIGIEG: Did they give you a reason why they knocked that back?

CORRECTED

Mr WITHERDIN: That advice was to one of my directors. My understanding around that is they were keen to preserve their independence. They would make the decision around the existence of the CEEC and their advice was then it is up to Government to work it out, to respond to that in terms of how they operationally implement it. Essentially that is what has happened with the development of this regulation and then the code underpinning that.

The Hon. NIALL BLAIR: There are very limited circumstances under allowables that a landholder could go ahead and take out some CEEC, is there not?

Mr WITHERDIN: Absolutely. We are talking things like existing fence lines and so on.

The Hon. NIALL BLAIR: If they wanted to do any of the other activities on farm that involved clearing they would have to get an assessment done on farm by LLS for the viability?

Mr WITHERDIN: Yes.

The Hon. NIALL BLAIR: The likelihood if it was identified that there was critical habitat there, the likelihood of that getting approved would be quite low?

Mr WITHERDIN: Absolutely, and for good reason.

The Hon. MARK BUTTIGIEG: Unless it was deemed it was non-sustainable.

The Hon. NIALL BLAIR: That is what I said. If it is not viable, can you clarify that?

Mr WITHERDIN: You are exactly right in terms of that. Unless there was a really poor representation of that community and the viability of it was really poor. Even if that is identified as a non-sustainable community the limited suite of allowables still apply. Just because it is a poor community does not mean you have the broad suite of allowables. No. That is a hard line. That really restricts it. It is a pretty robust approach to the challenges there.

The Hon. NIALL BLAIR: The key then would be if it is identified and it is something that is worth preserving then the landholder is then introduced to other alternatives, for example, accessing money, to look after it or get funding through stewardship payments from the trust?

Mr WITHERDIN: That is exactly right and that is the intent of the reform so we have the balance there. The Biodiversity Conservation Trust, with the private land conservation agreements, have about $90 million out there in terms of agreements already. Ultimately, over five years there will be in excess of $240 million. We are getting some good outcomes there.

The CHAIR: You did take some questions on notice. It is five calendar days to respond. The secretariat will be in touch with you about the process.

Mr WITHERDIN: That will not be a problem.

(The witness withdrew.)

The Committee adjourned at 14:31