

REPORT ON PROCEEDINGS BEFORE

**SELECT COMMITTEE ON THE PROPOSAL TO RAISE THE
WARRAGAMBA DAM WALL**

**INQUIRY INTO PROPOSAL TO RAISE THE WARRAGAMBA DAM
WALL**

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At Macquarie Room, Parliament House, Sydney, on Friday 28 August 2020

The Committee met at 9:45.

PRESENT

Mr Justin Field (Chair)
The Hon. Shayne Mallard
The Hon. Taylor Martin
The Hon. Rod Roberts (Deputy Chair)
The Hon. Adam Searle
The Hon. Penny Sharpe

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The CHAIR: Welcome, everyone, to the third hearing of the inquiry of the Select Committee on the Proposal to Raise the Warragamba Dam Wall. The inquiry is examining a number of aspects relating to the proposal to raise the dam wall. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay my respects to elders past, present and emerging of the Eora nation and extend that respect to any Aboriginal people present or listening in. Today we will hear from New South Wales Government representatives. Before we commence, I will make some brief comments about the procedures for the hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of the hearing will be placed on the Committee's website when it becomes available.

I remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. The guidelines for the broadcast of proceedings are available from the secretariat. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days.

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DAVID GAINSFORD, Executive Director Infrastructure Assessments, NSW Department of Planning, Industry, and Environment, on former affirmation

ATTICUS FLEMING, Deputy Secretary, NSW National Parks and Wildlife Service, on former affirmation

SIMON DRAPER, Chief Executive Officer, Infrastructure NSW, on former affirmation

MAREE ABOOD, Head of Hawkesbury-Nepean Valley Flood Risk Management Directorate, Infrastructure NSW, on former affirmation

DAVID HARPER, Program Director Major Projects, WaterNSW, on former affirmation

The CHAIR: I welcome our witnesses and remind you all that as you have previously appeared before the Committee to give evidence, you will be examined on your former affirmations. We have given some indication in correspondence about what we are looking to address today, but if you would like to make a short statement you are welcome to.

Mr DRAPER: Thanks, Chair. I will make an opening statement, if that is okay; it might help set the scene for your questions. I appear before the Committee today in my capacity as CEO of Infrastructure NSW. As you know, Infrastructure NSW is overseeing the whole-of-government implementation of phase one of the flood strategy for the Hawkesbury-Nepean Valley. Since the Committee's last hearing in June, we have continued to work across all levels of government and with our non-government partners and our communities to implement all nine of the flood strategy outcomes. I understand the Committee has a keen focus on outcome 2, which is the proposal to raise Warragamba Dam for flood mitigation. Again, I would like to emphasise that while the dam raising proposal is a key element of the flood strategy and the one that receives the most public commentary, it is part of a broader, integrated approach to managing risk in one of the most flood-exposed regions in Australia.

I would also note that the draft environmental impact statement [EIS] for this complex State significant infrastructure project, while well advanced, has not yet been finalised. While this process is ongoing, our responses to the inquiry will not draw on the detail from the draft EIS or from the Department of Planning, Industry and Environment's review of the draft document. On behalf of the government agencies here today, I would like to provide some contextual remarks about the matters outlined by the Committee in its letters of 18 August to Infrastructure NSW and WaterNSW.

The Committee has called for the voluntary production of a range of documents that fall into three categories: firstly, documents referred to in the resolution of the Legislative Council passed on 27 February this year; secondly, documents related to the review of the draft EIS by the Department of Planning, Industry and Environment for consistency with the Secretary's environmental assessment requirements; and, thirdly, documents related to the variation to the project provided to the Commonwealth Department of Agriculture, Water and Environment by WaterNSW in a letter dated 26 June 2020. The Committee's letter also included links to a series of media articles that reference and quote from documents that fall into these categories.

I would like to take a few minutes now to discuss the context within which these documents are being requested and publicly discussed. In relation to the documents referred to in the previous resolution of the Legislative Council, I note that the Department of Planning, Industry and Environment, WaterNSW and Infrastructure NSW have already responded to that order. The second category of internal government documents comprise agency comments on the draft EIS at a point in time in an ongoing process—noting that the EIS is subject to refinement before being finalised and submitted for exhibition. These documents have been provided to stakeholders and the media outside of, and without the context of, the planning assessment process.

My colleagues from the Department of Planning, Industry and Environment can provide more detail on the Department's process under the Environmental Planning and Assessment Act 1979 for assessing major State significant infrastructure projects. In this case, the project will also be assessed under the Australian Government's Environment Protection and Biodiversity Conservation Act 1999 for matters related to World Heritage, national heritage and threatened species. I ask the Committee to consider the broad implications for those processes of having incomplete, out-of-date and out-of-context information regularly circulated and speculated on. For the planning assessment process to work effectively, project proponents need to know that the process of seeking input from stakeholders and regulatory agencies, and providing responses to that input, can be conducted with confidence.

Feedback from the department and relevant agencies on the draft EIS is an important component in developing the final document. It is a completely normal part of the process—a matter of public servants doing their job and following established procedures. It is premature for opponents of the project to be commenting publicly about what is, at this stage, still a draft document. We are well aware of the particular importance of

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properly assessing incremental impacts on a World Heritage area. WaterNSW is working closely with the department and agencies in addressing feedback from the consistency review ahead of public exhibition. The whole point of this process is for the public to have a say, based on the most up-to-date and thorough information. The environmental impact statement will be publicly exhibited and scrutinised, and all interested parties will have an opportunity to make submissions that must be considered before finalising the proposal. That is its purpose.

The third category of documents relates to the variation to the project description provided by WaterNSW to the Commonwealth Department of Agriculture, Water and Environment. To be clear, there is no plan to change the flood mitigation capacity of the current proposal to raise Warragamba Dam. Further, the proposed 17-metre raising of sections of the dam infrastructure is not new information. It was publicly described in the New South Wales Government's submission to this Committee in September last year and has been available on the New South Wales Parliament's website since that time. Let me try to clear up any misunderstanding about the proposal. It is the height of the spillways that determines the flood mitigation capacity of the raised dam. Under the current proposal, the spillway height would be increased by up to 14 metres above the current full supply level, as has always been proposed. Sections of the dam wall proposed to be raised by up to 17 metres are the dam's abutments, or side walls, and the dam's roadway.

So why propose increasing the height of these sections of the dam now? The environmental assessment requirements for the EIS set out by the Secretary of the Department of Planning, Industry and Environment clearly state that the project should be "designed, constructed and operated to be resilient to the future impacts of climate change". Under predicted climate change, extreme rainfall events and floods will become more frequent and severe. Due to its unique characteristics, the Hawkesbury-Nepean flood plain is at particular risk. Peer-reviewed climate change research has found that by 2090 it is likely an additional three metres of spillway height would be required to provide similar flood mitigation benefits to the current proposal. The decision on whether to take that step would be a matter for future generations based on the information and circumstances at that time. However, increasing the height and strength of the mass concrete gravity dam wall is best not done in small additions and it is not even technically feasible to do so, often while remaining compliant with the dam safety standards.

To ensure a spillway raising would be feasible and compliant in the future the current design proposes to increase the height of the dam's abutments and roadway now to maintain the dam's structural integrity should the spillway height be increased if needed in response to climate change. As the height of the abutments and roadway does not affect the flood mitigation capacity available or the potential temporary upstream inundation, the option to raise them now does not have any impact on the draft environmental impact statement [EIS]. Any consideration to increase the dam's spillway height for climate change in the future would be unlikely until mid to late this century and should a proposal be put forward at that time it would be a new infrastructure project that would require new environmental planning assessments and approvals. Again, the current proposal does not seek and would not provide any approval to increase the level of the spillways above 14 metres.

The last time we appeared before the Committee we discussed what would have happened if Warragamba Dam had been full when it flooded in February this year instead of it at around 43 per cent of capacity. With the dam now full and the Bureau of Meteorology forecast for wetter conditions with increased risk of flooding we are reminded of why we need to maintain our focus on delivering the flood strategy program. For many tens of thousands of people who work and live in the floodplain the risk is real. To properly assess the Warragamba Dam raising proposal on its merits the Government remains committed to completing and exhibiting the environmental impact statement. Importantly, the final decision on the proposal will only be made after all environmental, cultural, financial and planning assessments are complete. Thank you for the opportunity to address the Committee today.

The CHAIR: Thank you, Mr Drake. Did anyone else want to make any initial comments? I will lead off with questions before I hand over to others. Could I have those two documents that I initially provided circulated? Mr Draper, I go to the two documents that are now in the public realm which were comments from the National Parks and Wildlife Service [NPWS] and the Commonwealth Department of Agriculture, Water and Environment [DAWE] to the consistency review of the EIS, the documents that I requested be tabled and you have provided them. They are the ones that were published on the various media outlets' websites when they reported on them. You raised in your opening statements concerns or warnings about considering incomplete or out of date information.

Mr DRAPER: That is right.

The CHAIR: Are you suggesting that those comments are incomplete or out of date or have been superseded?

Mr DRAPER: No. I was suggesting that the development of the EIS is an ongoing process and that revisions are made in response to the comments and that since these documents have been provided there will

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have been quite considerable work done on the EIS and discussions between these parties, WaterNSW and the Department of Planning, Industry and Environment [DPIE].

The CHAIR: I think it is understood that feedback is considered and responded to but I want to go back to these documents. You no doubt would have seen them and read them I am sure. Do you concede that they are true reflections of feedback that was received by the project team from the Department of Agriculture, Water and Environment and from National Parks and Wildlife Service?

Mr DRAPER: That is my understanding. Obviously we do not receive them, Infrastructure NSW, but that is certainly my understanding, Chair. They would have been the documents received at that point of time.

The CHAIR: I might ask Mr Gainsford, can you confirm that they are an accurate reflection of the comments received by those two organisations, and can you inform the Committee about when they were received by DPIE?

Mr GAINSFORD: Thank you, Chair. Yes, I can confirm that those documents are an accurate reflection of those comments received at that point in time. My understanding of when those documents were received by the department was at the end of June, early July.

The CHAIR: I think that does matter, if it was at the end of June or early July, because we met on 30 June at our previous hearing. Are you able to confirm what date they were received by DPIE?

Mr GAINSFORD: I will have to take that on notice.

The Hon. ADAM SEARLE: Do you know whether or not you had them at the time you last gave evidence to this Committee?

Mr GAINSFORD: I would have to take that on notice as well.

The CHAIR: Potentially, Mr Fleming, you could clear this up, one of them came from your organisation. Can you confirm the date that you sent your comments to DPIE?

Mr FLEMING: I do not have the date handy, I am sorry again. I would have to take it on notice, and bearing in mind that I think the comments were meant for NPWS to go through a DPIE process. I do not know the date on which they left my hands or the date on which they would have arrived in Mr Gainsford's hands.

The CHAIR: We have a little bit of time today. If it is possible someone could ask a question and see if we could resolve that question of the date before the end of today's hearing, that would be very useful.

Mr FLEMING: Can I clarify the question? Is the question on what date was it received by Mr Gainsford's area? Is that the key date you want?

The CHAIR: How about we do it this way; if we could confirm with you, Mr Fleming, when you sent it and who you sent it to?

Mr FLEMING: Sure, yes.

The CHAIR: And, Mr Gainsford, if you could confirm when it was received by DPIE, that would be useful?

Mr GAINSFORD: Sure.

The CHAIR: For you, Mr Gainsford, because we do not have the Federal department here, if you could give us an indication of when you received the Federal one, that would be useful as well. I think it is fair to assume that you have probably received additional feedback from agencies. Are you able to inform us about who else you have received information from, submissions from with regards to the consistency review?

Mr GAINSFORD: Yes, I can go through that. I think when I was here last time presenting to the Committee I referred to the fact that the department was compiling the advice. We received the advice from a number of different agencies. I can confirm that we received advice from within the department itself, our water group; the Environment Energy and Science Group within the department as well; from National Parks and Wildlife Service; from the Natural Resources Access Regulator; from the Environment Protection Authority; from NSW Fisheries; from Transport for NSW; from Heritage NSW; and from the Commonwealth Department of Agriculture, Water and Environment. In that compilation of documentation the department then once it had all of that information available sent that information on to WaterNSW around about 15 July, I believe.

The CHAIR: If you could take on notice to inform the Committee about when you received those submissions from those agencies and the date that you forwarded it on to WaterNSW, I would greatly appreciate that. I would like to come back now specifically to the National Parks and Wildlife Service submission. There

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were five very specific recommendations in there. How many of those recommendations have been taken up in the redrafting of the EIS at this point?

Mr GAINSFORD: If it would help the Committee, perhaps I could talk about the process that we have gone through since 15 July. Since 15 July when those documents were provided to WaterNSW the department has been working with WaterNSW and the other agencies that provided that advice to look at being able to clarify the comments and also to confirm the methodology to address those comments that had been received. We have had a series of meetings and workshops to assist WaterNSW in finalising the EIS. In terms of where WaterNSW is up to, I would have to refer to WaterNSW that question.

The CHAIR: Have you received any redraft since you provided those comments to the sections that the National Parks and Wildlife Service have raised concerns about?

Mr GAINSFORD: No, we have not.

The CHAIR: Mr Fleming, have you received any correspondence back from DPIE or WaterNSW with regards to the comments in your submission?

Mr FLEMING: I cannot recall receiving correspondence specifically to that point, but I want to stress that there is ongoing discussion between officers in National Parks and Wildlife Service and DPIE and WaterNSW about these issues and I am informed as to how those discussions are going. There is ongoing communication.

The CHAIR: I am sure we will go into the submissions in much more specific detail further along in the hearings but at this point, Mr Gainsford, you would concede that the EIS in its form at the time that these submissions were received, you have not received a response back, it has not been redrafted so we could suggest that in the form that it is in now does not meet the requirements of the Secretary's Environmental Assessment Requirements [SEARs] based on the feedback from NPWS and from the Federal department?

Mr GAINSFORD: Certainly based on the feedback there are some areas for, I guess, further development. What I would also say is that this is not unusual for a complex State significant infrastructure project. We would normally as we go through this form of consistency assessment expect for a very complex and large EIS process to be feeding back comments to help a proponent in addressing those requirements. Yes, we are in the process of going through that at the moment.

The CHAIR: Is there a timeline, at this point, on a re-draft of the EIS or when you would expect it to go out for public submission?

Mr GAINSFORD: I would not want to speculate on that, I think that would be more of a question for New South Wales.

Mr HARPER: There is no specific timeline, we still plan, as we always have, to have the exhibition commencing this year but we are still drafting up the responses.

The CHAIR: At this point, is any additional biodiversity work plan to be done, any additional fieldwork planned to be done in response to the submissions that you have received from national parks and for the Commonwealth?

Mr HARPER: Not at this stage, because we are still working through that with the water group and the Commonwealth.

The Hon. ADAM SEARLE: In relation to the Government's submission to this inquiry on page 17 under "EIS methodology", it said, "The environmental impact assessment process will comprehensively consider all known possible impacts." It goes on to outline a number of ways in which that will happen, setting it out in different topic areas. In relation to biodiversity it says, "The biodiversity surveys have been completed and the findings will be presented in the EIS." The Federal department has said that the offset strategy does not adequately offset the impacts as required by legislation. What is the response to that? That is a pretty serious criticism of the quality of the EIS.

Mr DRAPER: I think part of the response has to be that the EIS is not finished.

The Hon. ADAM SEARLE: Let us be serious about this.

Mr DRAPER: This is serious. That is a serious answer to the question.

The Hon. ADAM SEARLE: I am asking the questions. There is a draft EIS, presumably it was not back of the envelope stuff, it was a pretty seriously worked up document and, as we have seen from information in the public domain, Commonwealth and State agencies have taken serious exception to the quality of the work. Can you give us an explanation about why those agencies simply have found it so deficient?

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Mr DRAPER: I cannot speak on their behalf, but as Mr Gainsford said I think it is quite normal, boringly normal, that agencies provide feedback on EIS and other documents and they disagree with the approach that is taken. The whole point of that is to take those comments on board in the final EIS so the quality of the document that is put into the public realm for submission is of the highest standard.

The Hon. ADAM SEARLE: On the last occasion you were all here, 30 June, the transcript, at page 25, has this exchange:

The CHAIR: Would it be fair to say that there is a difference of opinion between DPIE and Water NSW and potentially the Commonwealth about how impacts from this project should be assessed in terms of the need for offsets?

Mr GAINSFORD: I think that is too early to say.

Mr HARPER: No.

Mr Harper, your evidence is that there is no difference of opinion. Looking at the material we have in the public domain is your evidence here today that when you gave that evidence you were not aware of the existence of these documents?

Mr GAINSFORD: At the time that we last met I was aware of certain documents that had been provided, I cannot recall whether these documents you are referring to had been provided to the department, but I will confirm that. I certainly was not aware of the detailed information within those submissions.

The Hon. ADAM SEARLE: Were any of you aware of these documents when you last gave evidence on 30 June?

Mr FLEMING: I am getting the date on which I signed off on the NPWS submissions. I cannot recall. I would just add, in terms of the NPWS comments, we did discuss some of these at the last submission; what was required in terms of offsets, what was required in terms of the assessment. I do not think, I am not sure there is anything in the NPWS comments that was not effectively canvassed, at least at a higher level, at that last hearing.

The Hon. ADAM SEARLE: What about the other documents that we now know about?

Mr GAINSFORD: Are you referring to the Commonwealth document?

The Hon. ADAM SEARLE: I am.

Mr GAINSFORD: Again we are getting the date back for you.

The Hon. ADAM SEARLE: Just to jog your memory, perhaps helpfully, the version of the Department of Agriculture, Water and the Environment comments on the Warragamba Dam raising draft EIS bushfire impact analysis says here "provided to NSW DPIE on 15 June 2020". That is two weeks before evidence was given here. Does that help?

Mr GAINSFORD: Thank you for providing that. As I said, I was not across the detail of what was in that submission. In terms of my evidence initially, as part of this hearing, that part of the department's role is to compile all of the submissions that have been received. We have had a number of submissions that have been received. At the time we last met we had not received all of that. My recollection is that we had not received all of those submissions.

Mr HARPER: The submissions, I did not get these comments until 15 or 16 July.

The Hon. ADAM SEARLE: And the version of the Department of Agriculture, Water and the Environment comments on the Warragamba Dam raising draft EIS biodiversity offset strategy, the version I have here says "provided to DPIE on 15 June 2020". That was a matter we discussed in some detail last time and I think it was your evidence, Mr Harper, that no further work was being planned, and I think that is still your evidence. You are saying here on your oath that you were not aware of this document.

Mr HARPER: The comments, no.

The Hon. ADAM SEARLE: Why did no-one make you aware of these documents before you came to give evidence to our Committee, given that they are pretty relevant and the obvious questions were going to be asked?

Mr GAINSFORD: I think it would be fair to say that there is a lot of—I have a team that does an enormous amount of work in terms of compiling these documents and liaising with the various agencies. I would not ordinarily be across all of the detail that is in those documents and, as I say, part of the process I was giving evidence about the last time I was here was that we were still compiling all of that advice that I mentioned before from all of those agencies.

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The Hon. ADAM SEARLE: In terms of the impacts requiring offsetting, we had some discussions about that, could I show you a document?

The Hon. SHAYNE MALLARD: You are seeing it before the Herald.

The Hon. ADAM SEARLE: I do not think anyone has seen this, I certainly have not seen it before. This is a document where at the foot of the page it says, "Environmental impact assessment appendix F1 biodiversity assessment report". At the top of the page it has, "7.8. Impacts requiring offsetting: native vegetation, species and population, impacts that do not require further assessment". On a fair reading of this document it seems to suggest assessments are not required to determine offsets for impacts to native vegetation as a result of the project or species credit or population is impacted by the project. Is that a fair reading of this project? Have you seen this before?

Mr DRAPER: Are you asking me? I have never seen it before, I do not even know what it is, to be honest.

The Hon. ADAM SEARLE: Well, it looks to be a page from the environmental impact assessment.

Mr DRAPER: I do not think we can speculate on it. Others may recognise it.

The Hon. ADAM SEARLE: I am asking you directly—

The Hon. SHAYNE MALLARD: Point of order—

The Hon. ADAM SEARLE: —can you go and check? I am asking him to take it on notice.

The Hon. SHAYNE MALLARD: My point of order is that you have tabled a document without any veracity of where it came from. Perhaps the Hon. Adam Searle could elaborate on where the document has come from and give it some validity for discussion.

The Hon. ADAM SEARLE: If the Hon. Shayne Mallard had paused, I was going to ask the witnesses, in all fairness, to take on notice whether this document is, in fact, part of the draft EIS, to verify that.

The Hon. SHAYNE MALLARD: That is your suggestion, is it?

The Hon. ADAM SEARLE: It is my request for them to take it on notice, to go off and check to see whether this is part of the draft EIS. And I am happy, as you prompted me, to table the document and for us to consider publication.

The Hon. SHAYNE MALLARD: It has no title or reference.

The Hon. ADAM SEARLE: It has a footnote and it seems to suggest—

The Hon. SHAYNE MALLARD: —not on mine.

The CHAIR: It is a different document. It is entirely appropriate for the Hon. Adam Searle to make that request of the witnesses.

The Hon. ADAM SEARLE: As I said, it seems to be an extract from the EIS. I have asked each of you if you have seen it before, I am happy for you to pass it around and if the answer is no I am happy for you to take it on notice and to check whether it is part of the draft EIS.

Mr GAINSFORD: I have not seen it before.

The Hon. ADAM SEARLE: Okay. As Mr Mallard has helpfully suggested to me—and I am very happy to embrace the suggestion—

The Hon. SHAYNE MALLARD: I am happy to help the Leader of the Opposition any time.

The Hon. ADAM SEARLE: —there is a document entitled "Warragamba Dam Raising Proposal Pre-Exhibition EIS Review". It seems to be a two-page document.

The Hon. SHAYNE MALLARD: The irony of the dam inquiry is that it leaks.

The Hon. ADAM SEARLE: Can I ask whether any of you recognise this document or have seen this document or another version of it before?

Mr GAINSFORD: Yes, I am familiar with this document.

The Hon. ADAM SEARLE: Is it fair to say that this is a summary of the submissions on the EIS from New South Wales and Commonwealth agencies?

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Mr GAINSFORD: That is correct

The Hon. ADAM SEARLE: And it is sort of a distillation of the key features of those submissions—that is correct?

Mr GAINSFORD: That was the intent, yes.

The Hon. ADAM SEARLE: It does not make for very pretty reading in terms of the assessment of the EIS, does it? It suggests that there is a lot of work to be done.

Mr GAINSFORD: As I mentioned in my previous evidence, the department has not conducted an assessment of this project yet—we have not done a merit-based assessment. The purposes of this document, and the advice that we forwarded through to WaterNSW compiled from the other agencies, is in regard to allowing the EIS to be in a final form so that it meets all those requirements and, as Mr Draper said in his opening statement, ensure the public has an opportunity to comment on a comprehensive and final EIS. That is the department's motivation in this work.

The Hon. ADAM SEARLE: Sure. Again, drawing on this analysis, it makes it pretty clear that the EIS does not identify where the requirements of the specific Secretary's Environmental Assessment Requirements [SEARs] are addressed. That is a pretty worrying deficiency, if that is a correct analysis, wouldn't you agree?

Mr HARPER: Can I answer that?

The Hon. ADAM SEARLE: Sure.

Mr HARPER: That is actually in chapter 1.

The CHAIR: It is now or—

Mr HARPER: It always has been.

The Hon. ADAM SEARLE: So you are saying that this critique is not accurate?

Mr HARPER: There is a navigation chapter about where you can find all the SEARs within in the EIS in chapter 1.

The Hon. ADAM SEARLE: Again, drawing on all the submissions, it says the biodiversity assessment does not fully comply with the requirements of the Secretary's Environmental Assessment Requirements, including the Framework for Biodiversity Assessment. It makes it pretty clear that it does not comply with the legislation. That is a pretty serious shortcoming in a document as serious as an EIS for a project of this magnitude. Would you agree?

Mr DRAPER: If it was on public exhibition that would be a serious issue.

The CHAIR: Sorry, can I ask for follow-up there? Because Mr Searle stole my thunder a little bit. He quoted from—

The Hon. ADAM SEARLE: Sorry.

The CHAIR: That's okay. I would just like to quickly go back to what I asked last time. I asked if it would be fair to say that there is a difference of opinion between the agencies. Mr Gainsford, you said, "I think it is too early to say." At that point, Mr Harper, you added, "No, there would not be because we have actually followed the FBA provisions for assessing those." Quite clearly, the distillation of the advice received is that the biodiversity assessment does not fully comply with the Framework for Biodiversity Assessment and further information is required to justify why the FBA was not fully implemented in the upstream biodiversity assessment. Are you contesting that suggestion that it has not complied with the Framework for Biodiversity Assessment?

Mr HARPER: No, it has complied. What we are doing now is—

The CHAIR: But the combined advice of the agency says no.

Mr HARPER: The preliminary advice, they have said no. That is their view at the moment, which is what we welcome—to understand from the consistency review what the detailed SEARs that we have been issued twice over the period, which are very descriptive as to what we are to undertake. The importance of this consistency review, as Mr Draper pointed out earlier, is to provide the proponent the opportunity to identify, with the agencies in particular, about where they might see some gaps required to address the SEARs' intent in some areas. We welcome that feedback because in some areas they are saying it appears to be inadequate or may not be supported. But I have not actually seen anywhere that it is saying that it is not compliant. At the moment we are working through with the agencies, as Mr Gainsford has said, over the past few weeks and deliberating that with each individual agency to address these comments and it is progressing.

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The CHAIR: This document suggests that it is not compliant and that is the combined view of the agencies.

Mr HARPER: It is a suggestion. When you look at the document and working through the agencies, we are coming to positions where the agencies are starting to have a better understanding.

Mr DRAPER: I think, again, we have to emphasise that it is a comment on a draft, it is not on exhibition. There is a process that DPIE is leading, as Mr Gainsford has outlined, to make sure that the document that gets exhibited is consistent with the SEARs. That is the process. If there is a view put at a time by an agency that it is not, then that has to be resolved and it has to get resolved before it goes on exhibition. That is the process.

The Hon. SHAYNE MALLARD: This is a standard process?

Mr DRAPER: Very standard. I acknowledge that this is a complex project. The Committee was established because we are talking about a World Heritage area, so we are not dismissing or diminishing the importance or substance of the project and the impacts it may have in that World Heritage area. But, yes, this is a very normal process.

The CHAIR: What happens, though, when WaterNSW responds to the concerns raised by the agency that it was insufficient in all of these ways and they still disagree? Who makes a decision as to whether or not the EIS is adequate to go on public exhibition?

Mr GAINSFORD: Perhaps I can talk through those next steps. As I mentioned earlier, the process that we are going through with WaterNSW is to assist them in understanding those comments that have been received. There are areas where there is clarification and, in some cases, WaterNSW has the opportunity to identify where perhaps some of those concerns have already been addressed in the documentation—perhaps in appendices or other components. And then also to assist WaterNSW in confirming what the methodology should be to meet those requirements. At that point in time—once WaterNSW has had a chance to respond to those issues—we would expect to receive a final EIS. Because we have been assisting WaterNSW through this process, our expectation would be that we would do a relatively quick pre-EIS check and, once we got to that point and are satisfied that all of those issues that we have been discussing have been addressed, we will be able to exhibit the EIS.

The CHAIR: Will the agencies that have had concerns with the draft get to see how those concerns have been addressed?

Mr GAINSFORD: They are an intricate part of the process that we are working through at the moment.

The CHAIR: What happens if they do not agree that it has been adequately addressed? Who makes the decision to say, "No, we think it has been, it can go on exhibition"?

Mr GAINSFORD: From a point of view of requirements—and I think I mentioned this at the last inquiry—we do not do a formalised adequacy assessment as used to happen under part 3A. The formalised adequacy assessment allowed us to reject to EISs. We do not have that same process within the department now, so once we have got to a point where, hopefully, the EIS has addressed those comments, we will exhibit the EIS. That will be the process.

The CHAIR: What happens if the agencies do not agree? Are we then reliant on them to choose to make a public submission to inform the public that we think it is inadequate in these ways or, basically, once there is this sort of consensus found—even if it is forced—that is it? All the concerns raised—the only reason we know about these concerns is because they have been leaked and I think we will get back to how that happened later. How is the public going to be aware that there are these fundamental points of difference about how this assessment is operating?

Mr GAINSFORD: It is a very transparent process. Once we have an EIS on exhibition there will be the opportunity for the public to make submissions and there will also be the opportunity for government agencies to make submissions. As I mentioned in my evidence at the last inquiry, the assessment process does not just occur as part of the EIS process—there is the ability to provide additional information and to respond to submissions that come through the EIS exhibition process, which enables that assessment to be updated and to provide new information as the assessment process continues. I think that, in answering your question, it really is quite premature at the moment because we have not done a merit-based assessment. At the moment we are talking about making sure that the EIS addresses those requirements.

The CHAIR: I will hand back but I just want to be really clear with one last question. There will be nothing stopping the National Parks and Wildlife Service, the Environment, Energy and Science [EES] group or any other agency raising any concerns they have around inadequacy in the public submission process?

CORRECTED

Mr GAINSFORD: That is a matter for those agencies really. I do not dictate how those agencies want to make submissions. Certainly from previous projects, those agencies have made public submissions. Absolutely.

The CHAIR: But not necessarily when they have gone through this adequacy process and we have come to these consensus positions. It is quite different when they are responding to a process that has not had this internal government—we will get to that. I guess we will see.

The Hon. PENNY SHARPE: If there is not agreement, is there anything within the EIS that would identify where there has not been a consensus in relation to those matters?

Mr GAINSFORD: That is really a matter for WaterNSW.

The Hon. PENNY SHARPE: Mr Harper?

Mr HARPER: I would have to take that on notice as to whether we would need to provide for that. The objective is to satisfy the agencies.

The Hon. PENNY SHARPE: Yes, but this is the point that I am making. We have just gone through the interim process, and that has actually been very helpful for me. We all understand that. You have all had to go back after making submissions and you are working through that process now. The point that Mr Justin Field was making was what happens if there is an agreement and WaterNSW has not addressed the issues raised by the agencies? Mr Gainsford just said that this is a very transparent process. When you put out the EIS, is there an appendix that says "we have not reached consensus on this"?

Mr HARPER: There is not requirement under the SEARs for that to be attached, or legislatively attached. It is the first time you it has been brought it up. I have not actually thought about it.

The Hon. PENNY SHARPE: Will you come back to us about whether you would consider that?

Mr HARPER: I will.

The Hon. PENNY SHARPE: What I am hearing is what we are then asking is if there is disagreement—there is actually quite serious disagreement in the comments on the way through. I accept that you might have been able to work through some of those on the way through. We are talking about extinctions here. We are not talking just about it not being desirable, we are talking about possible extinctions and massive impact on a World Heritage area. So you will come back to me about that. To confirm, you are relying on individual agencies to respond to the EIS if there is not an indication in the EIS that there is an agreement there?

Mr HARPER: That is the understanding of the process. It would happen through the public submission stage, both from the public and from agencies.

Mr DRAPER: It is worth distinguishing that this part of the process—as you have all pointed out—is about whether the quality of the EIS is sufficient for it to be exhibited and to inform the public, to allow them to make equally informed submissions. That is one question: Does the EIS satisfy the concerns about the quality of the EIS? The views about the actual project, that is a different matter and there may be submissions on that.

The Hon. PENNY SHARPE: I understand that.

The Hon. ADAM SEARLE: Who makes that first decision as to whether the EIS ultimately, after all of this feedback is taken on board—who decides whether it is up to snuff?

Mr GAINSFORD: As I mentioned before, we do not have the same powers that we had under part 3A in terms of adequacy assessments. We do not accept or reject EISs anymore.

The Hon. PENNY SHARPE: So you do your best but ultimately WaterNSW puts out the EIS that they want to?

Mr HARPER: No. We have to submit it as a final back to the DPIE for them to display.

Mr DRAPER: They would have to exhibit it.

The Hon. PENNY SHARPE: That is great. That is the point we are getting to—how we are resolving the conflict. I accept that you can work through the process and then ultimately it is in your best interests for the issues between agencies to be resolved. We are trying to understand what happens if that is unable to be resolved.

Mr DRAPER: From Infrastructure NSW's perspective, as the coordinator for the overall program, we are not the proponent for this project.

The Hon. PENNY SHARPE: I understand that.

CORRECTED

Mr DRAPER: I would say that the goal is to put something out of that meets all of the concerns, that remedies all of those—if there are deficiencies, they would be remedied. Any proponent putting something out where the EIS was not seen as adequate would do so at their peril.

The Hon. PENNY SHARPE: Correct. We know that you are able to resolve it then. We will see how you go.

Mr GAINSFORD: That is certainly our expectation as well.

The Hon. PENNY SHARPE: Mr Harper, can I ask about the issue around WaterNSW's interaction with the Federal agency? In the preparation and work that you have done, what interaction as the proponent have you had with the Federal agency?

Mr HARPER: More so recently than prior since the feedback that we have had, which has been coordinated through Mr Gainsford's office.

The Hon. PENNY SHARPE: That is what I am trying to understand. That is exactly where I am going. At what point are you having conversations directly with the Federal agency, given that they have some pretty significant powers? Their comments have been pretty serious in relation to the adequacy or not of the work that has been done. I just want to understand when you interact with them. Is it after they have given the comment?

Mr HARPER: Yes.

The Hon. PENNY SHARPE: You say that you were unaware of their concerns about your assessments until mid-July? You had no idea?

Mr HARPER: That is right. We had not had any previous advice until this formal issue.

The Hon. PENNY SHARPE: I understand that you might have had formal advice but what I am trying to understand is whether you were aware that—the issue of the assessment in relation to this project, particularly around the environment assessment, has been of public discussion for quite a long time. Much before 15 or 16 July. You had no warning? It was arms-length and the project, I assume through Mr Gainsford, was referred to the Feds under the Environment Protection and Biodiversity Conservation [EPBC] Act. They then have a look the work that you have done but you do not have any interaction? Basically, it all goes through there?

Mr HARPER: That is right.

The Hon. PENNY SHARPE: Given the concerns that have been raised by the Federal agency, and your evidence that you are not planning to do any further assessments, how do you believe you are going to reconcile the issues raised by the Federal agency?

Mr HARPER: As I have already mentioned, we have had discussions with all of the agencies anyway regularly since we got the information in mid-July. We are working through that with them. What we are coming to is—this is a very large document and there has not been a lot of time to look at this in terms of the information that is in there. What we are doing is providing more visibility, particularly for the Commonwealth in terms of the aspects that they are concerned about.

The Hon. PENNY SHARPE: When you say more visibility, what do you mean by that?

Mr HARPER: Rather than cross-referencing, we are creating more of a standalone section for the Commonwealth to address those World Heritage matters.

The Hon. PENNY SHARPE: Are you saying that within the draft EIS at the moment, all of the issues that they are concerned about are basically addressed but they are scattered through the report, and what you are doing is bringing that all together? Is that essentially what you are saying?

Mr HARPER: To an extent. However, there is also more narrative and enhancement that we are looking at doing.

The Hon. PENNY SHARPE: What does narrative and enhancement sound like?

Mr HARPER: More detail, more study and more assessment.

The Hon. PENNY SHARPE: What would more study include?

Mr HARPER: I am not privy to exactly what it is from the specialists.

The Hon. PENNY SHARPE: Could you take that on notice and come back to us?

Mr HARPER: Yes.

CORRECTED

The Hon. PENNY SHARPE: The highest level of protection that you can give to an area is World Heritage listing. It does not happen at very many sites around the world. I think that it is completely right that there is a rigorous assessment around that. The information that we have got from the leaked media articles—which I am sure you have seen, Mr Harper—literally say that New South Wales has failed to properly assess how its proposal will affect endangered wildlife. It talks about how you are going to be able to mitigate the risk. As I said before, it is not just mitigation of damage to an area. It is extinction of some species. It talks about the need to reassess the project's effects on koalas in terms of summer bushfires.

There are also issues around the swift parrot. You can have discussions, and perhaps there was some assessment that was not in your EIS beforehand, but I am trying to understand how you can continue to say that you will not be doing any more assessments based on these criticisms? How are you going to resolve those issues?

Mr HARPER: That is something my specialists are having discussions on with the agencies. I do not know specific details of every section within the EIS and that sort of level of detail. I do not think it is the right forum to have that conversation because I have not, probably, got that specific detail. I reserve that we are actually working through those assessments with the agencies for clarity on those expectations.

The Hon. ADAM SEARLE: If we can get to the specifics, we are approaching the bushfire season again and we all recall what a terrible bushfire season the State went through before. The summary of the critique of the EIS states that the EIS should analyse the impact of the proposal on these priority-listed species and ecological communities identified by the Australian Government and that are likely to occur in the study area, taking into consideration the loss of habitat that occurred due to the bushfires. It is very gentle public-service speak for, "The EIS has not analysed this matter." That is pretty worrying and surely you cannot have that analysis done without doing more fieldwork. Unless I have missed something.

Mr HARPER: You are missing the fact that it is a draft EIS. It is a working document.

The Hon. ADAM SEARLE: I understand it is a draft.

The Hon. PENNY SHARPE: There is no argument from us about that.

The Hon. ADAM SEARLE: There is no argument about that, but what we are saying is that the criticism of the draft identifies that a lot of things have not been done.

Mr HARPER: Yes.

The Hon. ADAM SEARLE: I am trying to understand that if there is no further fieldwork, how will those deficiencies be addressed?

Mr HARPER: The fieldwork has been undertaken prior to the bushfires and it is in compliance with the guidelines that were issued by DPIE for severely burnt fire areas and how that should be assessed. We have complied with that.

The Hon. ADAM SEARLE: I understand, but do you accept that the bushfires had a very significant impact on a lot of threatened species or species that have been identified as being at risk.

Mr HARPER: Yes, however, the guideline advises the proponent that in order to assess the biodiversity values of the area that would be affected by bushfire, that you rely upon the survey that was undertaken prior to the bushfire, which is what we have done.

The Hon. ADAM SEARLE: Okay. Maybe I have missed something. I understand that is what the guideline says, but the information from scientists and others is that the bushfires that occurred last year and early this year could have killed up to 1 billion animals and insects. The bushfire impact analysis from the Federal department received by DPIE on 15 June has a fairly long list of things that are missing from the EIS. For example, "The EIS needs to analyse the impact of the proposal on these priority-listed species and ecological communities." That is, the EIS has not done so. You are saying that the guidelines have been followed. The Federal department is saying they have not been. I am asking, how can you reconcile these without further fieldwork? And your answer is, "Oh the guidelines say we do not need to do further fieldwork even though these bushfires have had a massive impact on all of these species, potentially."

Mr DRAPER: If I can comment. I think the way that this has been worked through is—the first question is, if there is something required to change in the EIS, can it be remedied by further explanation, and Mr Harper used the term narrative, but I think explanation of the facts? The second is, as you pointed out, is there information that was gathered that has not been included in the EIS that could be included in the EIS? So is there already available information? And then I think the third thing is, if further information is required through studies or fieldwork, what needs to be done? What is required? I think that is the discussion that needs to happen with some of these agencies is, "Well, okay, let's work through those." The first hierarchy is, can we explain more? Can we

CORRECTED

put more information that we already have or is there some supplementary work that needs to be done? I think that is the discussion that Mr Harper is referring to that they are having with the Commonwealth agencies and with New South Wales Government agencies.

The Hon. ADAM SEARLE: Mr Harper, just refresh me. What is your exact position in this process?

Mr HARPER: In the process?

The Hon. ADAM SEARLE: You are the program director for WaterNSW.

Mr HARPER: Yes.

The Hon. ADAM SEARLE: So, ultimately, you are overseeing the preparation of the EIS.

Mr HARPER: At a very high level, yes. I am not in the detail.

The Hon. ADAM SEARLE: No, no, no, but, ultimately, when it leaves WaterNSW, it is presumably once you have ticked off. Is that right?

Mr HARPER: It would have to go through our executive approval.

The Hon. ADAM SEARLE: I am seeking to understand how you see this. You accept that the bushfires that occurred last year and early this year had a profound impact on animals and insects. Do you accept that as a general proposition?

Mr HARPER: Yes.

The Hon. ADAM SEARLE: Do you also accept that the listed species identified by the Commonwealth Government as being at risk or potentially threatened would be amongst those that have also been adversely affected by the bushfires?

Mr HARPER: Yes.

The Hon. ADAM SEARLE: Do you understand that it would be a very strange proposition to say that you can rely on an assessment of the state of those species that occurred pre-bushfire, even if that is what the guideline says.

Mr HARPER: I am not the regulator. I am the proponent following the guidelines and that is what we are asked to rely on.

The Hon. ADAM SEARLE: I understand that, but just because the guidelines say you can rely on something that happened before the bushfires—as a matter of common sense, those bushfires are a very profound factor that may have pushed a lot of these threatened and listed species further towards extinction, or put them at more risk than they were before, and you cannot know that without any further work. Would you accept that as a matter of common sense?

Mr HARPER: Can we just clarify that the bushfires were across the whole catchment, not in the area that we are looking at around the shoreline of the catchment?

The Hon. ADAM SEARLE: Sure, but there may well have been a consequent impact. You have had smoke and animals fleeing to other areas. Obviously, even the areas that were not directly impacted by bushfire, there may have been other negative impacts.

Mr HARPER: It is not the first time the catchment has been subject to bushfire.

The Hon. ADAM SEARLE: Sure. Nevertheless, before you can even get to a merit assessment of the project, surely there needs to be an understanding of what impact the bushfires have had on these species.

Mr HARPER: That is the conversation we are currently having with the agencies, including the Commonwealth, to address that in the EIS.

The Hon. ADAM SEARLE: I am just not sure what the conversation is because it just seems to be common sense to me. Maybe I have missed something.

Ms ABOOD: Can I add to that? This is a whole-of-government project and we are supporting WaterNSW to do that. Part of that is looking at the information and what processes we can put in place to collect information and get a better understanding of the impact of the bushfires—from maps and desktop exercises, and from information that other people have gathered to draw some conclusion about the potential impacts. There is still an issue about the safety of getting into the catchments to do survey work, so we are looking at all possible avenues to try and get a better understanding of that impact and then look at what we might need to do to take that forward.

CORRECTED

The Hon. ADAM SEARLE: As part of the bushfire impact analysis from the Federal department provided to DPIE on 15 June, it makes it clear that the EIS has not analysed the impact on the listed species, but it also indicates that mapping of the burnt areas should be conducted as a minimum. It talks about the need for further field surveys and states that further detailed assessment of the impact of bushfires should be conducted. That is pretty clear feedback from the Commonwealth agency. Can you tell us what is the conversation that needs to happen? Is the bushfire impact analysis not pretty clear?

Mr HARPER: As I mentioned earlier, we already have that conversation with them about the extent of what that change will be.

Ms ABOOD: And agreeing on a methodology. I think, that is what is happening now. Certainly from a desktop exercise to get the best mapping information available and then possibly there may be some requirements, if it is safe, to go in there and do some reconnaissance and some work.

The Hon. ADAM SEARLE: Okay.

Mr HARPER: It clearly was not in the original SEARs, nor has it been introduced until after the EIS was completed. It is an introduction of a new issue as a consequence.

The Hon. SHAYNE MALLARD: Mr Draper, you said in your opening statement—and I was not sure if you said proponents or opponents, but it clearly does not matter—that to take documents that have been leaked, that are fitting into an EIS process, and that are already probably redundant in terms of where you are now, or moved onto that point, is out of context. Did you use the word dangerous or inappropriate?

Mr DRAPER: I do not think I said dangerous, but, yes, I may have said inappropriate.

The Hon. SHAYNE MALLARD: I want you to expand on that. We are taking a frozen moment in time. An EIS process is underway. We have moved on from that period. Maybe, in context, talk about where the EIS is heading and the process you have gone through.

Mr DRAPER: What we are really trying to say is that there was a draft EIS produced and all of the agencies that Mr Gainsford referred to have been given the opportunity to review those documents as they stood at that time—I think they were produced early this year. Was that about the right time frame? The chapters?

Ms ABOOD: Yes. No. February/May.

Mr DRAPER: In any case, they had an opportunity to review the version that existed at that time. Since then there have been lots of discussions. Feedback has been received, as you pointed out, and there have been discussions. As agencies get in a room and talk about it, even to Mr Searle's point, if you want to understand the impacts of the bushfires, at one extreme you can go back into the area and try and count every member of the species that is there, but there are methods used by those who research these areas that try to model and extrapolate from existing data and from the mapping—a whole range of data can be used to try and re-estimate the population of those species in the area. That is the sort of discussion that has to happen

How far do we need to go? To Ms Abood's point, some of these areas are not even safe to go into. They are closed for good reason. These documents refer to something that was produced earlier this year. Now it is nearly the end of August. There has been a lot of discussion. While the EIS document has not been redrafted or resubmitted to DPIE yet, there is an enormous amount of work that is being done to make sure that, when it does get resubmitted, it is the top-quality document that addresses all of these incidents.

The Hon. SHAYNE MALLARD: Do you want to step us through, for the purposes of inquiry and for evidence for the report, the EIS process? Just step us through the stages. Perhaps that could go to Mr Gainsford.

The CHAIR: The questions are up to you, obviously, Mr Mallard, but we have heard that many times already at the inquiry. We have asked a question at nearly every hearing.

The Hon. SHAYNE MALLARD: I did not cut you off during your questions.

The CHAIR: Your questions are up to you. Go for it.

The Hon. SHAYNE MALLARD: This whole day of inquiry is a waste of time for these bureaucrats, who should be working on the EIS.

The CHAIR: If your concern is a waste of time, I would suggest that question is a waste of time.

The Hon. SHAYNE MALLARD: If you want to cut me off, make a point of order. I have asked the question and I would like it answered.

CORRECTED

The CHAIR: I was just making you aware that the previous transcripts would have contained that information.

The Hon. SHAYNE MALLARD: I am asking it again for clarity.

Mr GAINSFORD: Yes, sure. Thank you, Mr Mallard.

The Hon. SHAYNE MALLARD: Mr Gainsford, please step us through where we are at the moment and where these inquiry documents fit in with the time line.

Mr GAINSFORD: As Mr Draper has mentioned, we have obviously compiled and provided those comments on the draft EIS. The department has been coordinating and facilitating discussions with those agencies that have made those comments and also with WaterNSW, both to confirm the sort of methodology to complete those assessments, but also to clarify any comments, as Mr Harper was mentioning before. That will be an iterative process. We will have opportunity as that work develops to be able to review and hopefully to confirm that that work meets those requirements, concerns and gaps that have been identified in the advice on the draft EIS. As I mentioned before, once we get to the point where we have a complete assessment that meets those requirements, we will have a final EIS that WaterNSW will submit to the department.

The department is then responsible for organising the exhibition of the environmental impact statement. The exhibition of the environmental impact statement needs to be for 28 days as a minimum and that exhibition is very transparent and comprehensive. We will make the document publicly available on our website and through various other channels. The department then compiles any submissions that are received both from Government agencies and also from the community. Once we have compiled all of those submissions, we will then submit those to WaterNSW for a response. As I mentioned before, as part of that response to submissions WaterNSW may need to undertake further assessment, or there may be developments in the design that might necessitate further assessment work as part of the ongoing assessment that WaterNSW would be doing.

At that point in time, once WaterNSW has responded to all those submissions and has completed any further assessment, it would then submit that document, the response to submissions, back to the department. Then we will make a decision as to whether any of the new information that has been provided necessitates further public consultation. We can do that through a document called an addendum report or sometimes a preferred infrastructure report. Once we have made that decision, if we do go to exhibit that further documentation, we go through the same process in terms of receiving those submissions and then asking WaterNSW to respond.

The Hon. SHAYNE MALLARD: The draft EIS that is relevant to this feedback from various agencies State and Federal, you circulate that as a total document to those different agencies?

Mr GAINSFORD: My recollection is that we had been receiving chapters in various sections of the documentation. Those that were relevant to those agencies we forwarded to those agencies.

The Hon. SHAYNE MALLARD: I know there are working groups trying to meet these requirements and resolve these issues that are scattered through. Would you recirculate the chapters again before compiling the EIS to go on exhibition?

Mr GAINSFORD: That is one approach. Because we are working with WaterNSW in terms of working through those methodological issues, I do not envisage that we will need to go through the same consistency of review that we did before.

The Hon. SHAYNE MALLARD: Because the working groups are right across it and will hopefully sign off on it.

Mr GAINSFORD: That is the assumption, yes.

The Hon. SHAYNE MALLARD: I want to touch on the spillway issue, which has not been talked about, because that created some excitement in the community and for some members of the Committee for a while. Obviously climate change is driving this and you are talking about the concern that you will need to raise the spillway by three metres to meet climate change impacts that are predicted around 2090. Is that the case?

Mr HARPER: That is correct.

The Hon. SHAYNE MALLARD: Engineering-wise and safety-wise, in preparation for 2090, which I will not be around for, you need to build those abatements in the road and infrastructure up to 17 metres so that it is prepared for that if it is needed? One hopes it is not needed.

Mr DRAPER: I will let Mr Harper answer the detailed engineering questions, because it is unsafe for me to have a go at that. As we were saying in the opening statement, it is not that we are proposing that, but the secretary's environmental assessment requirements require WaterNSW to consider the impact of climate change.

CORRECTED

The assessment is that, by 2090, to achieve the same flood mitigation benefits that we would achieve today by raising it by 14 metres, the spillways might need to be another three metres higher.

The Hon. SHAYNE MALLARD: But you need to prepare for that.

Mr DRAPER: Yes, but I want to be clear that we are not proposing that. That is not part of this application or this project. That is for people in 2090 to think about.

The Hon. SHAYNE MALLARD: A whole new EIS process and another inquiry.

Mr DRAPER: Yes.

The Hon. SHAYNE MALLARD: Those were my questions. Thank you, Chair. I hope that was not too offensive for you.

The Hon. ADAM SEARLE: Just in relation to the matter of national environmental significance assessment from the Federal department. At page 9 it says, "The EIS concludes the project is unlikely to have a significant impact on koalas, but this should be reassessed with reference to the bushfire impacts." And "The assessment should consider the impact of bushfire on the regional koala population." It is quite clear that these are two areas where it was not adequate. Disturbingly, it says, "The survey effort is low. Three hours of KSAT survey plus 15 minutes of call playback and desktop analysis of previous records." In this EIS process, a full three and a quarter hours seems to have been dedicated to the impact or potential impacts of the projects on the koala population. Is that kind of criticism generally made of the effort put into the EIS?

Mr HARPER: First of all, I think when you read that it was implied that we had not considered the koalas in the bushfire sense—or as being inadequate. That is not correct, because the bushfire impact is not a requirement of the SEARs. As I said earlier, it is an additional requirement that is being considered. It is not that it was inadequate; it was never required. In terms of the survey efforts, the survey efforts have been complied with in accordance with the guidelines. That is being addressed and assessed accordingly with the agencies.

The CHAIR: The bushfire guidelines, you mean?

Mr HARPER: No, sorry.

The CHAIR: The guidelines for ecological assessments?

Mr HARPER: Yes.

The CHAIR: Bushfires aside, I am looking at page 2 at the top. It says, "The EIS notes limited previous surveys have been conducted in the area. Suitable habitat exists. Low field survey effort." The recommendation further down the page relating to other species states, "If specific surveys were not conducted for species that have a moderate or high likelihood of occurrence in the project area, DAWE questions the validity of concluding any unlikely significant impact." It seems to me that one of the big takeaways from the DAWE comments is an insufficient level of assessment and survey work. That is before the bushfires. Do you have concerns that the consultants have not met their requirements in delivering the ecological assessment for this projects?

Mr HARPER: No, I am comfortable that the guidelines are being satisfied or the Framework for Biodiversity Assessment [FBA] provisions.

The CHAIR: The Commonwealth obviously have not been.

Mr HARPER: That is their feedback and we are taking that feedback on board, which we need to understand in order to make a robust EIS.

The CHAIR: One thing that is getting a bit tricky here is the bushfire affected projects guidelines, which do not require you to go back and do additional work—you can use the assessment pre-bushfire, that has no bearing on the assessment of matters of national environmental significance, right?

Mr HARPER: Yes.

The CHAIR: So the Commonwealth requirements here, the EPBC Act requirements, they are not going to draw a distinction that you do not have to go back and look post-bushfire. How are you managing that conflict? Because that is a State-based consideration. But if there are now impacts of the bushfires on matters of national environmental significance they do not care that you have a set of guidelines here to not have to go back and do additional survey work, so how is that being managed?

Mr HARPER: That would be a matter I would pass to David Gainsford, but in terms of the proponent, we are taking that feedback from both State and Federal levels and working with them to understand what needs to be adjusted, amended or added to the EIS. As I said earlier, this is a large EIS. Some of the commentary that

CORRECTED

was mentioned earlier about something not particularly being in the EIS, we are actually navigating to identify where it was because potentially not all of those chapters might have gone to a specific agency that was cross-referenced for their specific area of expertise—possibly world heritage, for example. So now conversations are about finding those cross-references and bringing them into the relevant chapters.

The CHAIR: If you are basing some of your assumptions about, "We do not need to go and do more work because we did the assessment before the bushfire and the State-based guideline says we do not need to do more," but the Commonwealth is saying it is inadequate now for assessing matters of national environmental significance because the bushfires have been so impactful, at the end of the day how can you possibly meet the requirements of the Federal environment law without doing more fieldwork and assessment?

Mr HARPER: That is the conversation that we are having with them, as I said earlier, about the bushfire assessment.

The CHAIR: Okay.

Mr HARPER: We have not closed that out with them just yet. We are just working it through.

The CHAIR: This is not just a concern raised federally. Mr Fleming, before the final recommendation of your comments you highlight that the EIS concludes that no further assessment is required but provides no specific assessment against the March 2020 guidelines to demonstrate how this conclusion was reached and you recommend that the EIS should include clear and detailed information to identify how the March 2020 guidelines have been considered in order to support any decision to do no further assessment despite the extensive impacts arising from the bushfires. What do you actually mean by that? What were your expectations in terms of providing an assessment against the guidelines?

Mr FLEMING: Chair, can I begin by answering your earlier question to me as to the dates at which documents were provided?

The CHAIR: Yes, please.

Mr FLEMING: I can confirm that I signed off on the NPWS comments on 1 June. They then went to another part of NSW Environment, Energy and Science EES and that part of EES provided the comments to planning on 5 June. I think that was then reflected in my evidence at the last hearing in that these key issues were discussed. We talked extensively about the bushfires. I do not have the transcript in front of me but I remember the discussion we had and I did make the point that on that particular issue you are referring to our view was consideration was needed in terms of how the impact of fires in the catchment would affect the assessment of biodiversity.

We talked about the extent of the catchment that had been burnt. I think I even provided some data on the extent of the potential area of inundation that had been burnt and was unburnt and the importance of refugial areas. A couple of the other key points in our submission, again from memory, we did also discuss at the last inquiry. I think I mentioned the concerns of the traditional owners Auntie Sharon and Auntie Merle around cultural heritage. And we talked a bit about the offsets and what we might expect in the offsets scheme. But I want to add that I am satisfied that the processes now in place are addressing those concerns. Those processes are ongoing so I cannot talk to you about whether the concerns are ultimately adequately addressed—that is still a work in progress. But we are involved in discussions around those key issues.

The CHAIR: Yes, I think you are in the clear there, Mr Fleming, but if your submission was provided to DPIE on 5 June and when we met on 30 June Mr Gainsford was confident that there was not a conflict on these issues. Perhaps you would like to make some comment there, Mr Gainsford.

Mr GAINSFORD: I do not think I said that, with all respect, Chair. I said what we were doing was we were still compiling the information—the submissions that had been received. I do not think I actually said—

The CHAIR: I apologise. You said, "I think it is too early to say."

Mr GAINSFORD: Thank you.

Mr FLEMING: That is really the point I am trying to make, that it is an ongoing process and those issues are important. From our point of view they are being addressed. Our role is to provide input and advice on the issues of relevance to National Parks and Wildlife, obviously. Planning's role was ultimately to oversee the process and WaterNSW obviously to do the EIS. We are being invited to and making contributions as part of that process.

The Hon. PENNY SHARPE: I understand Mr Harper's point around assessment, which was that through this process you follow the guidelines as they exist. We have had a substantial event in the middle of that,

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which was the bushfires, which, frankly, surprised everyone in their intensity and the amount of area that was burnt. So it is really a question to you, Mr Gainsford. In the planning process and the EIS process, does this reveal that there is a problem in that we are referring back to old guidelines pre-fire that really hampers Mr Harper's ability to say, "We will do further assessments?" Whether you choose to do that is a matter for WaterNSW but is there a policy guideline legislative problem here that we are not able to pick up the issues associated with the fires that we experienced over summer?

Mr GAINSFORD: It would be very difficult for me to make comment on the actual guidelines themselves. They are not my guidelines. They are guidelines that are part of another—

The Hon. PENNY SHARPE: Sorry, where exactly? I am not asking you to make policy on the run.

Mr GAINSFORD: I understand.

The Hon. PENNY SHARPE: I am genuinely just trying to work out in terms of the kinds of things this Committee is investigating whether we are identifying a problem with our planning system that might address the concerns that we are raising.

Mr GAINSFORD: Yes. So as I understand it—again I am not an expert in this guidelines—the NSW Environment, Energy and Science part of the department has prepared these guidelines.

The Hon. PENNY SHARPE: It is EES. Okay.

Mr GAINSFORD: Those guidelines are developed to assist proponents to help assess bushfire impacts. Mr Harper is correct that in circumstances where all of the fieldwork and all of the work that has been done prior to those bushfires occurring, my recollection of those guidelines is that the guidelines actually require the proponent to re-consult with the consent authority. That is the process we are going through at the moment.

The Hon. PENNY SHARPE: The status of the guidelines, though—who signs off on the guidelines? They are developed and they are signed off on. Where do they sit in terms of the legislation, the planning process? Is it at the discretion of EES who have written this up? You know, they sound reasonable. What is the status of the guidelines?

Mr GAINSFORD: As part of the Secretary's Environmental Assessment Requirements we would often make reference to a number of guidelines and a number of different policies relevant to the EIS being prepared. Obviously at the time that these guidelines were being published that is post our Secretary's Environmental Assessment Requirements. But again as this information and as new guidelines become relevant, as we would normally do for any type of assessment, we would have conversations with the proponent around the application of those types of guidelines, which is exactly what we are doing at the moment.

The Hon. PENNY SHARPE: Yes, I understand that. My question is who signs off on the guidelines? If you wanted to change the guidelines, what happens? Can you take that on notice and come back to me?

Mr GAINSFORD: Sure.

The Hon. PENNY SHARPE: That would be great.

Mr DRAPER: Just to clarify, the guidelines we are talking about are the March 2020 guidelines?

The Hon. PENNY SHARPE: Yes. What we have identified here today is that WaterNSW have followed the guidelines as required, but we have had a change and I am trying to understand how that fits together. The fires were big. The world is different post those summer fires, for all agencies and for the way that we try to respond to that.

Mr DRAPER: I should not be the one asking questions, but just for a point of clarification I understand that the guidelines published in March 2020 were about what you do because of the bushfires that had happened over summer. So they are designed to help the proponents—

The Hon. PENNY SHARPE: I completely get all that. My issue is that Mr Harper is saying there is not going to be any further assessment. He said today that is because he was not required to because the original work was done under the old guidelines. That is the interplay that I am trying to unpack. Sorry if that is not very clear, but that is what I am trying to get to.

Mr DRAPER: No, I think that is clear.

The Hon. PENNY SHARPE: I think this is to you, Mr Draper: The EIS will go out and 28 days is going to be the time frame? I know the legislative requirement is for 28 days for people to respond.

Mr GAINSFORD: It is a minimum.

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The Hon. PENNY SHARPE: It is quite common, as you would know, to extend the time. Particularly in projects where there is a lot of interest, people are going to want time. Can you give me a ballpark figure of how many thousands of pages the EIS will be?

Mr GAINSFORD: I could not give that.

The Hon. PENNY SHARPE: What about the draft? I reckon Mr Harper can.

The Hon. ADAM SEARLE: It is about 1,000 pages, is it not, Mr Harper?

The Hon. PENNY SHARPE: It is going to be significant.

Ms ABOOD: With the appendices, I guess it is about 12,000.

The Hon. PENNY SHARPE: Yes, that is the point.

Mr HARPER: It is around 10,000 or 11,000 pages.

The Hon. PENNY SHARPE: I will just flag with you that I would not recommend the 28 days as the time frame you give for people to come back.

Mr HARPER: That is the context of the comments too. There is a lot of information.

Ms ABOOD: That is right.

The Hon. ADAM SEARLE: Returning to the biodiversity offset strategy in relation to the Federal department's commentary, it is quite clear that, in the view of the Federal department, species surveys should have been done as part of the FBA in the construction area but was not. Can you explain why that was not done as part of the EIS in its draft form?

Mr HARPER: In its draft form, that is all a direct impact area. From a characterisation point of view, a lot of the focus was upstream and downstream. There was a small amount of survey done but then the biodiversity assessment report for that area has assumed presence, which is the precautionary approach under the FBA that we have adopted.

The Hon. ADAM SEARLE: The department has also indicated that there were no offsets for impacts on nationally listed species and communities. The document has a number of significant criticisms of the offset strategy. A document that I have caused to be circulated is entitled "Energy, Climate Change and Sustainability: Key Biodiversity Issues and Comments". The first page appears to deal with upstream assessment and the second and third pages appear to deal with downstream ecological assessment. I understand that this is an internal DPIE assessment and I have gone with the two-page distillation, if we can call it that. It makes clear that, in the view of Environment, Energy and Science within DPIE, the rationale of the conclusion for considering all upstream impacts from temporary inundation as indirect impacts is not supported—I think that is public service speak for "is deficient" or that they do not support the conclusions in the draft EIS—and that the Biodiversity Offsets Scheme does not propose to provide any upfront offsets for species, credit species for upstream impacts.

You can read it for yourself. There are a number of quite significant criticisms of the draft EIS. I would not claim to have any kind of expertise in this, but it seems to be a pretty root-and-branch analysis setting out some very significant shortcomings in the draft EIS. When you look at all the different comments from all the different agencies and put it together—I have not seen the 10,000 or 11,000 pages, but it sounds like that document is in a pretty woeful state. Is it usual at this stage of an EIS process for it to be in such a shape?

Mr DRAPER: I could not comment on whether it is woeful.

Mr HARPER: I would comment that it is not in a woeful state; 10,000 or 11,000 pages is not an issue of being considered to be in a woeful state. Some of the commentary here, particularly the biodiversity offset that you brought up, is the package that we have in a draft EIS. Because of the unique nature of this project—it is quite unique—there are no real precedents that have been set in this type of work. A characterisation forms the basis of the variability that we have in the upstream areas and at the dam and downstream. So whilst a comment might say it is not supported, it is not saying it is non-compliant. The conversation and the working group that we are working through now is around this offset strategy and the package that is linked to that and the way forward.

Mr DRAPER: I think Mr Harper raises a good point—and this is something we grapple with generally—that with most projects that are built, the impacts are clear and they are permanent and they happen almost at the very beginning of the project, when it is constructed. The impacts that are being canvassed here are contingent on an event happening, and they will be temporary. So that makes it a little bit more complex to estimate the impacts and how, then, you treat them. I think the hierarchy for those sorts of impacts is you avoid them, you mitigate them or you offset them. So the question is how do you deal with something which is,

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hopefully, an infrequent event, a temporary event and which you do not know the impacts for? It is a bit harder than most projects to grapple with.

The Hon. ADAM SEARLE: Perhaps too hard.

Mr DRAPER: I do not think it is too hard. It is not beyond the wit of the—

Mr HARPER: It is not insurmountable to get to a conclusion.

The Hon. ADAM SEARLE: Moving to Aboriginal cultural heritage—the second page of the summary document—again, drawing on the different agencies' feedback, this departmental distillation indicates that the Aboriginal cultural heritage assessment has not properly assessed the cultural impacts of the proposal. It says pretty clearly that the assessment should provide further justification for conclusions that inundation may have a limited impact on sites, objects and places and how significance has been ascertained and ranked. Importantly, it says, "It is considered that additional studies, including an anthropological report and a specialist rock art study, are necessary to inform a full assessment of the cultural impacts of the proposal", and it goes on. Is there a plan to have those additional studies done, including the anthropological report?

Mr HARPER: That agency is Heritage NSW? I am trying to remember who it was; it keeps changing.

The Hon. PENNY SHARPE: Yes, it does.

Mr HARPER: There are discussions and meetings we have had with this particular feedback. The feedback, again, is part of the process of providing us an ability to identify where they may believe that there could be gaps in the SEARs and within the EIS that has been provided. Those specific areas are being looked at right now in terms of that—in terms of the rock art study, I think it is called, or specialist—and the extent of an anthropological amount of work that already exists in the Aboriginal Cultural Heritage Assessment Report [ACHAR] to an extent. We are working with Heritage NSW to understand what additional requirements would be for the anthropological work.

The Hon. ADAM SEARLE: I think I am right in saying that this area is very significant because it has the most fully realised version of a creation myth for the local Indigenous people.

The CHAIR: It is the creation story.

The Hon. ADAM SEARLE: That is obviously a fairly profound issue. If the EIS, which I have not seen, seems to suggest that there is only limited impact from inundation in terms of the risk to all of this, it would be a very important thing to get right, would it not?

The CHAIR: The cultural heritage report, though, was completed. The Gundungurra put out a statement about the status of the cultural heritage report last year. They described it as poor and they have continually been frustrated that, I think, 74 per cent of the area—this is from their release at the time—that will be flooded by the raised dam, or temporarily flooded under certain conditions, has not been surveyed despite that area being identified in the methodology that was going to guide the cultural heritage report. Given the public outcry following Rio Tinto's decision to blast the Juukan Gorge, what discussions have happened internally about ensuring that you are engaging with the Gundungurra and making sure that you have done a full assessment so you can fully be aware of the potential impact? The reality is that the project, as designed, will flood at least two more key sites in the creation story, which is, I think, the most complete in this part of Australia. It seems pretty significant.

Mr HARPER: The significance that has been assessed under the Aboriginal Cultural Heritage Report [ACHR] in consultation with the registered Aboriginal parties [RAPs], which has been quite extensive over two years.

The CHAIR: They recognise it as insufficient and not having covered off on the area that was agreed.

Mr HARPER: And the Aboriginal Cultural Heritage Report was provided as part of the process to all of the RAPs, 22 of them I think, for their commentary and feedback. That was all received over a seven or eight-week period I think and then amended and accommodated within the ACHR. Some of the anthropological work was not included at their request too. This is why we are working through with Heritage NSW to provide that visibility for their clarity about the extent of that work.

The CHAIR: You are not opposed to doing additional cultural heritage survey work and assessment?

Mr HARPER: We are looking at the anthropological assessment extent of additional effort with Heritage NSW.

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The Hon. PENNY SHARPE: I have two questions. The cultural heritage aspects are dealing with Heritage NSW not National Parks and Wildlife Service?

Mr HARPER: It is working in concert. DPIE are always present in these conversations with all the other agencies.

The Hon. PENNY SHARPE: I am confused. Have I missed something?

Mr FLEMING: The primary responsibility is with Heritage NSW.

The Hon. PENNY SHARPE: Right.

Mr HARPER: But we do also have commentary around the heritage from national parks as well, which we have conversations with as well.

The Hon. PENNY SHARPE: Yes, that is right. My next question is obviously the World Heritage listing which is a Federal listing. We have requirements under UNESCO in relation to that. Is it Heritage NSW that takes the lead on that? I am trying to understand who is in charge here of looking at this stuff.

Mr FLEMING: For World Heritage it is obviously the Commonwealth that has the lead.

The Hon. PENNY SHARPE: That is correct.

Mr FLEMING: We support the Commonwealth in terms of—

The Hon. PENNY SHARPE: So it is National Parks primarily, given it is the national park and it is called the World Heritage listed national park?

Mr FLEMING: Correct.

Mr GAINSFORD: I think, just to add to those statements, part of that work that we are doing at the moment helping to facilitate the discussions and allow WaterNSW to complete their work is involving all of those parties.

The Hon. PENNY SHARPE: That involves the Federal people as well?

Mr GAINSFORD: That is correct, yes.

Mr HARPER: And in all the commentary there is quite a bit of duplication because you have—and that is what we have been breaking down to make clear actually the extent of what needs to be undertaken here.

The Hon. PENNY SHARPE: My concern is, which I flagged before and beyond the environmental values around the World Heritage listing is the significance it has in relation to tourism and jobs in the Blue Mountains and visitation. As I understand it there have been concerns raised from UNESCO about this project, which I am sure you are very well aware of, and ensuring that the listing is not threatened through the process. I am trying to understand who is in charge. I have to say I am still confused after that answer. Ms Abood, you look as though you may have something to say here.

Ms ABOOD: I was going to say that Heritage has moved into the Premier's cluster as of 1 July. From the Aboriginal cultural heritage they are probably the primary agency with responsibility, and as I think—

The Hon. PENNY SHARPE: But as we know, unfortunately Aboriginal cultural heritage still falls under the National Parks and Wildlife Act, which there has been extensive work—we are digressing. I might come back to you with questions on notice about this. I am genuinely trying to work out who signs off and who is overseeing, particularly the World Heritage protection issue.

Mr GAINSFORD: Perhaps I can help clarify.

The Hon. PENNY SHARPE: Yes, if you could, that would be great.

Mr GAINSFORD: We are doing the assessment. Ultimately the department is doing an assessment of this project, as we would for any State significant infrastructure project. In this case, because it also requires an approval under the Environment Protection and Biodiversity Conservation Act it means that we are doing an accredited assessment on behalf of the Commonwealth. Ultimately the relationship with the Commonwealth to make sure that it satisfies their requirements under their legislation, that relationship is between us and the Commonwealth.

The Hon. PENNY SHARPE: Then you use Heritage NSW, National Parks and Wildlife Service to try to bring that together.

Mr GAINSFORD: Exactly.

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The Hon. PENNY SHARPE: Thank you. That is actually helpful.

The CHAIR: I want to move on to the decision to vary the project. We have seen the 30 June letter from WaterNSW to the Federal department requesting a variation. We know that was accepted and they have issued that variation. When did you first make a decision to vary the project?

Mr HARPER: WaterNSW was the proponent to make the decision on the climate change height.

The CHAIR: Who made the decision to seek a variation?

Mr HARPER: Well, the Commonwealth asked us for that variation.

The CHAIR: No, the Commonwealth—we can get to that. Your letter notes about WaterNSW responding to a Department of Agriculture, Water and the Environment request that a variation be made. They would only have made that request for a formal variation because you had indicated that you were going to build the abutments higher than you otherwise would have. What was that process? At what point did you decide that it was going to pre-emptively have this additional height to the abutments and structural work to be able to facilitate a future increase?

Ms ABOOD: I think this—correct me if I am wrong, Mr Gainsford—arose through the process when the Commonwealth Government received the draft documents with the EIS and they realised that the project descriptions differed in terms of—because the amendment for, I guess the climate change stuff came after the SEARs were issued. The Commonwealth Government wanted to make the project description compliant, or consistent with what was in the—

The CHAIR: So you are saying that this was always your intent with the project, it is just that there was a difference between the SEARs and what the project design looked like?

Mr DRAPER: I think what we said in the opening statement was that the 17-metre abutment at road level has been known for a long time, nearly a year now. Nearly a year ago we said that in our submission to this Committee. I understand your question is: When did that enter the design? My understanding, and I would ask Mr Harper to clarify, but my understanding is having received the SEARs and knowing that they had to meet this climate change objective, that the design as it was being worked up with the parties that have engaged to do that would suggest that you had to increase the height of the abutments and the roadway and the thickness of the dam wall in order to achieve that.

The CHAIR: Okay. Your variation request says that "an assessment of the impact of current and projected climate change conditions on the flood mitigation benefits of various dam raising heights for Warragamba Dam were undertaken based on work by CSIRO, BOM and the New South Wales NARClIM project." When was that assessment undertaken?

Mr HARPER: It was 2019, I believe.

Ms ABOOD: Yes.

Mr HARPER: And it finished early this year.

Ms ABOOD: And it was peer reviewed.

The CHAIR: Who undertook the assessment?

Ms ABOOD: Infrastructure NSW led that process, did the climate change, we led that project. It was undertaken by Mark Babister and it was peer reviewed by the University of South Australia and University of New South Wales.

The CHAIR: Mark Babister is a consultant?

Ms ABOOD: WMAWater Consultancy, yes.

The CHAIR: What triggered the assessment?

Ms ABOOD: It was always part of the climate change that we were going to do. In terms of the SEARs compliance around looking at climate change but also the work that we need to do for the broader strategies to understand what the future change and future risk will be in terms of climate change. So it was incorporated as part of that work.

The CHAIR: What was the output of the assessment?

Ms ABOOD: The output was the report.

The CHAIR: Is that report publicly available?

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Ms ABOOD: It will be a document that will support the EIS.

The CHAIR: So it will be an annexe or appendix to the EIS?

Ms ABOOD: It will be available, yes.

The CHAIR: But it is not publicly available now?

Ms ABOOD: Not yet.

The CHAIR: You cannot make it available to the Committee?

Ms ABOOD: I will take that on notice.

The CHAIR: If you could. Because if it is just informing the process. I am sure everyone would like to know if there is an increase in risks associated with climate change we should understand what they are. It is separate to just the issue of the dam as well, obviously. The development of a flood strategy generally no doubt would have had an assessment like this. What was the thing that triggered doing this additional work? Because in developing the Resilient Valleys Resilient Communities process you were basing all of that in part on an assessment of climate change. So what has changed since that work was done and this work being commissioned?

Ms ABOOD: I can answer that. The work that underpinned the strategy was the first phase of the climate change work and then we undertook more detailed flood modelling to take into account the Australian rainfall run-off guidelines of 2016, and they were revised in 2019. It was to take into account the 2019 guidelines. They made some quite significant changes in how would you assess climate change, particularly for extreme events. So that was the trigger.

The CHAIR: I understand that there was an intention to always do this work. You indicated that was in your submission but in your letter to DAWE you suggested that the decision to increase the abutments was informed by this work, which you have now acknowledged only got finished earlier this year. There is a bit of a disconnect. You are using that as a justification for a decision you had largely already taken, am I right?

Ms ABOOD: The work was completed in 2019, but it started—we have been doing ongoing climate change work since 2016.

The CHAIR: Mr Harper just said this assessment, which I just cited and you cite in your letter sent on 30 June, that assessment was completed earlier this year.

Mr HARPER: After a rigorous period of due process.

The CHAIR: I understand that, but the intention to increase the abutment height was something that Mr Draper said was indicated in the initial submission to this inquiry. You had already planned to do that work and now you are using this assessment report, which came after that, as justification for making that decision. Am I wrong in that assessment?

Ms ABOOD: It is an iterative process. The report is the completion of a process. The report is completed once it has been peer reviewed and adopted, but that work informed the design and the design of the dam. It has been ongoing.

The CHAIR: When did you commission this work?

Ms ABOOD: I would have to check but I think it was around 2018.

Mr DRAPER: The relevant fact is that the design work has been happening for quite a long time. The Australian rainfall and run-off guidelines, the design had to follow those and it had to be validated through a more rigorous study that was peer-reviewed.

The CHAIR: I am not questioning that, Mr Draper. It seems to me though that this is different to what was originally flagged in the options paper that was first done and looked at all of the different options and first gave us a sense of the cost around this. I would like to understand how this new design is impacting the assumed cost for this project.

Ms ABOOD: The original design in the task force where we considered all those options, as I said it was the initial climate change and that was back in 2016 and then the new guidelines came in and they were revised again in 2019. The comparative assessment against all the options was based using the same information and then with SEARs that certainly had a requirement there for consideration of climate change and incorporation of management actions into your design and concept. That came after, I guess, development of the strategy. That came post. We were incorporating the information and as I said it is an iterative process in terms of doing the

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modelling, understanding the design and trying to minimise the impact on upstream while maximising the benefits downstream and incorporating that option for climate change.

The CHAIR: This design pours a lot more concrete, I think we can all assume.

Ms ABOOD: Yes.

The CHAIR: What is the guesstimate at this point on potential additional costs for the project as a result of this change?

Mr DRAPER: I think we have always said, and we have said in the evidence to this Committee before, in 2015 the estimate that was used was an early strategic estimate and no work had really been done at that time on the detailed design. It was in 2015 dollars. We always said that the cost would have to be revisited when there was a design that had been validated and we understand what the planning consent process delivers should it be approved, what conditions are around it, that is all going to have to be taken into account in the final cost. It is too early to know that.

The CHAIR: There is no working figure on the project at this point?

Mr DRAPER: There is no figure that we can reliably use to estimate the cost of the project at the moment given how much is at play.

The CHAIR: There is no offset figure yet either that has been agreed?

Mr HARPER: No.

The CHAIR: I might come back to that in a little bit.

The Hon. ADAM SEARLE: In relation to the Aboriginal cultural heritage issues that we have been discussing, can you inform the Committee what feedback on the draft EIS, in terms of Aboriginal cultural heritage, you have received from the Commonwealth?

Mr HARPER: On the Aboriginal cultural heritage alone?

The Hon. ADAM SEARLE: Certainly on Aboriginal cultural alone, but, yes.

Mr HARPER: We have received some feedback. I do not know the details without referring to it.

The Hon. ADAM SEARLE: Is it negative feedback?

Mr HARPER: I do not think—

The Hon. ADAM SEARLE: —does it suggest efficiencies in the EIS or things that need to be addressed?

Mr HARPER: It suggests improvements.

The Hon. ADAM SEARLE: Have you seen that document?

Mr HARPER: I am sure I have, I cannot remember the content of that particular one.

The Hon. ADAM SEARLE: A question for all of you to take on notice; could you supply a copy of that document?

Mr HARPER: I will take it on notice.

The Hon. ADAM SEARLE: What feedback on Aboriginal cultural heritage assessment issues have you received from Heritage NSW?

Mr HARPER: Similar to what you just mentioned earlier about the rock art specialist requirements and some more assessment of anthropological cultural heritage. Plus some other smaller details.

The Hon. ADAM SEARLE: But essentially of the flavour that the EIS is not sufficient and there is more to do, would that be a fair assessment?

Mr HARPER: No. I would say on the flavour that the information exists within the ACHAR report and some of that information was extracted and we are actually looking at providing that visibility to Heritage NSW and unpacking that with them at the moment for their clarity.

The Hon. ADAM SEARLE: Have you received a formal submission from Heritage NSW, likely other departmental documents that we have been discussing, some of which have appeared in the media?

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Mr GAINSFORD: Maybe I could assist with that. At the point in time that we were compiling the information from the different departments the Aboriginal heritage components were not in Heritage NSW. That has recently been changed into the Department of Premier and Cabinet. It was previously sitting within the environment, energy and sustainability group and that was where those comments came from. As I mentioned in the evidence I gave earlier, in the compendium of all of those responses to the draft EIS that was one of the responses that we got and compiled and sent to WaterNSW.

The Hon. ADAM SEARLE: Again, I ask you on notice, to consider providing the Heritage NSW feedback on Aboriginal cultural heritage issues to the Committee. In terms of world heritage values, in terms of that two-page distillation prepared by the department, the document says in relation to world heritage values, this department's assessment is that the EIS has not specifically addressed the impacts on all the attributes of the outstanding universal value and it has not properly addressed the integrity component of the world heritage area, and has not adequately addressed offsets for world heritage values, including the specific need to demonstrate, "at a minimum how the proposed offset will improve the integrity and resilience of the heritage values of the impacted heritage place or property." That is a pretty important consideration in terms of maintaining the integrity of world heritage values. What steps have been taken to address those concerns identified with the draft EIS?

Mr HARPER: We are addressing those directly with the Commonwealth and National Parks line item by line item and identifying if it was not in chapter and appendix related to that protected and sensitive lands area, that we are bringing the information from elsewhere in the EIS document, that is very large, and bringing it into that appendix purposely related for the outstanding universal values and integrity biodiversity Aboriginal cultural heritage and the like. And including protected and sensitive lands for offset consideration is under discussion as well.

The CHAIR: I wanted to come back to this question of cost. I know you indicated that you do not have a cost estimate generally or the offset cost. Minister Ayres was quoted in the *Daily Telegraph* on 20 August. He was reported as saying, "The Minister for Western Sydney, Stuart Ayres, is concerned that huge biodiversity offset costs enforced by government departments and pressure from green groups will make the dam wall project unviable." Has Infrastructure NSW provided a brief or written to the Minister in relation to biodiversity offset costs?

Mr DRAPER: Not that I recall. I do not remember any brief or—

Ms ABOOD: We have not provided any dollars.

The CHAIR: Do you know on what basis Minister Ayres would have been raising in the media concerns that biodiversity offset costs were going to make the project unviable?

Mr DRAPER: I could not speculate.

The CHAIR: Okay. Have you provided any advice to any other agency—the Premier's department, any other Ministers—around the potential biodiversity offset costs?

Mr DRAPER: Again, not that I recall doing so, no. We do not have a basis for doing that at the moment with all the processes going on in the EIS.

The CHAIR: Mr Gainsford, does your Minister have any idea of biodiversity offset costs at this stage?

Mr GAINSFORD: Not that I am aware of, no.

The CHAIR: So you would not be aware of any document or any basis on which Minister Ayres would be claiming in the media that biodiversity offset costs would be so great as to make this project unviable?

Mr DRAPER: No, what we are saying is that we have not written to Minister Ayres about that. That was your question. So Minister Ayres may have—

The CHAIR: Not just written briefs. You also then indicated that you have not provided any such advice to any other agency or any other Minister.

Mr DRAPER: No.

The CHAIR: So there is no dollar figure floating around within the Government around biodiversity offset costs, is my point.

Mr DRAPER: That is a different point to the question that you asked. You asked us what we had provided or discussed with Minister Ayres and we have answered that. Minister Ayres has other sources of advice that we may not be aware of.

CORRECTED

The CHAIR: But there would be no other source of advice that was reasonably able to be trusted about biodiversity offset costs. You are coordinating the project, WaterNSW is developing the EIS, DPIE is making sure that it fits the bill—and there are some questions around potential biodiversity offset costs. There would be no other credible source of information about potential costs of this project or biodiversity offset costs. Am I wrong?

Mr DRAPER: I think you probably are wrong. There are other people in the Government who could have done some analysis and provided advice to Minister Ayres.

The CHAIR: Who would have done that?

Mr DRAPER: Minister Ayres, for example, is within the Treasury cluster. So there are people in Treasury who may have formed a view and provided advice; Minister Ayres may have sought advice from elsewhere. I could not really—you are really asking me to speculate about—

The CHAIR: No, I am not asking you to speculate at all. Have you provided any advice to Treasury about potential biodiversity offset costs?

Ms ABOOD: More on the methodology, not—

The CHAIR: You provided advice on the methodology that would be used? We heard this morning that there was some disagreement about the application of that methodology and the consequences of that with regards to costs. Mr Fleming or Mr Gainsford, has Treasury come to you and asked for any advice in regards to making an assessment about biodiversity offset costs?

Mr GAINSFORD: Not that I am aware of, no.

Mr FLEMING: Not that I am aware of.

The CHAIR: Mr Harper, I cannot imagine that they would have come to you?

Mr HARPER: No.

Mr DRAPER: To be clear, I am not saying that Treasury has—

The CHAIR: No, I understand. I just want to clear this up because it was a pretty substantial story; it was a pretty substantial allegation. At this stage, it seems to be relatively baseless.

The Hon. ADAM SEARLE: We would have liked to have asked Minister Ayres about this.

The CHAIR: I would have liked to have asked Minister Ayres. In fact, the Government threatened that Minister Ayres would be here but he—

The Hon. PENNY SHARPE: He decided not to.

The Hon. ADAM SEARLE: I think it was their proposal leaking.

The CHAIR: We will not put words in Mr Mallard's mouth. So no-one in this room has any idea about how Minister Ayres would have come to the conclusion that biodiversity offset costs could potentially make this project unviable?

Mr DRAPER: We cannot help you with that, no. You would have to ask Minister Ayres.

The CHAIR: Okay. Has anyone in the room received any correspondence from Minister Ayres or his office asking questions about the costings of this project and, in particular, biodiversity offset costs?

Mr DRAPER: I do not recall such a thing.

The CHAIR: Have you had any requests for briefs between now and the middle of August asking for information about biodiversity offset costs or costs generally from the Minister's office.

Ms ABOOD: Not requests, no.

The CHAIR: Okay. I think you made the point this morning, Mr Draper—and I do not want to put words in your mouth—that it is frustrating that some of this information has come out at a time when it does not holistically look at where the project is at and the EIS assessment—I totally get that. There is no doubt some frustration that this information is coming out as well. What actions are being taken, if any, to work out how this information is being made public?

Mr DRAPER: I cannot comment. There is nothing that I can advise the Committee on actions that we have taken from Infrastructure NSW's point of view.

CORRECTED

Mr GAINSFORD: From a department point of view we are conducting some investigations and they are ongoing at this point in time.

The CHAIR: What do those investigations look like? Can you tell us the scope of them?

Mr GAINSFORD: I mean we are obviously looking at who received some of the documentation that was submitted to WaterNSW and looking through the information technology system—the way that information was transmitted.

The CHAIR: Do you have a time line on that potential investigation? When did it commence?

Mr GAINSFORD: It commenced as we became aware of some of these articles in the media.

The CHAIR: These are the more recent leaks—so it only commenced in the past three or so weeks?

Mr GAINSFORD: Yes, that is correct.

The CHAIR: Am I to understand that that is being coordinated by DPIE?

Mr GAINSFORD: We are conducting an investigation. I cannot speak on behalf of other agencies in terms of what they are doing. We are conducting an investigation internally.

Mr FLEMING: And NPWS is part of DPIE.

The CHAIR: Yes, I understand. Mr Harper, are there any internal investigations within WaterNSW?

Mr HARPER: Not of the recent media articles, no.

The CHAIR: Okay, but you have done something in the past around that, have you?

Mr HARPER: A long way back, yes.

The CHAIR: About other leaks of information?

Mr HARPER: Yes.

The CHAIR: Sorry, Mr Draper, I might have missed your comment. You are not conducting any investigations with Infrastructure NSW?

Mr DRAPER: No, we have no investigation underway with Infrastructure NSW. We have no reason to believe those documents emanated from ourselves.

The CHAIR: But I assume you have had access to all these documents?

Mr DRAPER: I probably could have got them if I asked for them but I did not ask for them and did not receive them.

The CHAIR: So outside of DPIE, WaterNSW and NSW National Parks and Wildlife Service, would any other agencies—obviously the Federal department had elements of it—been privy to this information?

Mr GAINSFORD: The agencies that I mentioned before that provided advice to the department, which we compiled, were all copied in to the advice that went to WaterNSW.

The CHAIR: Okay.

The Hon. ADAM SEARLE: Given the sort of breadth of commentary about the things that the EIS either does not do or needs to do more of, we have serious critiques of the biodiversity assessment, the bushfire assessment, the proposed offsetting arrangements, the Aboriginal cultural heritage and World Heritage values—and even hydrology. It says there needs to be further analysis of how to change flow patterns and levels would increase scour and erosion and other aspects to do with hydrology. This is a very significant body of work that still needs to be done. Do you have a time frame in which you might reasonably expect these additional works to be undertaken?

Mr HARPER: Any that are relevant to responding to the comments are underway at the moment.

The Hon. ADAM SEARLE: Sure, I understand it is underway but do you have a time frame?

Mr HARPER: No, I would have to get back to you on that exactly if you are looking for a time frame.

The Hon. ADAM SEARLE: Yes, I just wondered whether it is the end of this year, middle of next year, end of next year—

Mr HARPER: The plan is this year.

CORRECTED

The Hon. ADAM SEARLE: If that is done this year, what is your estimate then, from your perspective, for finalising the EIS and putting it on public exhibition?

Mr HARPER: It is very hard to put a time line on that as we are still working through those comments—we only got them a month ago—to unpack the detail that has been requested or suggested in the comments and also identifying where that detail already exists in the EIS, to some extent.

The Hon. ADAM SEARLE: So if people have missed it, bringing it up front—

Mr HARPER: Yes, we are restructuring the EIS a little bit. It has been valuable in terms of us understanding how the public would read the document so we are restructuring it to bring some of those key issues highlighted in the earlier parts of chapters and making it a bit more navigable, although it is navigated through chapter 1. That is running now in parallel to that—identifying some of the restructure on some of those chapters.

The Hon. ADAM SEARLE: Okay, that is useful. Mr Gainsford, I know this is a difficult question, but we have heard that the full document might be 11,000 or 12,000 pages in its current iteration and Ms Sharpe was asking questions about the minimum exhibition time being 28 days. I think you would not have to be a genius to work out that 28 days is going to be very hard, for even sophisticated operators, to digest that amount of information. Is the department considering an estimated period that might be a sensible and realistic time frame for the exhibition phase?

Mr GAINSFORD: I do not believe that we have identified an exhibition period for this project at this point in time, but, yes, drawing on the references that you were making there, there are certainly a number of major complex projects which we have exhibited in the past for longer than 28 days. That will obviously be part of the consideration we have in regard to this. If the final EIS is received and the exhibition period would take it into the Christmas and New Year period, we are actually obligated to extend the exhibition period under the legislation. It will depend partly on when we receive the EIS, and it will also depend on taking into consideration the public interest and the complexity of the documentation that is received.

The Hon. ADAM SEARLE: At the risk of going over old ground, I want to make sure my understanding of where the evidence today has gotten to. Because there is no longer the adequacy assessment capability that used to exist under part 3A about say, "Well, look this EIS is not fit for purpose", after all the conversations and efforts to reconcile all of the differences, in terms of what then goes on exhibition, we do not know what visibility the wider community will have—do we?—about any unresolved critiques or issues to do with the EIS from different government bodies, State and Federal. Is that correct?

Mr GAINSFORD: My expectation is that we will resolve those issues and clearly we are working with WaterNSW to hopefully address those issues. You are correct, we do not have the ability to stop the EIS going on exhibition, ultimately, but we are working cooperatively with WaterNSW at this point in time. Again, I would refer to my previous evidence that once the EIS goes on exhibition there are ample opportunities for further submissions and further information to be made available around, in this case, the merits of the assessment that has been done.

The Hon. ADAM SEARLE: Sure, but again, in terms of providing easy reading for people in the community and people who are not experts in any of these fields, will there be a document or an appendices that people can go to and go, "These were the issues that were not able to be reconciled", what those criticisms or issues are and where they stem from? Is that information that will be public at the same time as the EIS in some form?

Mr GAINSFORD: While I am not exactly familiar with the way that the draft EIS is being constructed, our requirements actually do require the proponent to address the consultation that they have had with both agencies and the community up to that point and to provide some detail around those issues that have arisen as part of that consultation. I would expect that the EIS would definitely provide some details of that consultation.

The CHAIR: Could I offer, perhaps, Mr Gainsford, an opportunity for you to make this easier for the public and all of us, and simply commit to publishing the feedback that you have received from the agencies to the EIS? Then the public can make a judgement when they see the final as to whether or not they think that has been adequate and they can make submissions to that effect. Would you be prepared to provide those to the Committee?

Mr GAINSFORD: I would have to take that on notice, but what I would say is that the documentation we have referred to a number of times here, in terms of compiling the advice that has come from agencies, is part of an iterative process. There are a number of steps, meetings and advice that happens through this process. It is a snapshot in time, to some extent, and sometimes it is actually not particularly accurate in terms of where the process is at in any point in time.

CORRECTED

The CHAIR: Sure, but the public would then be able to make a judgement on that, that they would not be able to make if they just see the final EIS. I am just offering that. I am asking you to take that on notice, if you would be prepared to publish. Obviously, some of them are already on the public record. I think it is substantially in the public interest that they are out there. Can you confirm that if the House was to pass a call for papers motion whether or not those documents would be considered cabinet in confidence, as most have been when we have asked for these sorts of things associated with this project in the past?

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

The CHAIR: I appreciate that. Mr Harper, I want to follow up on the engagement with the Federal department around the variation. Would you be prepared to provide on notice the letter that WaterNSW refers to? In your letter to them on 30 June, you say "WaterNSW is responding to the DAWE (Department of Agriculture, Water and Environment) request." I would be interested to see the DAWE (Department of Agriculture, Water and Environment) request. I cannot imagine that is a secret document. It seems like a fairly unsurprising process.

Mr HARPER: I will take that on notice.

The Hon. ADAM SEARLE: What correspondence about world heritage value concerns of the impact of the proposal has Government received internationally? For example, in terms of the relevant UN body to deal with world heritage. What are those concerns?

Mr GAINSFORD: I am aware that through the Australian Government there has been correspondence that has been received from UNESCO around the concerns that they have with the proposal and the world heritage impacts. It is through the Australian Government that we have been corresponding. My understanding of those concerns relate to ensuring that there is a rigorous EIS process and a rigorous EIS that addresses some of those concerns around the world heritage impacts. Certainly our discussions with the Commonwealth have been to ensure that the EIS does address those issues. My understanding is that the Commonwealth will provide that final EIS to those UN organisations for their review.

Mr FLEMING: I would have to take on notice whether we have any additional correspondence. I cannot say for certain that we do not, but as Mr Gainsford said, typically the correspondence from the UN bodies—the World Heritage Centre and so on—goes direct to the Commonwealth. I will take on notice whether we have got anything additionally.

The Hon. ADAM SEARLE: In terms of the assessment that the department will do, will you be following any relevant UN assessment guidelines for assessing world heritage matters?

Mr GAINSFORD: Consistent with the advice that has been provided by the Commonwealth and has been incorporated into the Secretary's Environmental Assessment Requirements. We will be conducting the assessment to address those issues and then it would be a matter for the Australian Government to have those discussions with the world heritage commission and others.

The Hon. ADAM SEARLE: Has any of the correspondence you have received on this topic indicated what consequences there may be for the world heritage listing if these assessments are not done properly—or, in terms of, the impacts of the dam proposal?

Mr GAINSFORD: I am not aware that they have raised consequences. I am aware that they have raised concerns.

The Hon. ADAM SEARLE: Just to be clear, you are not aware of any possible consequences for the world heritage listing that might flow from the dam wall being raised? It is not a trick question, I am happy for you to take it on notice.

Mr GAINSFORD: I am happy to take it on notice. What I would say is that my understanding is the department has not received direct correspondence it has been through the Australian Government.

The Hon. ADAM SEARLE: What information or correspondence has Government received? If you need to make inquiries beyond your agencies, I would appreciate that.

Mr FLEMING: Just to clarify your question. I will confirm this and take it on notice as you suggest. I have not seen correspondence from the relevant international bodies talking about consequences. I suspect there has been commentary from others about possible consequences, including, possibly, some of the other international NGOs. But we will take on notice what we have received from international bodies—I think that is what your question was—and provide a response.

The Hon. ADAM SEARLE: Yes. Obviously I just want to get a sense of the totality the of the information and whether there has been correspondence about possible consequences for world heritage listing

CORRECTED

from authoritative international bodies. It may not have come direct to the State Government—I appreciate that—but maybe the Commonwealth has made the New South Wales Government familiar with those concerns if they exist, so I am just interested to what the state of play is there.

The Hon. PENNY SHARPE: This one is for Ms Abood. It is to do with the status of the current arrangements around Warragamba Dam. My understanding is—and we have covered this previously but I just want to confirm this—that the current rules in relation to Warragamba Dam do not allow it to be used for flood mitigation. Given the sort of flood events that we have had, is a consideration of changing the rules in relation to that on the table?

Ms ABOOD: Yes, that has pretty much been a discussion of late because the dam is at 99.9 per cent and it was spilling earlier this week. It is very much part of the discussion at looking at the current arrangements. Under the current legislation, Water NSW, Warragamba Dam is a water supply dam and from a legislative point of view we would need to change the legislation to amend any pre-releases and to operate it as flood mitigation function. I guess the other thing I would caution is that we looked at all of those options in terms of pre-releases, operating the gates differently, whether you could get flood mitigation, but the volume of water that you would have to let out would not be sufficient to create a sufficient airspace to mitigate any significant flood downstream.

There is a lot of work—because that has been around for a long time and every time the dam approaches being near full, that comes up. Certainly from a legislative point of view they cannot do that now. Pending approval for a flood mitigation function in the future, then the legislative amendments, operating license, water sharing plan would all have to be amended to reflect that.

The Hon. PENNY SHARPE: Terrific. Thank you.

The CHAIR: If there are no other questions, is there anything that the witnesses would like to add before we close out the meeting?

Mr DRAPER: No.

The CHAIR: Thank you for attending the hearing. I found it immensely valuable. The Committee has resolved that answers to questions on notice taken be returned within 21 days. I think that there were quite a few. The secretariat will be in contact with you in regard to those questions. Thank you very much.

(The witnesses withdrew.)

The Committee adjourned at 11:58.