

IN-CAMERA PROCEEDINGS BEFORE

SELECT COMMITTEE ON FLOODPLAIN HARVESTING

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FLOODPLAIN HARVESTING

CORRECTED

At , Via Video conference, Sydney on Thursday, 7 October 2021

The Committee met in camera at 1:30 pm

PRESENT

Ms Cate Faehrmann (Chair)
The Hon. Mark Banasiak (Deputy Chair)
The Hon. Lou Amato
The Hon. Sam Farraway
The Hon. Ben Franklin
The Hon. Rose Jackson
The Hon. Adam Searle
The Hon. Penny Sharpe
The Hon. Mick Veitch

Evidence in camera by **CONRAD BOLTON**, Chair, Healthy Floodplains Review Committee, affirmed

The CHAIR: Mr Bolton, just before we get into whether you make a short statement to the Committee to begin with, you just broke up a bit there. I might just get you to turn your video off. I think it will be a little bit better going that way, if that is okay. If you turn your video off you will still be able to see us. We will see how that goes. Can you just say a few words, Mr Bolton?

Mr BOLTON: Yes. Can you hear me all right, Chair?

The CHAIR: Yes. I think that is better, actually. Would you like to start by making a short opening statement for the Committee?

Mr BOLTON: Yes, thank you. Thank you, Chair and members, for the invitation to participate in the inquiry into floodplain harvesting. By way of experience, I have chaired various bodies: The Aerial Agricultural Association of Australia; the Namoi Catchment Management Authority in 2011, which was absorbed into the North West Local Land Service, which I chaired until March 2020; I have 12 years local government experience as an elected member between 2004 and 2016 and served four terms as mayor of the Narrabri shire during that time; I sit as Chair of the north-west Westpac Rescue Helicopter Service, as well as a director on the Westpac Rescue Helicopter board. I have four children requiring ongoing conflict resolution and I have been married for 40 years with no conflict resolution requirements—I do what I am told. I have a farming operation in the north-west that includes irrigation and have flown agriculturally most of the farming enterprises in the north-west over a 30-year aviation career.

I currently chair the Healthy Floodplains Review Committee on behalf of the State and have held this position since early 2014. The [inaudible] is to ensure that floodplain harvesting registrants receive procedural fairness and natural justice regarding the department's preliminary determinations of either eligibility to participate in the floodplain harvesting licensing or their proposed floodplain harvesting entitlements and to make sure that the floodplain harvesting policy, associated supplementary policy and guidelines are implemented fairly and consistently. The committee's membership has a representative from the agricultural industry, the irrigation industry and environmental groups. The construct of the committee is healthy as it has a natural internal self-check due to the membership so no one industry organisation can create bias in regards to the determinations of the committee.

The committee is a forum secured by a confidential deed poll for registrants that disagree with the department's preliminary determinations to seek amendments as there are no other appeal mechanisms available to them. We are not a policy advisory forum or a forum that provides a voice to members' organisation groups. The committee has access to any technical, legal and independent expert advice and operates using a consensus decision-making process. To date we have dealt with over 400 submissions with thousands of issues embedded within those submissions with farm scale validation being a large percentage of those. Only 25 submissions have not reached a consensus and this was a result of a representative organisation not agreeing with Government policy.

There has been an independent probity review on departmental processes, completed in 2019, which confirmed the processes being utilised were sound. There is another currently underway and due for completion that will address whether, one, the department has gathered sufficient information under the farm scale validation process to enable the Minister or her delegate to make a fair, fully informed and reasonable determination of the share components of the individual floodplain harvesting access licence; two, the processes the review committee utilised to determine submissions referred to it; and three, the membership of the committee and the processes relating to the appointment of members.

Although the meeting procedures of the committee are informal, it has a high level of formality in regards to pecuniary and non-pecuniary declarations. I allow members the freedom to explore in depth the issues we are dealing with to assist in a consensus outcome and allow applicants every opportunity to provide additional information should their submissions be deficient. I believe all members have found the process of this committee interesting, educational, intense and satisfying. It has been my pleasure to chair the 50-odd meetings we have had to date. Thank you.

The CHAIR: Thank you, Mr Bolton. There was an occasional little glitch in you coming across then. I think the secretariat will contact you, if that is okay, to get a copy of that opening statement to assist Hansard. That will take place after this. We will see how we go with you coming across clearly. We will kick off with questions from the Opposition. Mr Mick Veitch.

The Hon. MICK VEITCH: Hello, Conrad. It is good to see you, no matter how it is coming across.

Mr BOLTON: How are you, Mick? It has been a while.

The Hon. MICK VEITCH: Yes, it has been a while. Conrad, I have one question and then I am going to hand across to my colleague Rose Jackson. When you were initially appointed to this committee, were you provided with instruction from government around your legal obligations to the committee essentially around the governance of that committee?

Mr BOLTON: Yes. There was a trip to Sydney, and there were several quite intense training meetings that we had with the rest of the committee prior to getting into any of the meat in the sandwich, so to speak, Mick.

The Hon. MICK VEITCH: I will leave it there. Our time is pretty short, comrade, so I will hand over to Rose.

The Hon. ROSE JACKSON: Thank you, Mr Bolton, for coming along today and for your opening statement. You mentioned in your opening statement that whilst the meetings are informal, there is actually quite a lot of formality around how things like declarations of interest are managed. Could you talk about how that does occur, because obviously decisions are being made that affect people's financial situations and things like that? What is the process for declaring conflicts of interest? Is there any process, for example, for declaring standing declarations or policies around how that is managed?

Mr BOLTON: The pecuniary interest issues have been very minimal, Rose. In saying that, the Farmers Fed have a standing conflict of interest in regard to relationship—a cousin, I believe, of a committee member. There is a standing non-pecuniary interest in regard to that. I myself have a pecuniary interest in regard to the modelling on the Barwon-Darling because I am also an irrigator as well on the Barwon River. When we get to the modelling outcomes—because there are some trigger flows that happen downstream as a direct result which will be affected directly from them—I recused myself from the meeting and we nominated a Chair to take over until that has been dealt with. Other than that, there has been quite scant or basically nil pecuniary interests [inaudible]. On the agenda, obviously one of the first items addressed—

The Hon. ROSE JACKSON: Sorry, I think you are—

Mr BOLTON: —is usually pecuniary and non-pecuniary issues.

The CHAIR: Mr Bolton, with the secretariat's guidance, we might need to change to the phone because we are going to get little bits and pieces of this. You just broke up a number of times. Do you have the number to the landline to call? You know what to do, apparently.

Mr BOLTON: I will come out of this and ring with my phone.

The CHAIR: Excellent. We will hear you in a minute. We will obviously pause the clock. I was assured that he was well-versed on what to do if he had to do this and he had the telephone number handy. We will just hang 10, as they say.

Mr BOLTON: Okay, I am back.

The CHAIR: Mr Bolton. Yes, great. You can hear me okay?

Mr BOLTON: Does that sound any better?

The CHAIR: Yes. It is a little bit telephone-crackly, but hopefully you will not cut out in terms of internet connection or whatever you are relying on.

Mr BOLTON: There we go.

The CHAIR: Rose, over to you. I think Mr Bolton was mid-sentence, but maybe we need to start that again.

The Hon. ROSE JACKSON: No, that is okay. I will follow on from the parts of your answer that I did get, Mr Bolton. You were suggesting that to the extent that members had pecuniary interests, which was quite limited, they are declared and they do recuse themselves from the meeting. Is that correct?

Mr BOLTON: That is correct.

The Hon. ROSE JACKSON: And to the extent that they have non-pecuniary interests—for example, they know the people making the submissions or have some other relationship with them that is not a financial relationship—how is that managed?

Mr BOLTON: No, they can stay in the meeting for that period. It is really when it looks like there is some sort of gain personally that it becomes a real issue. Otherwise, if it is non-pecuniary, I do not have an issue with that. It just depends on what it is, Rose. But, like I say, it has been extremely limited.

The Hon. ROSE JACKSON: Those kinds of decisions about the extent of the interest and how that might impact on decision-making, you make them on a case-by-case basis as Chair. Is that correct?

Mr BOLTON: That is correct. The only pecuniary interest was someone's cousin does a bit of modelling—as in floodplain harvesting modelling—and provided some detail, which we deal with.

The Hon. ROSE JACKSON: In the training that you referred to in my colleague's Mr Veitch's question—when you came to Sydney—it was clear to all members of the committee what an interest that they should declare looks like? I know you are saying that not many are declared. But that does not necessarily mean that not many exist, it is just that they are not being declared. Do you feel as though everyone fully understands what they need to disclose?

Mr BOLTON: Yes. We have been together for several years, most of us. We know each other pretty well, I guess, and what our circumstances are. If there are issues, I certainly have not been made aware of them. It is really the responsibility of individual members to declare their pecuniary interests, not the Chair. The Chair can deal with it but it is on the individual members to declare their pecuniary interests at the start of the meeting.

The Hon. ROSE JACKSON: One last question before I hand over to my colleague Ms Sharpe. I want to ask what the process was for your appointment as the independent Chair of this committee. I understand you have quite a lot of experience, which you mentioned in your opening statement. How particularly did your appointment as the independent Chair of this committee come about?

Mr BOLTON: Rose, I cannot remember if I was asked by the local member if I was interested in chairing it or whether I received a call from the department asking if I would chair the meeting. It was back in 2013 and the committee at that point seemed like just something on the side, not something incredibly important, as it has turned out to be. I checked back through my emails trying to find some sort of reference as to how I was assigned or asked to take up the Chair position, but, sorry, can't answer it.

The Hon. ROSE JACKSON: That is okay. Thanks for trying your best to answer.

The Hon. PENNY SHARPE: Thank you, Mr Bolton, for coming along today. In some of your evidence so far I think you said there have been 400 submissions in relation to the issues that your committee has had to deal with. Am I right in saying that those 400 submissions are 400 requests for an alteration of the draft determination by the department?

Mr BOLTON: Some of the submissions are quite lengthy. There are 400 individual enterprise submissions, I guess. If someone has separate farms then each farm will be treated as a separate submission, and within those submissions there is a multitude of issues that they are asking for an amendment on.

The Hon. PENNY SHARPE: Mr Bolton, are you able to tell us how many enterprises there are altogether that are included in the process that you are going through?

Mr BOLTON: Outside of the submissions, people are quite happy with the result the department came to. There are 500-plus—I am only guessing, sorry, Penny, because we are only focused on what comes at us.

The Hon. PENNY SHARPE: That is okay. If you could take that on notice, that would be really helpful.

Mr BOLTON: Sure.

The CHAIR: Thanks, Penny. Unfortunately the time has expired. Mr Bolton, what was the genesis of the committee? You said earlier that you had been asked to chair something but it was not really what it became. What was it originally?

Mr BOLTON: It is very much what it was intended to be. I guess we did not realise the magnitude of work that was going to be involved in it. It is pretty well described in the Act, or the regulations we have got pretty well describe what the committee purpose is and that certainly has not changed. What changed—

The CHAIR: Okay.

Mr BOLTON: Yes, so they have not changed. It is exactly [disorder].

The CHAIR: Sorry. Did the power or the terms of reference change, or what you are saying is it is under the regs or the Act?

Mr BOLTON: It is pretty much under what is described in the regs and the Act, so our duties have not changed from that.

The CHAIR: Have there been changes to the committee make-up over time?

Mr BOLTON: No. They have remained pretty well in line as defined in the Act. I do not know if it is the Act or the regulation that describes it. I thought it was the Act, but anyway.

The CHAIR: I mean in regard to individuals.

Mr BOLTON: They have changed. An Irrigators' Council representative had to retire because he became a director of one of the larger cotton enterprises. He had to step back from the committee because it became a direct conflict for him, and NSW Farmers had a change at the beginning of the year of their representative.

The CHAIR: With this appeals process, NRAR has done its big assessment. This is an independent body with lots of resources and lots of expertise, and the Department of Planning, Industry and Environment [DPIE] also make recommendations. Why would this committee, made up of three stakeholder interest representatives as well as you as an independent Chair, be able to decide ultimately that the decision rests with you—is that correct—to make final recommendations as to the allocation allowed? Am I seeing that right?

Mr BOLTON: The final recommendations that we make go through the executive secretary for sign-off. Our job is to make sure that the policies have been fairly applied. We are basically an oversight committee probably more importantly than a decision-making committee, other than supporting or suggesting amendments to the department's position in regard to the submissions.

The CHAIR: They go to Mr Bentley. Is that correct?

Mr BOLTON: Yes.

The CHAIR: Has Mr Bentley sent any of those appeals, which I understand are numbering in the hundreds—that is what you are referring to—back for consideration?

Mr BOLTON: No.

The CHAIR: Have you seen a difference in the number of appeals over time being submitted to the review committee?

Mr BOLTON: Yes. The department sought a review on the processes that were through Alluvium, which is an independent contractor that supplies information in regard to modelling and things like that, to have a look at processes and fairness in regard to the department's methodology on how they were ratifying the farm-scale validation process. What they found is that there was no recourse for the farmers to ask for or seek amendments. That was a recommendation that was made by Alluvium, the department took it up and our workflow went through the roof.

The CHAIR: Just to be clear on that, you said earlier that the purpose of the committee is well laid out in the Act and the regs. After the Alluvium report, which found that there was no avenue of appeal for farmers, who made the decision that that appeal—the appeal for irrigators—would then go to your committee? How was that decision made?

Mr BOLTON: That would have been up the chain for the department to accept that. I do not know if it went through the Minister or what. I have no idea. I just know that that was an accepted method and it bode well towards natural justice.

The CHAIR: In other words, just to be clear, it is a massive change in the remit of the committee. Was there a change in the regulations or was there any kind of legislative change for your committee to be able to hear those appeals and then do all the necessary work and make recommendations to DPIE? Or did that take place in the terms of reference that the committee drafted for that?

Mr BOLTON: The terms of reference never changed. It has always been a body to allow for an appeals process should there be an anomaly there that maybe is not covered by policy, or someone is trying to get some sort of amendment that just was not clear for all bodies that we were dealing with that came through to the anomalies committee. So the terms of reference never changed. They were just expanded after the Alluvium suggestions that there should be a more formal process for submissions to be made for amendments.

The CHAIR: Were irrigators and landholders notified of the ability? They must have been notified of a change formally in some way. How were they informed to be able to make these appeals?

Mr BOLTON: Letters went out. Those letters, which started with the Gwydir and the Border rivers, went out seeking should anyone like to make a submission and supply their evidence to support those amendments. Initially it was a little bit boggy because the committee, in those letters to the growers, did not quite define exactly what sort of evidence it needed to help with the determination and provide a recommendation. By the time we got to the Namoi, which is a large valley, we had a pretty concise list of evidence that was required to be provided. It

does not mean the Gwydir and the Border did not provide the same sort of evidence; it is just that we had to go back to the applicant two or three times to make sure that we picked up the relevant information that was needed to help with the decision.

The CHAIR: Thank you. My time is about to expire. When you are looking at handing out these licences for the existing works, it is your understanding that they will all be compensable. Is that correct?

Mr BOLTON: No. This is the new licence regime, is it?

The CHAIR: Thank you, Mr Bolton. We will move to questions from the Government.

The Hon. BEN FRANKLIN: I am just checking that you did not have another follow-up question that you wanted to ask. It sounded like you were going somewhere with that. If you wanted to finish that, that is fine.

The CHAIR: No, that is okay.

The Hon. BEN FRANKLIN: Thanks very much for being here, Mr Bolton. It is nice to speak to you again.

Mr BOLTON: No worries, Ben.

The Hon. BEN FRANKLIN: We have had a little bit of a discussion throughout the inquiry about the historical methods for assessing floodplain harvesting taking from 20 or 25 years ago. Is that something that your committee has considered and, if it is, what methods you might have used and what you think the most accurate way of estimating those issues is?

Mr BOLTON: I think one of the biggest issues—I remember the aircraft when it was doing the lidar surveys back in the early nineties, because we had to dodge around it. We were busy spraying crops and, of course, that aircraft was at the same or just above the same height as we do our turns and things like that. I remember the plane that was bubbling through, doing its grid search or lidar assessment. One of the problems, and this is one of the biggest things that—the lidar is quite accurate. It does have an issue in regard to accurate survey of dam capacity.

The reason being is that—and I remember it was flying through. Obviously we were busy and it was the cotton season, so people had water in the dams. So when the lidar aircraft flew over, water in the storage obviously gave a false reading so that the storages ended up having less capacity, from the department's point of view, as a result of the lidar than was actually there. That was probably a good initial first step to find out what the capacity of the valley was. But it needed to be ratified or qualified through the process of what we have been through on the farm validation process. The evidence that we have asked for and required has now put more succinct or accurate data into the modelling, so the outcomes will be a lot closer to what they need to be. Does that go to your question, Ben?

The Hon. BEN FRANKLIN: It does in terms of the first part. The second part is how do we accurately estimate what take there has been when it is 20 years after the fact?

Mr BOLTON: As a result of all this, the modellers—and if you have spent time with a modeller, you know they are pretty intense—will come up with the figures at the end off all this data. It has been quite extensive, as you can appreciate. They will come up with a figure, but it will not truly be properly assessed, and this means that there will be more data coming in until we have flood events with metering devices that can actually realistically and properly measure inflow from a flood event.

The Hon. BEN FRANKLIN: That gets to the next question I was going to ask, which was could you speak to your views about the importance or otherwise of establishing a metering and licensing regime and what flow-on effects that is likely to have broadly in terms of providing certainty, and potentially what impact that will have on the work that you do on your committee?

Mr BOLTON: It is sort of like an opinion part that we do not actually deal with on our committee. That is sort of like a result of the work that we are doing, Ben. We are helping to qualify the actual infrastructure that is in place that not only has the ability to take but also to impound water. Once you qualify—

The Hon. BEN FRANKLIN: Let me put it—

Mr BOLTON: Yes, put it in a different way.

The Hon. BEN FRANKLIN: I was just going to say, let me put it another—

Mr BOLTON: Once you qualify that—

The Hon. BEN FRANKLIN: Please, finish the sentence.

Mr BOLTON: Sorry. Once you qualify that, then you know you have got a very good assessment on ability to harvest floodplain waters. You have also got a very good assessment or knowledge on ability to impound the water. At some stage that water coming onto the farm, whether it is at the lift pump at the storage or—it has to be measured. As long as that is in place I think you will end up with a fairly robust outcome.

The Hon. BEN FRANKLIN: Do you think it is likely that there would then be fewer issues referred to your committee when that sort of system is in place?

Mr BOLTON: Most of the issues have already been referred, dealt with and moved on. It will only be if new evidence comes in. We actually expect our committee to finalise its duties in June of this year but it has been delayed. It is probably a good thing it has been delayed. There are probably a few things that the department was spending 18 hours a day trying to get sorted, which has taken a little bit of pressure off them, which is a good thing as well. So the extra time has probably come in handy for them because we are basically at the backside of the work that is required of this committee. We have got a little bit of Macquarie farm scale validation stuff to finalise, and the Namoi modelling and the Barwon-Darling modelling has not been finalised either, I believe. The bulk of the work is finished and we will not be going back there unless there is a change in policy.

The Hon. BEN FRANKLIN: What sort of time frame do you think you would need to finalise that work, Mr Bolton?

Mr BOLTON: We expect to still be dealing with outlying issues probably up until June next year.

The CHAIR: Thank you very much, Mr Bolton, for your time. If you have any questions on notice or if there are any supplementary questions, the secretariat will be in touch with you about that. Thank you, once again, for persisting with the technology and for appearing before the Committee today.

(The witness withdrew.)

(Short adjournment)