

**REPORT ON PROCEEDINGS BEFORE**

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

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

**CORRECTED**

**Virtual hearing via videoconference on Monday 21 February 2022**

**The Committee met at 09:30.**

**PRESENT**

Mr Justin Field (Chair)

The Hon. Wes Fang  
The Hon. Shayne Mallard  
The Hon. Taylor Martin  
The Hon. Rod Roberts (Deputy Chair)  
The Hon. Adam Searle  
The Hon. Penny Sharpe

\* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.

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**The CHAIR:** Welcome to the seventh hearing of the Select Committee's inquiry into the proposal to raise the Warragamba Dam wall. Before I commence, I would like to acknowledge the Gadigal people, who are the traditional custodians of the land on which Parliament sits. I also acknowledge the traditional custodians of the various lands from which my colleagues are joining today, as well as people participating in today's hearing. I would also like to pay my respects to Elders past, present and emerging, and extend that respect to all Aboriginal people who may be present today. Today's hearing is being conducted as a fully virtual hearing. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link provided by the Committee secretariat. Today the Committee will first hear evidence from the Colong Foundation, then hear evidence from agencies that have been responsible for or involved in the review of the environmental impact statement for the proposal.

Before we commence I would like to make some brief comments about the procedures for today's hearing. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the virtual hearing. Therefore, I urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. 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 these circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days.

Today's proceedings are being streamed live, and a transcript will be placed on the Committee's website once it becomes available. Finally, a few notes on virtual hearing etiquette to minimise disruptions and assist our Hansard reporters. Can I ask Committee members to clearly identify who questions are directed to and could I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Please remember to turn your microphones back on when you are getting ready to speak. If you start speaking whilst muted, please start your question or answer again so it can be recorded in the transcript. Members and witnesses should avoid speaking over each other so we can all be heard clearly. I remind members and witnesses to speak directly into the microphone and avoid making comments when your head is turned away.

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**MR ANDREW CHALK**, Director, Chalk & Behrendt Lawyers and Consultants, Colong Foundation for Wilderness, sworn and examined

**The CHAIR:** I now welcome our first witness, Mr Andrew Chalk. Would you like to start by making a short opening statement?

**ANDREW CHALK:** I will, Chair, thank you. Firstly, thank you to the Committee for the opportunity to speak today. I am here in a fairly narrow respect on behalf of the Colong Foundation; that is, while the Colong Foundation has made a very detailed and lengthy submission on the environmental impact statement [EIS] for the dam, my role in that was limited to looking at issues around whether the EIS itself met the legal requirements for an EIS under the Environmental Planning and Assessment Act. So while the Colong Foundation's submission dealt with many other aspects of the EIS, my comments will be really limited to the legal aspects. I should also say that the Colong Foundation has waived privilege in the advice we have provided to it in relation to the validity, if you like, of the EIS, and I am authorised to speak on those aspects.

The crux of the advice that we gave the foundation, and which appears in large part in the submission that they made, was that the document that was exhibited as an EIS does not meet the legal requirements. The essential reason for that is that there were key and critical parts of the proposal that was put forward that, as yet, have not been resolved or defined in a way that would allow an effective assessment of the impacts that the proposal would have. In brief summary, the elements that go into determining the performance of a dam in a flood in their previous form comprised the amount of water coming down the river or the stream; the height of the dam wall or, more specifically, the height of the spillway; whether there are openings in the wall—apertures, slots, conduits—and where those apertures are positioned and their size, and also whether they are gated in order to allow the dam actually to be operated; and thirdly, if they are gated, whether or how those gates are actually operated in the event of a flood.

In the current instance, the proposed height of the spillways has been identified. But the other two critical elements, the apertures or openings, have not been determined—whether they are gated or not and, assuming they are to be gated, what the operating procedures for the dam would be. Those two elements are absolutely critical to being able to determine what impacts the proposed new dam will have on both the upstream and downstream environments. In effect, if a development has three parts to it, the current EIS really only effectively deals with one. In those circumstances, it sits so far outside what might reasonably be expected for such a critical development, given the potential impacts that it is intended to either ameliorate or potentially cause. For those reasons, in a nutshell, we just say that it does not come close to meeting what is a very high bar for saying that a document does not constitute an EIS. I might leave it there in opening.

**The CHAIR:** Thank you, Mr Chalk. I might open with some questions. My reading of the advice that you have provided to Colong, if I can summarise and get you to respond to it, is that basically the proponent has failed to meet the requirements of the planning law in New South Wales about what should be included in an EIS. Therefore, it is impossible for the planning Minister to lawfully make a decision about this project, given those inadequacies. Is that correct?

**ANDREW CHALK:** In summary, that's correct. The project is defined as including both the physical infrastructure and how it is operated. As I have just mentioned, the key aspect of the physical infrastructure aside from the height of the spillway, which is what gates or apertures there will be in the wall, has not been defined. Therefore, you do not get to the second stage of how you are going to operate it. At very best, if it were just a weir, you could get approval to construct it as a weir. But that is not what is being proposed here.

**The CHAIR:** So, the EIS does articulate impacts upstream and downstream. It articulates flood mitigation likely outcomes. But, if I am understanding you correctly, it is actually impossible for the decision-maker to make a determination about whether or not those claims are accurate or reflect the full extent of impacts because they have provided no detail about how the actual dam wall would operate in a flood.

**ANDREW CHALK:** That's correct. The EIS poses three options. In relation, for example, to openings, they say, "We might build openings or conduits that are gated and where those gates can be operated, we may just leave the conduits open so that once the water reaches a certain level it flows out as fast as those conduits will allow. Or, thirdly, it may be a combination of the two." But the essential point is: If you put in an obstruction in the middle of a river, then the only way you are going to know what effect it is going to have upstream or downstream is by the technology that allows the flows to be controlled. And if they haven't decided whether or not those flows will be controlled and, if so, how, then it is impossible to work out the upstream or the downstream impacts, for that matter, other than on the assumption that it is just a weir.

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But that is not what they have done in their EIS. When I say "a weir", I mean a complete blockage of the river to a certain height so that the water can do nothing but flow over the top. For a piece of infrastructure that is intended to cost so much and that is to have, it is said, such an important and dramatic impact on how floods occur in western Sydney—or the impact it is going to have on Aboriginal cultural heritage upstream, as well as biodiversity and vegetation upstream—the idea that these fundamental elements haven't been resolved makes it impossible to assess those impacts.

**The CHAIR:** Just one more question from me before I hand over to others. What are the legal consequences should the planning Minister approve this project on the basis of the current EIS?

**ANDREW CHALK:** I think inevitably there would be a challenge to it, and the Minister would be left in the position of having to defend why a project that left two out of three critical elements unresolved has been given approval. I know there is some suggestion that a solution to that might be by the path of producing a preferred infrastructure report, but that misconceives the role of those reports. They are really meant to be the fine tuning of a proposal based on the submissions and reflections and the work that comes out of the EIS, and the responses—the public responses and departmental responses—to them.

But if you haven't defined the critical elements of the project, you cannot really play catch-up in the preferred infrastructure report and hope that that will be adequate, not least because it is a fundamental requirement that you have a proper EIS exhibited. If the EIS hasn't met the secretary's requirements, which we would say is the case here, then you just really don't get beyond that point. So I cannot see the Minister's decision to approve on the current EIS being valid. I think the answer really is essentially that WaterNSW needs to go back and think through what it actually wants to do and how it will do it and what the operating procedures and protocols would be, and then put that on exhibition. It doesn't mean starting again, but it does mean a new EIS and a new process if it is going to be done validly.

**The Hon. PENNY SHARPE:** Thank you very much for coming in today, and thank you for the information. In particular, I just wanted to get you to outline to the Committee why you believe that the Secretary's Environmental Assessment Requirements haven't been met. Can you take us through why you believe those haven't been met?

**ANDREW CHALK:** The first one is that the—and it is requirement 2.1 (b):

The Proponent must detail a framework for managing water releases from the dam that are capable of meeting the objectives of the project (in terms of flood mitigation), ensures impacts to upstream and downstream areas and ecosystems are minimised. The framework shall include consideration of the potential rates of rise and fall in the river, timing of water releases. These shall include consideration of antecedent, conditions within the river, flooding impacts, and transparent and translucent flows.

The requirements require detail about the project. As I have outlined before, if two of the three fundamental aspects of the project have not been defined, you do not get to that most basic of requirements.

But there are other failures in terms of meeting the SEARs. One is that the proponent is required to consider not only alternatives to the project—which might, for example, be a better road network to allow escape, or dredging the river to improve flows—but they are also required to consider what the options are within the project. In other words, let's assume we are going to raise the dam wall or we are going to operate in a particular way. What are the alternatives to how we operate it? Again, if you haven't defined how you can operate it, you just don't get to defining what those options are. The irony is you probably couldn't build a granny flat in western Sydney without hydraulic engineers' reports on what your options are. This is a project that is meant to secure the safety of western Sydney in the event of a serious flood, and yet these core issues haven't been determined.

**The Hon. PENNY SHARPE:** Thank you for that. I just wanted you to outline that. That has been helpful. The other part of this, of course, is—in terms of what the Government does from here, they are basically heading towards doing a preferred infrastructure report. Again, can you just explain to the Committee? I mean, I accept what you have said which is that the EIS is inadequate so in some ways they really should not be proceeding at all. But is it your understanding that really the way the Government is trying to deal with the considerable criticism of the EIS, and the likely impacts, is through this slightly separate process now which is the preferred infrastructure report? Can you just take us through, I suppose, the key decision-making points in where that fits in it the approval process? Why is it outside the Act which I think that is basically your assertion?

**ANDREW CHALK:** Probably the fundamental reason that we say it is outside the Act is that an important part of the Environmental Planning and Assessment Act, and one of the consistent themes of the Act, is public participation. It is one of the objects of the Act and it has always been there. Admittedly State significant infrastructure, as part 5, Division 5.2, eats into what otherwise would be the normal public participation requirements. That is in one sense why the EIS process, which is so important as really the only opportunity that the public gets to look at what the Government is proposing to do or what the proponent is proposing to do, if the scheme is, essentially subverted by putting in a minimal EIS, it does not detail critical aspects, and then slots them

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in down the track at the preferred infrastructure stage, which does not have to be exhibited, you really cut significantly into people's ability to comment on the project, including experts and other departments for that matter.

Now, I should add here that the impacts will not only be upstream from the operation—depending on how they ultimately decide to operate the dam in a flood—there will be people downstream whose properties will be inundated for longer than if this wall was built. So, there will be losers and winners downstream as well. And yet they will not have the opportunity to comment on, you know, who should win and who should lose because they will not get to see the operating protocols in advance of the project proceeding, if that were a lawful way to do it.

**The Hon. PENNY SHARPE:** So, essentially, the Government is looking at doing this preferred infrastructure process which carves out, if I understand what you are saying correctly, public input into that process. The Minister could still basically approve the project—leaving aside the fact that you think it could be challenged and those kind of things—but the process as you have described it means essentially the Minister could still go ahead and approve the project. Is that right?

**ANDREW CHALK:** Well, he could attempt to. I am not saying the chance—

**The Hon. PENNY SHARPE:** There would probably be a challenge, sure. Sure. I get that. The backwards and forwards—I mean the key issue here is, it is a requirement for legislation to change the operational aspects of the wall if they are to use it for flood mitigations, isn't that correct?

**ANDREW CHALK:** So, I understand that and I gather Minister Ayres may have made a comment to that effect and that is also relevant because to the extent that it cannot be used for flood mitigation at the moment—and I am not saying that is the case, it is not something that I have looked closely at—but the premise of the whole application is that no, this project will not be used for storage or water supply; that its function is purely flood mitigation. If that is not the case, and legislation is required to address it, then yes, you would assume that the legislation should precede certainly the approval of the project or, at worst, make the commencement of the project conditional on the passage of that legislation.

**The Hon. PENNY SHARPE:** Yes, thank you. If others have got questions—I have got more but I am happy to see if anyone else has any at this point.

**The CHAIR:** I ask Government members if they have any questions. I might flag we might spend a few extra minutes with Mr Chalk since we started late. Government? Any from you?

**The Hon. TAYLOR MARTIN:** Not from me, Chair.

**The Hon. PENNY SHARPE:** If that is the case I will jump in. Thank you. I know that there has also been in concerns about the way in which the summary report of submissions to the EIS have been dealt with and have been raised by Colong, and that really deals with about over 500 submissions that have not been properly addressed. Do you want to take us through that issue, please, Mr Chalk?

**ANDREW CHALK:** So essentially what happened there was that I think the Colong Foundation set up a website that gave people the opportunity of making submissions via that site. I think there are just over 500 submissions made in that manner. The department decided not to treat them as submissions but instead to treat them as what it was calling feedback. Two grounds were given, as I understand it. One that was that the proper or a disclosure of political donations had not been in the form that the department preferred, and the second was that the Privacy Act requirements where the maker of a submission would tick how they wanted their privacy treated and an acknowledgment of the department's terms had also not been met.

We would say that neither of those are valid reasons to reject the submissions. Firstly. There is no such thing as a feedback under the Environmental Planning and Assessment Act—it is either a submission or it is not. In relation to the political donations. Even if a donation is not declared it is still a submission. It may have criminal consequences for the person making it who does not disclose, but the submission still stands. It obviously goes to the weight that is given to it. In this instance though the declaration, if you like, if it was made on the Colong's website, was wider than what the department required. So the fact that the department required, asked for, required a narrower declaration, more limited declaration, does not avoid the fact that a wider one was given. In relation to the privacy issue, submissions contain very little private information, other than the name of the person making the submission. As you know, they are just expressions of opinion. So those could very easily be dealt with, if need be, by just deleting the person's name on the assumption that they may not want it published. There is no basis for not treating such a significant number of submissions as submissions.

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**The Hon. PENNY SHARPE:** Thank you for that. I have just got one more issue, which is I understand that you have provided legal advice in relation to these matters and you have been talking about that a lot. Are you okay to table that for the benefit of the Committee?

**ANDREW CHALK:** Yes, I have got no problem with—there was a written advice of 20 January 2022. There is no difficulty tabling that.

**The Hon. PENNY SHARPE:** Terrific, thank you very much. If we can get a copy of that that would be very helpful for the Committee. That is it from me, Chair?

**The CHAIR:** I might just check with Government members if there are any last questions, If not then thank you very much, Mr Chalk.

**The Hon. WES FANG:** No, I was going to indicate Chair that we have been listening intently and are happy with what we have heard so far.

**The CHAIR:** Mr Chalk, thank you for your evidence today and for agreeing to provide that document. The secretariat will be in touch about that, thank you for your time.

**ANDREW CHALK:** Thank you, Mr Chair.

**(The witness withdrew.)**

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

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

**The CHAIR:** Do you want to make a short opening statement?

**SIMON DRAPER:** Thanks, no we do not have an opening statement today.

**The CHAIR:** Okay, thank you. I might commence with questions, if I could. We have just received evidence from a Mr Andrew Chalk, who has provided legal advice to the Colong Foundation. The suggestion that he has made, and his advice to the Colong Foundation, is that the EIS fails to fulfil the requirements of the Secretary's Environmental Assessment Requirements [SEARS] for the project. This issue has come up before within the Committee, including the leaking of information from various government agencies that suggested, as far back I think as 18 months ago, that the draft EIS was inadequate in terms of the secretary's environmental reporting requirements. Could I just ask you to provide a comment or response on this legal advice that makes that suggestion that the SEARS had not been met by the EIS?

**SIMON DRAPER:** I will go first then Maree might want to comment as well. Obviously we have not heard that evidence. I have not seen anything from the gentleman you are referring to. In any case, we are probably not in the best place to comment on whether the EIS meets the requirements. I mean, obviously the view of those who submitted the EIS at the time was that it did meet those requirements. We are aware that there was a lot of engagement leading up to the submission and exhibition of the EIS, and it was checked by the Department of Planning, so on that basis there was a prima facie view that it does meet the requirements of the SEARS, but clearly people can make submissions about that, and the department and its Minister can consider those.

**The CHAIR:** The other project is in the hands of the planning department and the planning Minister. The proponent WaterNSW has provided that EIS. Other agencies have commented. Can you explain your role with this project going forward?

**SIMON DRAPER:** Going forward. Maybe again I will start and Ms Abood can add to it. Our role generally is, as the coordinator of the overall Hawkesbury-Nepean flood mitigation strategy which has nine elements to it. The dam is one of those elements. I will not go through the elements and waste the Committee's time as I think we have been through that before. But the dam is one element. The proponent of the dam is, as you said, WaterNSW. We will continue to play a coordination role of this with all the other elements as well, provide advice and input as do other agencies on the way through. As I understand it, it is intended that it will be delivered by WaterNSW. Maree, I do not know if you want to add to that?

**MAREE ABOOD:** Our key role going forward is really around ensuring that the objectives of the assessment have been met and any of the cost-benefit information that we have provided—So Infrastructure NSW undertook the option's assessment. Any further advice that is required from WaterNSW is in the submissions report, but that is our key role.

**The CHAIR:** One of the aspects that has been raised before by the Committee and was also identified in previous evidence—and I think has been included in submissions, including from the Colong Foundation to the project—is a lack of information about how the dam will actually operate under flood circumstances. In terms of you providing advice, I guess what I am getting to is you have been quite central in the discussion about this project up until now. You have faced hearings before. A lot of your comments, if I can put it quite simply—and I know we have had a lot of discussions about waiting for the EIS to come out—the EIS is out and now there are some serious gaps in information, including how the dam will actually operate, what the operational rules would be. The criticism without that other information about the upstream and downstream impacts simply cannot be reasonably assessed. Can you provide a response to that, and given that you are providing a coordinating response, how have we got to a situation where an inadequate EIS has been provided to the planning department?

**SIMON DRAPER:** Just on your last point, I think what we said earlier, we are not aware that it is inadequate or do accept that it is inadequate. That is a matter for the Department of Planning to determine. If they have determined that, so be it. As far as we are aware it was entirely adequate. There was a lot of work done in preparation, and we are aware the interactions that were happening between different government agencies to check that before it was submitted. I guess, as you said, it will be somewhat sorted out as part of the response to submissions report. As to the operating rules I do not really have any comment on that. It is something that is beyond my, at least, areas of expertise. I do not know if Maree wants to make any further comment?

**MAREE ABOOD:** For further detail, I would suggest that you refer that to WaterNSW. What I can say is that there is a set of principles that we developed and they were incorporated as the operational rules and



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certainly one of the key principles was to minimise the upstream impacts of maximising the downstream benefits. Downstream, of course, is paramount. There is a whole set of principles that were translated into operational rules. Should the dam be approved the operations will be commenced. So it will not be any worse than what has been presented in the EIS. In fact, it could be improved. I would suggest for further detail that you refer to question for to WaterNSW this afternoon.

**The CHAIR:** Infrastructure NSW, I think, was quoted in a media story this morning suggesting that should the dam have been operating in the most recent flood event in the Hawkesbury-Nepean there would have been quite specific differences in the flood impacts at various points? You were specific to 0.1 of a metre. What were the operational rules that you used to base assumptions on to come up with that information? Why was that not included in the EIS?

**MAREE ABOOD:** It is the same operational rules that we had done for the modelling for the EIS. As I said, we had a set of principles and a set of rules. I am not sure, in terms of the operation, what sort of details you are requiring but I would suggest that you would refer that to WaterNSW this afternoon.

**The CHAIR:** But do you concur that those operational rules are not outlined in the EIS? I mean, this is one of the fundamental criticisms that has been raised that how the actual dam will operate is not articulated in the EIS.

**SIMON DRAPER:** I certainly could not comment on that. I could not verify that or could not concur with that because I have not gone back to check whether that is the case.

**The CHAIR:** Okay. There have been suggestions in the media in the past, I think some correspondence was leaked at some stage to this effect, that due to questions around liability, or concerns around liability, with the operation of the dam as a flood mitigation dam that there would need to be enabling legislation. Can you confirm that that would be a requirement before the dam could actually operate as a flood mitigation dam?

**SIMON DRAPER:** I think there are probably two issues in there, Chair. One I think was you would need to have legislation that permits the dam to be operated as a flood mitigation dam as well as a storage dam. So that is one. The other one I think you were referring to was a request on WaterNSW is that right?

**MAREE ABOOD:** Yes, I think a number of questions have been raised whether it is legislative requirements to enable the function to be there to see. You may not need legislative requirements because in the WaterNSW Act that function does exist. Certainly some regulatory amendments will be required, such as amendments to the plan, where foreseeable, the operating licence which is probably one of the key instruments and potentially there could be a legislative amendment pending the liability. But that would be really subject to a decision. We would review the legislation and I guess any regulations that may have changed in the interim, to see whether any regulatory or legislative amendments were required.

**The CHAIR:** With regards to the liability aspect—and Mr Searle I note your question and I might just ask this last one—you seem to suggest that may or may not be required. What would be the trigger for making a determination as to whether or not legislation—and I assume this is about limiting the liability of the dam operator—would be required? How would you make a judgement like that?

**SIMON DRAPER:** We would not make a judgement on that. That is really not a matter for us.

**MAREE ABOOD:** It would be a legal process that we would go through. We would look at places such as Wivenhoe [inaudible] we have already looked at them but we would review them.

**The Hon. PENNY SHARPE:** Sorry, Chair, Ms Abood you are very muffled with your mask on. I know it is not your fault but I really struggled to hear that last bit, my apologies.

**MAREE ABOOD:** That is okay, sorry. What I was saying is this legislation would be reviewed pending the decision of the outcome of the dam. We would be looking at all the latest, I guess, legislative things and places such as Wivenhoe, really just to look out whether there are any requirements to strengthen legislation around liability. But we go through an enormous process and liability with anybody that is involved in this.

**SIMON DRAPER:** This is an obvious answer, but it is more a matter for the Parliament than for us.

**The CHAIR:** Yes, we understand that Mr Draper. Mr Searle, you looked like you had a question before. I might throw to you in the first instance then move from there.

**The Hon. ADAM SEARLE:** Mr Draper, is Infrastructure NSW the proponent of this project?

**The CHAIR:** Sorry Mr Searle, I will turn up the volume. Would you mind starting again, we could not quite hear you.

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**The Hon. ADAM SEARLE:** Sorry, can you hear me now?

**The CHAIR:** Yes.

**The Hon. ADAM SEARLE:** Is your organisation the proponent of this project?

**SIMON DRAPER:** No, the proponent is WaterNSW. They are the applicant. We were responsible, if Mr Searle is using a more generic use of that phrase, Infrastructure NSW led a process, probably going back nearly a decade to look at the options for dealing with the flood risk in the Hawkesbury-Nepean Valley. We coordinated with that process. The proponent for the dam is WaterNSW.

**The Hon. ADAM SEARLE:** They are the legal applicant but you have been driving, as it were, the policy area. Is that correct?

**SIMON DRAPER:** Yes, Infrastructure NSW has definitely supported. There is a process of going through a number of options over a number of years, as Ms Abood outlined earlier. The one that we recommended at that time as the most favourable, the most beneficial, was the dam wall raising. That is correct.

**The Hon. ADAM SEARLE:** The document the Chair referred to earlier was the Hawkesbury-Nepean Valley Flood Management Taskforce document. On page 33 it states: "WaterNSW would require amendments to its enabling legislation to provide a complete statutory limitation of liability to the operator, its directors, officers and employees" And then it talks about "further comprehensive legislative requirements that would be necessary to fulfil the implementation of the raising of the dam wall." Are you saying that this is entirely a matter for some other agency and you have not turned your mind to it whatsoever?

**SIMON DRAPER:** I think what we are saying is that there is a view that a change in the operation of the dam may require complementary changes to other legislation, that sets out the liabilities of those participants. It is WaterNSW, all of those references are to WaterNSW not for Infrastructure NSW. I think that issue has been flagged the Chair's flagged it as something that has been discussed in the past as well. But it is not something that refers to our organisation.

**The Hon. ADAM SEARLE:** It is not just about the liability of the operator, it is talking about the need to provide statutory authorities, a comprehensive suite of documentation relating to flood manuals. This is not just some small facilitative change in a statute, according to this document, some pretty comprehensive additional legislation would be required to fulfil the policy direction that you have led. You must have given some thought to that. I mean, are you saying that nothing will be thought about this until after any final approval is given and then you will work out what laws you actually need to implement this? That seems to be a recipe for disaster, having taken all of this time and invested all these resources on this project if you cannot lawfully carry it out?

**SIMON DRAPER:** The answer to that is, no that is not what has been done. Ms Abood's outlined a few moments ago a number of the changes that have been anticipated as being a fairly thorough process. I thought you were asking specifically about the liability question.

**The Hon. ADAM SEARLE:** I am asking you about all the legislative changes necessary to effect this project?

**MAREE ABOOD:** Can I just add to that? Certainly I think the document that you are referring to that was a point of time and we have certainly done a number of reviews to look at, as said, the current status of the legislative and the regulatory environment plus all the lessons learned, particularly coming out of Wivenhoe. Our role, particularly Infrastructure NSW, is to look at whole-of-government perspective in terms of making sure that it is fair and equitable around liability. Yes, we do lead the policy and we do coordinate across the Government around the legal and liability issues. Just a final of it whether there is a legislative change that is required around the liability, as I said, we will do a re-assessment at the time but we do have a very good understanding of what is required.

**The Hon. ADAM SEARLE:** Sorry a reassessment?

**MAREE ABOOD:** We have done a lot of detailed work in this area. As I said the major changes will be really on operational monitors, water sharing plans, works whatever and potentially there may be a legislative requirement that may be required.

**The Hon. ADAM SEARLE:** Ms Abood, perhaps I am not making myself clear—

**The CHAIR:** You are a bit faint, Mr Searle. We cannot quite hear.

**The Hon. ADAM SEARLE:** It seems to me that there is clear evidence before this Committee that at the present time this project cannot be lawfully carried out because necessary changes are needed to various laws. I am just asking you whether you agree with that and at what point in time you are thinking about trying to achieve

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these changes to the law because if you cannot carry out this project under the law as it exists, is there the potential that all of these processes that are being engaged at the moment may be a futility if you cannot carry this out under the law?

**SIMON DRAPER:** Just to be clear, when you say the project cannot be carried out, I mean the primary issue confronting everybody at the moment is a planning determination. So for the project to be implemented for the construction to proceed it requires obviously those construction approvals, those planning approvals. I think some of the things you were referring to go to the operation of the dam, the longer term operation of the dam. Yes, those things have also been contemplated but I agree with you there would be no point in trying to change regulations or pass legislation through Parliament to deal with the operation of the dam when we don't even have a planning determination at this point.

**The Hon. ADAM SEARLE:** Putting it the other way around, what is the point of obtaining the planning approval, and potentially very expensive construction, if you cannot lawfully operate in the way that is intended?

**MAREE ABOOD:** Can I just add there? There are no barriers at this point. The WaterNSW function already exists. It just needs to come into effect once there is a decision. The key instrument there probably will be the operating licence, the Water Management Act, so the legislation is already there. There is no barrier to taking forward our flood mitigation function. It is just assessing what additional things may be required, such as whether you need a new operating licence or whether you need an existing one. There is no barrier to prevent a flood mitigation function.

**SIMON DRAPER:** Mr Searle, I think people could disagree with this but if you think about the counterfactual to what you are putting to us, the idea that we would ask the Parliament to change laws and Ministers to change regulations and go through that process, when there has not been a public consultation and a planning determination made on the dam wall raising, that would seem to be the wrong way around. I think people would raise questions if we pursued that course.

**The Hon. ADAM SEARLE:** Parliament was asked to change the law, and did an election or so ago, to facilitate the project. The counterfactual that you put as being strange and perhaps unacceptable, in fact, happened.

**SIMON DRAPER:** Maybe—

**The Hon. ADAM SEARLE:** brought by the Government of which you are an agency.

**SIMON DRAPER:** Just to be clear, we are an agency, we are not the Government.

**MAREE ABOOD:** I was going to say the 2018 legislation that you are referring to, the legislation prevented temporary inundation, so it would have been very difficult to take forward an EIS for the planning Minister to make a determination. That is why the 2018 amendment in the WaterNSW Act was at play. What you are referring to around the operation and liability is a very different matter.

**The Hon. ADAM SEARLE:** Thank you, Mr Chair. Those are my questions.

**The CHAIR:** Thank you, Mr Searle. I might throw to the Deputy Chair in the first instance.

**The Hon. ROD ROBERTS:** Thank you Chair. I have a couple of quick questions. The Hawkesbury valley flood mitigation strategy identified a number of issues to alleviate the flood risk and management down in the valley, of which the raising of the dam wall was only one. Others included limiting development on the floodplain and upgrading the evacuation roads, et cetera. This Committee has been going nearly three years. It started in June 2019. The issues of the valley have been well-known for longer than that. I just wonder if you can identified for us, please, any significant upgrades to any of the evacuation roads in the three years whilst this Committee has been sitting?

**SIMON DRAPER:** I will pass over to Ms Abood in a moment. Just to perhaps add to this, some of the other things you have described are not so much alternatives to the dam wall raising, they are complementary measures. As I said earlier there are nine measures, the road evacuations, the development of the land use approaches, the community awareness—all of those things go together with the dam wall raising. So I will pass it over to Ms Abood to give any information about the road upgrades.

**MAREE ABOOD:** Okay, so Transport for NSW is letting the road resilience package. They are engaging with councils now for the roads for the final business case. Originally in the strategy we identified I think around 40 priority road upgrades. In the roads that they have done in the last several years detailed investigations revealed that rather than fixing it you would have to adopt more of a corridor approach or systemic approach because you would only transfer from one area and transfer the problems downstream or upstream of the roads. They have found just over 100 projects that they have identified. They are working with councils and I think there

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was a recent announcement that the Commonwealth Government was going to co-fund the money for the final business case for the planning works for the final business case. So that work is proceeding.

**The Hon. ROD ROBERTS:** So nothing concrete is in place at this point in time?

**SIMON DRAPER:** Yes, I think Ms Abood is referring to a package of road upgrades that have been identified out of this process. I would not want to leave you with the impression that we could not answer the question about whether there have been other road upgrades. Obviously there has been plenty of work done in the roads in western Sydney in they have covered a floodplain over that period. Ms Abood was referring to a particular package that has been worked up through this program.

**MAREE ABOOD:** There have been some road upgrades in the area around Penrith. The off-ramp on to the M4 and I think some upgrades on Richmond Road. There have definitely been upgrades with site resilience in mind. The package that I am talking about is a piece of ongoing work.

**The Hon. ROD ROBERTS:** Taking it a bit further, can you identify for us any changes at all in any planning mechanisms, anything that has put any limits in place for future development on the flood plain? What has actually happened there? That was certainly another thing that you have identified in your strategy.

**MAREE ABOOD:** Absolutely, so one of the big things that we have been working on is the organisational modelling. One of the key purposes of that model is a really a tool for government to be able to assist the accumulative impact of ongoing growth. The lands have will all be rezoned. As part of any development or any DA of major significance they will come to us and ask for advice as to whether it is going to have impact. Ongoing work around Penrith lakes for example around employment lands. There is a lot going on in the space. This will feed into the regional planning framework that is being developed. It is a big process and it is a long process. But certainly for us managing the growth is critical to make sure that the road capacity that we can maintain the capacity.

**The Hon. ROD ROBERTS:** I have nothing further, thanks Chair.

**The Hon. SHAYNE MALLARD:** I do not mind asking a question or two, thank you, Mr Chair. I want to revisit that discussion from our witness Mr Draper. I thought it was a good line of questions from Mr Roberts about the flood strategy. One of the perceptions that the community and the proponents of the dam wall raising have is that it is one or the other—it is the dam wall raising or its roads and evacuation routes and stopping any further development that might be permissible in the current planning scheme. I would like you to unpack age that a bit more and explain why it is not one or the other. In the view of the Government, it is a strategy of a combined package of approaches, including community awareness which we talked about before too.

**SIMON DRAPER:** I will start and Maree is by star the subject matter expert, so she can take it through more thoroughly. The way I have described this issue, is that it is one of the things—people talk about complex policy problems because genuinely it is one of conflict. There are so many competing goals. We start obviously with the problem that there are a lot of people who already live and work on the floodplain who are very exposed to risks every day. You have also got to take into consideration the environmental impacts of some of the measures that can be undertaken. The dam wall raising has obviously raised a lot of concerns about potential biodiversity impacts, impacts about Aboriginal and cultural heritage and many of the options also raise concerns about water security.

So, we have complexity around the problem. We are trying to solve lots of different objectives at once. Then there are a number of elements required to try and deal with the flood mitigation process, as well. There are nine elements. Again, I do not want to unnecessarily take up the Committee's time, but I do think it is worth explaining that they are complimentary. They do not substitute for each other. By far the measure that has the greatest impact in terms of providing time for people to evacuate and reducing the peak of floods is a dam wall raising or alternatively, a less effective other change to the dam wall to allow people time to get out of there. So, I will pass over to Ms Abood to talk through the other elements.

**MAREE ABOOD:** I guess, as we have always said, there is no simple or single solution to this. We are dealing with a legacy issue of over 200 years of development. What we are seeing out in the floodplain now is really a legacy of previous planning decisions. Particularly I think the policy settings around 2006 and 2007 had an influence on I guess what we are seeing today. In terms of the mix, it is really when you are looking at flood risk management you have to look at, you know, what measures can you put in place to either mitigate or prevent, set for preparedness and response and recovery. The strategy comprises the actions of an integrated suite of complimentary measures.

I will look specifically at the important ones really here. The dam is really important for significantly reducing the existing risk. It is not about opening up more land for development. For managing ongoing growth

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the land has already been rezoned. So, to manage that you really need to look at your planning framework and the planning policies and roads. So, we did look at roads as a potential alternative, but with roads, for major roads for upgrade, they do nothing to protect people's homes or businesses or like, the critical assets. They are critical for getting people out during an event, but people may not have homes to come back to. So the dam is effective because it does both. So, with the Hawkesbury-Nepean, for any new major upgrades for roads, they are required to look at resilience as part of that. It is much cheaper to do it as part of the planning process rather than retrofit roads as resilience.

The package I mentioned previously is the road resilient package. They are roads that already exist. They are not major roads but they are feeder roads and affected by local flooding. They are critical to making sure that people can get onto the evacuation network. So it is about fixing up road points, culverts, shoulders, community sections and things like that and some low bridges. So, there is that package. Then you also need to have a community that is going to be able to be aware and respond. So, a lot of our effort over the last four to five years is about building community resilience that is a very diverse and complex community. It is dynamic and you know evacuation signs. So everything that we do is a suite of complimentary measures to - across that flood spectrum that I was talking about.

**The Hon. SHAYNE MALLARD:** The M4 upgrade, the northern upgrade I am familiar with those. I know there have been road upgrades towards the Hawkesbury, so they are all complimentary to this project.

**MAREE ABOOD:** Exactly, they are all complementary. When we did look at major roads I think major roads seems like a really good solution, but from our perspective we are not looking at major roads for growth, we are actually looking at it from an evacuation perspective. So when you are looking at it from risk to life, because these are infrequent events but are perhaps catastrophic events, they do not stack up economically. So the most cost-effective way is when they are required for forests or for upgrades at that point in time, then you make sure that you incorporate the flood risk limits.

**The Hon. SHAYNE MALLARD:** I think that is a reality check about what this is about. It is not just about, as important as it is, to save lives and get people out of the flood zone; it is also about protecting property and business assets for economic and community recovery. The project has those two objectives.

**MAREE ABOOD:** Absolutely. I guess life is paramount, that is our primary objective, but the second objective is really around to protect people's homes, so reduce the impact of major flooding. We have always said that you would never be able to eliminate flooding in this valley, but we could significantly reduce it and give people a much better chance and recovery time, too, much quicker.

**SIMON DRAPER:** It is worth saying that when you see major natural disasters, I mean a disaster itself and the events that happen during those days of the event, unless there is a really strong recovery and resilience, those effects can last for years for communities and families, and households break down.

**The Hon. SHAYNE MALLARD:** Like fires and drought and so forth, it is just in that category. That is the end of my questions, Mr Chair. I do not know if Mr Fang or—I am not sure if Taylor is there at the moment, have questions.

**The Hon. WES FANG:** I do not have any questions for the witnesses at the moment.

**The CHAIR:** Mr Martin?

**The Hon. TAYLOR MARTIN:** None from me, thank you.

**The CHAIR:** Ms Sharpe, I might just ask two quick ones and then I will throw to you, if I could. My question relates to, I guess, the changes, the ministerial reshuffle and how that fits in in the first instance. Now we see that Minister Stokes has moved into sort of an infrastructure role and I am just trying to understand his role in this project now and whether or not Infrastructure NSW works to Minister Stokes in the first instance.

**SIMON DRAPER:** Yes, and obviously if we get too deep into ministerial reshuffle questions then that is really a question for the Premier and others, not for us. But I can certainly say that the change that was made in December means that Minister Stokes, in our legislation, the Infrastructure NSW Act, Minister Stokes is now the responsible Minister. So yes, we would provide advice to him on those matters. When it comes to the Hawkesbury-Nepean flood strategy, there are other Ministers involved—the Minister for Western Sydney, the Minister for Water, the Minister for Planning and others, the Minister for Transport—so there are various portfolio responsibilities for different parts of that strategy because it is such a diverse strategy. But yes, it is quite correct, Chair, that Minister Stokes is the Minister responsible under our Act.

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**The CHAIR:** It is pretty clear that quite a bit more work will need to be done by the EIS or in preparing a preferred infrastructure report. Has additional money been sought, and given the new ministerial arrangements what is the process for trying to get more money for this project now?

**MAREE ABOOD:** I can answer this one. WaterNSW will be using their existing budget, but I note further money will be sought for the additional work and for the preparation of the submissions for a PIR report.

**The CHAIR:** So the money that has already been allocated under—I think it originally came from the Climate Change Fund—is the extent of it. No further moneys have been sought or will be required to finalise the EIS or preferred infrastructure report. Is that right?

**MAREE ABOOD:** Yes, There is no climate change money. The climate change money has been expended but the budget that has been allocated to WaterNSW there is no additional money being sought to do this work. They are operating within their current budget.

**SIMON DRAPER:** No doubt, Chair, with a budget process coming up and a budget in June, if anyone asks for more money it is the time they will ask for it, but we are not aware of any requests.

**MAREE ABOOD:** We are not.

**The CHAIR:** Okay. And you have not asked for any more money for your aspects of this component of the floodplain management strategy?

**SIMON DRAPER:** No.

**The CHAIR:** Just with regards to the business case, what is the status of the business case at this point, and can you just confirm your role and, I guess, the new infrastructure Minister's role in the preparation of the business case?

**SIMON DRAPER:** A business case was prepared for consideration by Government. It is under consideration by Cabinet. My understanding is that that will be further considered as the planning consent process advances.

**The CHAIR:** So the business case has been finalised and submitted to Cabinet for consideration, is that right?

**SIMON DRAPER:** As you can see from the EIS itself or the work that was required to include in the EIS in relation to the cost-benefit ratio et cetera, it was done, and that is really quite a significant element of the business case itself.

**The CHAIR:** I am not sure that answered the question. Has a business case been finalised at this point?

**SIMON DRAPER:** A business case has been prepared. As to finalised, that would be a matter for Government whether they want to ask for more information. There is a business case that has been provided to Government and they may ask for more information as the project advances.

**The CHAIR:** Without getting into matters of Cabinet secrecy, can you confirm if that document says "final business case" on it? Is that at the top?

**SIMON DRAPER:** It may say "final business case", but it may say "draft final business case". I cannot recall, I am sorry. We have to be quite careful not to get into stuff that is in front of Cabinet.

**The CHAIR:** I understand. Ms Sharpe, I might hand over to you, but if we have got time I may come back. Thank you.

**The Hon. PENNY SHARPE:** Thank you. Just to follow up on that, in terms of the business case, was that submitted by yourselves or by WaterNSW?

**SIMON DRAPER:** I mean, sorry to be pedantic, but anything that goes to government gets submitted by a Minister rather than by an agency.

**The Hon. PENNY SHARPE:** Okay, which Minister? Was it Minister Stokes? Was it Minister Ayres? Was it now Minister—is it Minister Anderson has now got Water? Previous Minister Pavey? Who is the Minister who submitted the business case?

**SIMON DRAPER:** Rather than going to—because, again, we are talking about what is happening in Cabinet, who is making submissions to Cabinet, which Ministers, and that is something that we are not permitted to disclose—

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**The Hon. PENNY SHARPE:** I am really not asking—you said that there had been a business case prepared. I do not believe that this is any State secrets or breaching Cabinet issues to understand; so that the public understands, which Minister has carriage of the business case?

**The Hon. WES FANG:** Chair, I might just at this juncture remind the witness that they could take the question on notice if they are unsure of the position of the answer and perhaps seek advice and then provide it to us within 21 days.

**SIMON DRAPER:** Yes, thanks. I will take it on notice, except to say that the ministerial responsibilities are as I have laid out earlier for the overall strategy.

**The Hon. PENNY SHARPE:** Sorry, Mr Draper, I like to think that I have got a pretty good understanding of the architecture of government and I have looked very closely at the allocation of Acts in relation to who is responsible for what and I still am unclear about which. The proponent of the project is WaterNSW, so that would be Minister Anderson, is that correct?

**SIMON DRAPER:** He is the Minister responsible for water, yes.

**The Hon. PENNY SHARPE:** So he is responsible for the actual project?

**SIMON DRAPER:** He is responsible for WaterNSW and WaterNSW is the proponent for the dam wall raising.

**The Hon. PENNY SHARPE:** So Infrastructure NSW is now under Minister Stokes, is that correct?

**MAREE ABOOD:** Minister Ayres is still the coordinating Minister.

**SIMON DRAPER:** Yes, but just to answer your question, yes Minister Stokes is the Minister to whom we report under our legislation.

**The Hon. PENNY SHARPE:** And the Hawkesbury flood mitigation part of that has been given to Minister Ayres, is that correct?

**SIMON DRAPER:** The Minister for Western Sydney has carriage of the strategy, that is correct. Just maybe to expand in general terms, while we are responsible to Minister Stokes as the Minister for Infrastructure, and previously the Premier, who was the Minister for Infrastructure, there are a number with whom we work with portfolio responsibilities, whether that is on Hawkesbury-Nepean and Warragamba Dam or it might be another project. We do work with a number of Ministers.

**The Hon. PENNY SHARPE:** Sure, I am across that, but obviously just for this one. Just also to be clear then, the Minister for Roads has got some interest in terms of the planning and the Minister for Planning—I suppose that is the question: Is the final consent Minister now then the Minister for Planning, i.e. Minister Roberts?

**SIMON DRAPER:** Yes, I will give you an answer but I think it is probably worth asking those from the Department of Planning, I think, who are appearing today. Certainly, the Minister for Planning is the—or the Department of Planning and the Minister for Planning have the role as consent authority. There is also, obviously, Federal legislation that has to be met as well, and there are arrangements between the Commonwealth and the State on that. But I think you would be much better off asking that question to—

**The Hon. PENNY SHARPE:** Don't worry, I will, thank you. I will do that. It is a little confusing. Just to go back to the issue of legislation, has there been legislation drafted and have you had any involvement in that?

**MAREE ABOOD:** I can answer that. Definitely no legislation has been drafted, to my knowledge, because, I guess, we are not at that process. So, yes, there would be no point in drafting any legislation at this point.

**The Hon. PENNY SHARPE:** Right, okay. I might just leave it there for now, Chair.

**The CHAIR:** Thank you, Ms Sharpe. Are there any other questions from other members? Mr Searle?

**The Hon. ADAM SEARLE:** Nothing from me, Mr Chair.

**The CHAIR:** Deputy Chair?

**The Hon. ROD ROBERTS:** Nothing from me, thank you.

**The Hon. PENNY SHARPE:** Sorry, I have one more, if no-one else has got one. Is that alright?

**The CHAIR:** I will just go around the room, Ms Sharpe. We will just check in before you do, and I have got a couple more as well, but I will come back to you first. Government?

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**The Hon. WES FANG:** I do not have any further questions, Chair. I am not sure about my colleagues.

**The Hon. SHAYNE MALLARD:** I would not mind asking one more question. I am not sure if it is directly relevant to these witnesses but I was wondering if you would like to comment on the proposal to manage water inundation, to manage flooding, by permanently lowering the level of the dam? I know we have gone over it before but now you have done the work on the EIS and so forth I thought it would be worth revisiting that argument that if you dropped the dam down, I guess, equivalent to 17 metres—do you want to update us on the thinking on that?

**SIMON DRAPER:** Yes. You could not drop it the equivalent of 17 metres. I think there are two options that are analysed: one is to drop it by five metres and the other is to drop it by 12 metres, and there are technical reasons why you cannot do it further. But probably the most overwhelming reason why—or there are two reasons why those options are not favoured and do not perform: one is they do not deliver the flood mitigation benefits that a dam wall raising does. So, unfortunately, in very significant floods they just would not hold back enough floodwaters. But the second is that of course they precipitate a significant decline in water supply for Sydney. That generates either some very major costs to the population or costs in terms of developing replacement water security facilities.

**The Hon. SHAYNE MALLARD:** You are talking desalination.

**SIMON DRAPER:** Desalination, yes.

**The Hon. SHAYNE MALLARD:** How many plants would be required?

**SIMON DRAPER:** I think at least two would be the answer.

**The Hon. SHAYNE MALLARD:** Two additional plants?

**SIMON DRAPER:** That is my understanding. But, again, you are better off asking WaterNSW.

**The Hon. SHAYNE MALLARD:** Okay.

**MAREE ABOOD:** They are probably under the Department of Water—sorry, DPE Water. We work very closely with DPE Water, who were responsible for developing the Greater Sydney Water Strategy. So all the information that was presented in the EIS was done in conjunct with them as part of the development of the water strategy and there was consultation, I think, at a similar time as our EIS. Back in 2017, when we released the strategy, the minus five option performed better because at that time there was a bigger gap. But at our current time, Sydney is at its sustainable water limit, so any sort of reduction in water supply and water security—and Warragamba supplies 80 per cent of Sydney's water storage; I think it is the largest urban water dam in the Southern Hemisphere—so any reduction in water supply would have a significant impact on water security.

So the Greater Sydney Water Strategy, I guess they have put forward a lot of measures in terms of trying to meet ongoing for future growth but also for drought security. So if we were going to drop water supply as an alternative for flood mitigation, minus five does not really do much at all; it was only going to mitigate for very small events. Minus 12 will provide bonus benefits but it certainly comes at a significant cost and you would need to replace the water that is lost or foregone from reducing the water supply and you need to have that in place before you could start a flood mitigation function. So you need to build desal plants for that before you could even contemplate the drought and the current demands of a population of around five million people.

**The Hon. SHAYNE MALLARD:** And a desal plant or two more desal plants have a whole lot of environmental impacts again.

**MAREE ABOOD:** They have their own impacts and greenhouse, yes. Look, everything you do has its impact. So there is nothing that comes here that is going to be free of impact, but desalination plants are more expensive. That is why, I guess, if you look at the BCRs for the drop in water supply, they are much lower than raising the dam. But I think we have also said, if you remember, that it is a V-shaped valley, so you do not get as many benefits by going down; so by raising the dam, the spillway up to 14 metres gives you the greatest benefits.

**The Hon. SHAYNE MALLARD:** Thank you. That is the end of my question line there, Mr Chair.

**The CHAIR:** Thank you, Mr Mallard. Ms Sharpe, before I hand to you I might just do a follow up on that one. Ms Abood, obviously we have seen some of the original documentation and the BCRs for the various options, but of course this project is now far more advanced. We are aware of significant cost blowouts and the EIS, unfortunately, is incomplete when it comes to some of the full costs, especially around biodiversity offsets. How is the public to make a judgement about the cost benefit of the various options without this information being transparent? I assume that information in more detail about the various options and the costs would be fully contained in the business case that has been submitted to Government. Is that true?



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**MAREE ABOOD:** I guess the first point I would make probably is that I guess normally in an EIS it is not normally a cost-benefit analysis. We have tried to put as much information as we can, particularly from a relative comparison of the different options to see how they would perform. So the level of information that we have provided there was to provide some of that comparative, I guess, from a performance point of view. Of course, the details, as part of the work that we do for cost benefit and providing that advice to government, is far more detailed and it is very detailed work. Certainly, if there has been a provision, and I think you raised this question last time, certainly around the biodiversity offsets a provision was provided in the net present value, which is the, I guess, standard economic tool to compare the different options.

**The CHAIR:** But the actual full cost of that is not articulated in dollar terms. Biodiversity offset costs are not articulated in dollar terms, nor are the actual offsets and where they might be obtained identified in the report.

**SIMON DRAPER:** The reason for that is that is in a way part of the product of the EIS itself. I think that is what the energy and science group have pointed out in their submission, that some of this has to be worked out by the proponent as part of the EIS process itself.

**MAREE ABOOD:** I think WaterNSW could give you more details on that this afternoon, but certainly in chapter 13 they certainly identified the credits. The credits are basically the basis of how—and how you retire those credits will depend on what, I guess, the final value is, but certainly there was a value that was provided as a provisional value in terms of, I think it was chapter 13 outlines, and I think WaterNSW this afternoon might be able to provide a bit more detail around their proposed strategy.

**The CHAIR:** Here again, and I do not want to belabour the point, but we get into this ridiculous circular argument where we are waiting for the outcome of the planning process to be able to work out what the project looks like, but you have already submitted a business case to Government and it is hard to understand on what basis you have submitted that business case, what level of detail you have included in there, what assumptions you have made about what ultimately might be approved through the planning system. Would it not just be easier if all of this information was transparent? Why would the business case not be made public?

**SIMON DRAPER:** I think the point that Ms Abood was making a moment ago is that the EIS itself is much more transparent than usual; there is more information in that than the public would normally get and we thought that was a good thing to do. We have been in that process very transparent about the costs of the dam, the fact that it has changed from the initial preliminary estimate back in 2015. I think there is a fair bit of detail there and I think the public would appreciate that we have provided a lot more than they would normally get for a project like this.

**The CHAIR:** I have just got one more. There was some commentary recently from a member of Floodplain Management Australia [FMA] on the dam. Have you had any engagement with Floodplain Management Australia, either Infrastructure NSW as an entity or either yourself, Mr Draper, or yourself, Ms Abood?

**SIMON DRAPER:** I do not believe I have had any, no.

**MAREE ABOOD:** The floodplain, they are, I guess, a peak, a professional body which various members would be aware of, but my engagement has been, I guess, sometimes we participate as presentations, but I have not done any of that for quite some years. We did receive an SMA award for best project for community resilience. We got the NRMA award last year for best program of the year for building community resilience for flood. That is the level of our engagement.

**The CHAIR:** So that is an award that was issued through Flood Plain Management Australia, was it?

**MAREE ABOOD:** Yes.

**The CHAIR:** Okay. You do not recall having a conversation with any individuals from there or correspondence with them about this project specifically in the last six months?

**MAREE ABOOD:** I said, my interaction with FMA has been mainly around the project and we were awarded a prize— [Inaudible] The Community Resilience Program for preparedness of communities. So we were awarded a prize. We negotiated with the FMA to be able to donate that to a worthy recipient in one of the community groups that would help them with flood preparedness; I think that one is for homeless people. That has been my level of engagement with the FMA.

**The CHAIR:** Okay. Just one quick, final one on this new change of ministerial responsibilities. Do you brief Minister Ayres directly on the floodplain management program or do you now do that through Minister Stokes?

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**SIMON DRAPER:** Obviously, these changes are fairly recent, but we generally brief both Ministers because Minister Stokes, as Ms Sharpe was pointing out earlier, is our Minister—sorry, it might have been Mr Searle—is our Minister under our legislation, and so we certainly brief Minister Stokes and we brief Minister Ayres as the portfolio Minister for that program.

**The CHAIR:** Do you brief them separately or together?

**SIMON DRAPER:** It would vary from time to time.

**The CHAIR:** When was the last time you briefed Minister Ayres?

**SIMON DRAPER:** Well—

**The CHAIR:** You can take that on notice.

**SIMON DRAPER:** Yes, I will take it on notice because I cannot remember, sorry.

**The CHAIR:** That is alright, that is fine. Ms Sharpe.

**The Hon. PENNY SHARPE:** Thank you. Two more hopefully quick ones from me. In terms of the cost for the project, there are obviously some costs outlined in the EIS, but you have said that you have done the business case. Can you give us an update on the anticipated estimated costs of the project?

**SIMON DRAPER:** They are still as they are set out in the EIS.

**The Hon. PENNY SHARPE:** So it has not changed with the business case. Thank you. What is the role of Infrastructure NSW in the preferred infrastructure report process?

**SIMON DRAPER:** I do not know that we have a role at all. I might have to take that on notice, Ms Sharpe, and come back to you. I am not sure that we have a role at all in that.

**The Hon. PENNY SHARPE:** I am very confused really about what your role is given that you seem to coordinate everything but then you are not the proponent. So given the concerns of all of the different agencies, you have got no role in trying to bring that together? Given Minister Ayres' extreme enthusiasm for the project and you are reporting to him on this project, you have no role?

**SIMON DRAPER:** No, I did not say that, but you are asking about a very specific document and that is kind of a statutory process.

**The Hon. PENNY SHARPE:** Sure.

**SIMON DRAPER:** If I can draw an analogy, there are lots of elements of this project in which we do not get that very involved because there are other agencies with much more active portfolio responsibilities. Similarly, when it comes to investigating road requirements and those sorts of things, there are other agencies better suited to do that.

**MAREE ABOOD:** We are supporting WaterNSW with the information they need, particularly for the submissions report, the options assessment and things that are the strategic context components of it, but WaterNSW, being the proponent, will be responsible for the PIR. I am still struggling to understand the need for a PIR, but certainly the submissions report we will support them with the information where we have some sort of responsibility.

**The Hon. PENNY SHARPE:** So you will feed into that, but it is directed—look, I am not trying to be tricky about this, I am genuinely interested in trying to work out who is responsible for what. In terms of the flood, dealing with the submissions, there is a role in terms of coordinating the other agencies?

**MAREE ABOOD:** It is the information, as I said, the strategic context. So anything that has been raised in issues to whether it be around the roads or around the options assessment or any of those sorts of things, we will certainly deal with those. But I guess WaterNSW as a proponent would deal with the matters strictly around the EIS and I guess they are still responsible for developing the PIR, but we will be working with them to support them providing the right information and help them, I guess, with any information they need from the agencies.

**The Hon. PENNY SHARPE:** And it is your view, Ms Abood, that a preferred infrastructure report, PIR, is not required?

**MAREE ABOOD:** I am not saying that. I did not say it was not, but I am just trying to understand the need for it, that is all. I am trying to clarify the purpose of why it is required.

**SIMON DRAPER:** We will leave that to the planning people to figure out.

**The Hon. PENNY SHARPE:** Don't worry, we will come back to them. Thank you very much.

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**CORRECTED**

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**The CHAIR:** Thank you, Ms Sharpe. Anyone who wants to ask a question this is the last opportunity before we move on. Speak now. No. Thank you. I thank the witnesses for your appearance here today. I believe there might have been one or two questions that were taken on notice. The Committee has resolved that answers to those questions be returned within 21 days. The secretariat will contact you in relation to those questions that were taken on notice. Thank you very much.

**(The witnesses withdrew.)**

**(Short adjournment)**

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**CORRECTED**

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**SAMUEL KIDMAN**, Executive Director, Heritage NSW, affirmed and examined

**TIMOTHY SMITH**, Director of Assessments, Heritage NSW, affirmed and examined

**DEAN KNUDSON**, Deputy Secretary, Biodiversity, Conservation and Science, Department of Planning and Environment, affirmed and examined

**ATTICUS FLEMING**, Acting Coordinator-General, Environment, Energy and Science Group, on former oath

**The CHAIR:** Is there any witness who would like to make a short opening statement to the Committee? No, okay, then I will start with some questions from me before I pass on to other members. Obviously, we have seen some of the agencies' submissions to the EIS. I will start with you possibly, Mr Kidman. Do you think it is a fair way to describe your submission and position of your agency that the EIS does not adequately assess the natural and cultural values to the Greater Blue Mountains World Heritage Area?

**SAMUEL KIDMAN:** I think that is pretty clear from our submission, Mr Field. What the submission goes into some detail about is where we think that the environmental impact statement could be approved to take greater account in particular of Aboriginal cultural heritage values and, I think, the extent of the survey area, but I think all of those details are fairly clearly articulated in our submission.

**The CHAIR:** We understand now from evidence that we have heard this morning that there will not be any additional financial resources allocated to work on the EIS and the suggestion is that there is going to be a preferred infrastructure report process gone through to address any of the inadequacies. So I guess my question to you is, what additional work do you think would be necessary to update the EIS to address your concerns?

**SAMUEL KIDMAN:** There are a number of things. Our role, of course, is to provide advice to DPE in relation to the potential impact to heritage values and we rely on the information in the EIS to make an appropriate assessment. We have provided this advice to DPE on 17 December. We had some concerns with the Aboriginal cultural heritage assessment report and the supporting documentation. There is, and this is also clearly articulated in the submission I think—the implications of the impacts to Aboriginal cultural heritage are understated and also, as the submission makes clear, based on the assessment and the investigation area, it is hard for us at this stage to understand the breadth and the scope of the impacts. So we have gone back to DPE, WaterNSW, requesting some further work be done.

**The CHAIR:** Would that require additional field work to be done?

**SAMUEL KIDMAN:** I do not know. I assume it would, but I am not in charge of funding of that project or the assessment. We provide comment on the documents that are provided to us.

**The CHAIR:** I understand. I am not trying to put you in a difficult position, Mr Kidman, but we are getting certainly very limited information from certainly Infrastructure NSW and we will try this afternoon, I am sure, with Planning and the proponent. But I am just trying to understand the extent of additional work that would need to be done so we can make those questions as useful as possible.

**SAMUEL KIDMAN:** Sure. I suppose what I might say is that, as our submission makes clear, there are a couple of key factors: one is the extent, the size of the investigation area and using that to extrapolate over a much broader area, and I think, as our submission makes clear, the consultation with the Aboriginal community and registered Aboriginal parties could be perhaps improved, and whether that means additional resourcing I honestly do not know.

**The CHAIR:** Okay, fair enough. Then I might direct a similar question to EES and, Mr Knudson, it is probably for you. With regards to the World Heritage elements of the assessment, am I again fair to say—and I know your agencies have made submissions to the EIS process; I am not asking you to go over the full extent but I guess the Committee needs to hear this evidence directly as well for us to be able to incorporate it into our report. Is it fair to say that the EIS does not adequately address the World Heritage impacts of this proposal?

**DEAN KNUDSON:** Chair, I believe that is absolutely the case. Indeed, our submission pretty much uses exactly those words. We listed off about six different areas that we thought needed additional work, and that could be, to pick up Mr Kidman's point, the department may have already done that work but it was not reflected in the documentation shared with us. So on World Heritage there is a number of issues that we think need to be addressed and certainly the Aboriginal cultural heritage point that Mr Kidman already raised is definitely one of those, but there are also deficiencies with respect to the impacts on biodiversity as it relates to why the property was listed as World Heritage property.

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**The CHAIR:** Thank you for that. I have got a couple of questions, but just to step through that logical line of questioning that I did before as well, what additional work do you think would need to be done to address those concerns?

**DEAN KNUDSON:** The key issues are to take a look at the Statement of Outstanding Universal Value for the property and make sure that that is comprehensively assessed, whatever is included in that statement. That includes a listing of all the criteria for which the property was listed under the World Heritage Convention, and this needs to be looked at in great detail. And then, finally, there is a catch-all phrase which I think they are purporting to struggle with, which is about the integrity of the values, and that is where, in particular, the Aboriginal cultural heritage element comes out. But, like I said, on biodiversity as well, as it relates to the World Heritage values, we think there are some truly unique, globally significant biodiversity aspects to the World Heritage property that need to be more adequately addressed, and that was the nature of our submission on the EIS.

**The CHAIR:** Do you think that that would require additional field work, or are you not able to make a judgement on that basis, on the information that was in the EIS?

**DEAN KNUDSON:** It is the latter, Chair. We do not know what the proponent necessarily has in terms of the full extent of detail. All we could comment on was what we received.

**The CHAIR:** There was a series of leaks of agency submissions or agency comments on the draft EIS—I think we are talking now well over 12 months ago. Some of the witnesses here today may have been at the hearing where we looked at that. Our understanding was that there was then quite significant interactions between the agencies and Planning and the proponent to sort of go through those adequacy concerns and to address them. It seems, though, that largely they have not been addressed in the final EIS. So I guess my question is to you in the first place, Mr Knudson. Can you explain what was that engagement between Planning, your agency and the proponent between those draft comments and the final submission of the EIS?

**DEAN KNUDSON:** Chair, I cannot really give you an awful lot of detail because I joined the department after those events and that last testimony. But certainly we can come back and detail the extent of meetings that happened and what was discussed at a fairly high level between ourselves and Planning in particular. Planning is the main interlocutor with the proponent; we do not deal directly with a proponent—that is fairly standard—but we can walk through what we provided to Planning in terms of correspondence back to WaterNSW and make sure that you have got all the information that we have. We are happy to provide that on notice.

**The CHAIR:** Okay, thank you, I would appreciate that. Mr Fleming, of course I do recall that you were at that hearing in particular and we did ask you a number of questions about the concerns that you raised in your initial comments on the draft EIS. Can you make comment on how you feel they have been addressed in the final EIS, or if at all?

**ATTICUS FLEMING:** I think I would have to echo what Mr Knudson has said in that there are still some elements that require additional work. They are articulated in a fair bit of detail through the submission, including in the National Parks and Wildlife Service component of the submission. So I am not sure I can add to them. I do not have anything to add that is not in our submission, if that is the question.

**The CHAIR:** I guess my question is, do you think a reasonable effort has been made to address the concerns that you initially raised or has it just been fobbed off by Planning or the proponent?

**DEAN KNUDSON:** The one thing I would say, Chair, is that my staff told me that a number of the comments that we provided were reflected in the updated documentation by the proponent, but not comprehensively, and that is why we have such an extensive list of issues that we provided in our submission that we still believe need to be detailed. But in terms of the specifics, I do not think Mr Fleming or myself would have that level of detail for you. I can give you that assurance that some was definitely taken on board, but there is more to be done, no question.

**ATTICUS FLEMING:** I think, Mr Field, I would say it is a complex project. It is a really complex project to assess. If you are asking if it is being done in good faith, I think the answer is yes. It is being done in good faith. If your question is, "Are there issues that are still outstanding?" I think the answer is yes. There are issues that are still outstanding. You are specifically asking about a couple of the concerns I raised in the early stages of this, and one of those was the impact of bushfires and whether areas, post the fires, have effectively attained a greater significance as refuge for species. I think you will see from the submission that EES put in that that is an area that still needs a little bit more analysis. So, there are issues. They are complex. They are difficult. I think they are being addressed in good faith, but there are still some outstanding matters that need to be addressed to ensure it is rigorously assessed.

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**The CHAIR:** I see your hand, Mr Searle. I will just ask one more on that and, if I get a chance, I will come back. It seemed that questions that were initially raised by this Committee and other members of the public about addressing those bushfire risks were largely—the comment was, "It was difficult to get in and do that analysis because of the impact of the burn and the risks." I would assume your understanding of the terrain out there and the recovery is that there would be no barrier now to getting out in the field and doing that level of assessment at the moment.

**ATTICUS FLEMING:** I can only comment to say that as a result of floods there have been some barriers to entry and movement around the site over the last 12 months, and you can imagine that to be the case. In terms of any more detail on that, I am afraid I am not in a position to add the detail.

**The CHAIR:** Okay. Go ahead, Mr Kidman. I think you wanted to make comment on this. I am happy for you to, Mr Knudson, as well.

**SAMUEL KIDMAN:** Sorry, Mr Field. Yes, I would just make a couple of points in relation to some recommendations that this Committee raised in its interim report. There were a couple of recommendations which were picked up by WaterNSW. One was about—you recommended a standalone anthropological report to address identification and assessment of cultural values and how they relate to archaeology and landscape and the impact of the proposal. I can confirm that WaterNSW did provide that as appendix K to the EIS. You also requested further archaeological assessment of potential archaeological deposits—that was provided by WaterNSW—and the development of a cultural heritage management plan prior to submission. Based on the documentation that was made public last year, that plan will be provided pre-construction in consultation with registered Aboriginal parties and the Aboriginal community. I just wanted to make those points.

**The CHAIR:** Thank you for that update, Mr Kidman. Mr Knudson, did you have something to add before I hand to Mr Searle?

**DEAN KNUDSON:** Just a very quick one, Chair, which is that we acknowledged in our submission that the sixth assessment report of the Intergovernmental Panel on Climate Change was not available at the time the EIS was prepared. That goes to the essence of your question in terms of what is happening with respect to global climate change predictions and impacts, which could now be taken into account more than they could have when the EIS was done originally, so I just wanted to flag that.

**The CHAIR:** Okay, thank you. Mr Searle, you indicated that you have some questions, I think.

**The Hon. ADAM SEARLE:** Yes. I just wanted to ask Mr Fleming what are the key outstanding issues from the perspective of the organisation he represents?

**ATTICUS FLEMING:** In a moment I will ask Mr Knudson to add a list of the items on the biodiversity side. I will concentrate on the national parks side. They are fully articulated in the submission. My apologies; I might miss a few. But, yes, articulating a little better the impact of the proposal on World Heritage values, and that includes on the integrity of those values, is something that needs a bit more work. There are aspects of the national park that have not been fully assessed: some of the historic heritage sites, some of the impacts of the project on infrastructure and on our capacity to manage the national park adequately. Obviously the cultural heritage, which is an important part of both the national park and the integrity of the World Heritage area—and Mr Kidman has outlined in the submission from Heritage NSW the key issues there.

And then, there are a series of—and I apologise if I am missing any of it. There are then a series of biodiversity issues which really straddle both national parks and the broader EES biodiversity remit. I will just say that that extends from both threatened species through to endemic species and some other important restricted-range species, and then other species that are, if you like, tied into the World Heritage listing, remembering that one of the key outstanding values of the property is the fact that it is a centre for the diversity and evolution of eucalypt species. I run through that list in part because not all of those biodiversity impacts will be picked up in, for example, the offsets analysis. What needs to be assessed is a little broader than what might be assessed purely from an offsets point of view. Mr Knudson?

**DEAN KNUDSON:** Great. Thank you, Mr Fleming. You have already mentioned the World Heritage elements and we have canvassed that a fair amount already. The offsets arrangements are something that does need to be addressed pretty extensively as we go forward. That will include the downstream impacts, as well. On biodiversity, we had almost a first principles kind of issue on that with respect to the polygons of the design of the actual project; therefore, its impacts are yet to be settled. That will allow us to then proceed and finalise that assessment of biodiversity impacts. Climate risk we talked a little bit about in the previous question, but I will also note that New South Wales has its Net Zero Plan, which could be more fulsomely addressed. Flood plain risk management is another piece that we flagged that we think needs to be looked at. And then, the last of the areas that we mentioned is about hydrological and aquatic ecology, noting that there are about 284 kilometres of

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upstream waterways that will be potentially inundated through the project's impacts, and that needs to be assessed more fulsomely as well. Those are the broad six categories.

**ATTICUS FLEMING:** I would just add, in case I did not cover it properly, that the impact on infrastructure and our ability to do things like feral animal control and fire management is another matter that needs just a little bit more attention.

**The CHAIR:** You're on mute, Mr Searle.

**The Hon. ADAM SEARLE:** Thank you, Mr Chair. Mr Fleming, can you just flesh that last point out? What are the additional concerns you have in relation to infrastructure and feral animal control?

**ATTICUS FLEMING:** There are a number of bridges and culverts—I cannot remember the exact number, but it is over 20—that are distributed through the study area, I think it is. And so, we need to get a good sense of what the implementation of the project will do to our ability to get around and deliver effective management.

**The Hon. ADAM SEARLE:** Thank you, Mr Chair. Those were my questions.

**The CHAIR:** Thank you. Ms Sharpe, if you want to continue for the Opposition, go ahead.

**The Hon. PENNY SHARPE:** I do. Thank you, Chair, and thanks to everyone coming in today. Mr Knudson, I think you said that you are now biodiversity, conservation and science. Does that mean that EES does not exist anymore in terms of the configuration within the department?

**DEAN KNUDSON:** No. It absolutely does continue to exist and Mr Fleming is the acting coordinator general for EES.

**The Hon. PENNY SHARPE:** Okay. I will need to get an org chart, I think. That is very confusing to me. And Heritage is back in the cluster, yes?

**SAMUEL KIDMAN:** Heritage will be back in the cluster as a part of EES from 1 April.

**The Hon. PENNY SHARPE:** Thank you, Mr Kidman. We heard this morning that the business case has been submitted to Cabinet and is under consideration. Did any of your agencies have input into the business case?

**DEAN KNUDSON:** Not that I am aware of, but we will come back on notice and absolutely confirm that for you.

**SAMUEL KIDMAN:** Not that I am aware of, either, but I can check that.

**The Hon. PENNY SHARPE:** Thank you. The reason that I am asking about the business case, which obviously—we were also told there is no change in relation to the cost profile or the estimated costs of the project as it stands. Can I just clarify? There have been significant concerns about whether the way the biodiversity offsets will be accounted for—whether there is a temporary inundation or whether there is permanent damage. Is that something that you believe still needs to be resolved? Or is that something that you have accepted now within the EIS—that it is temporary inundation and understanding that there will have to be calculations later, but that the issue around temporary versus permanent is agreed to? I am not sure who to ask. I am not sure whether it is you, Mr Knudson, or Mr Fleming.

**DEAN KNUDSON:** I believe it is me. The answer is that you are exactly right that at the back end of the process, once the final preferred infrastructure plan comes in, along with the response to all the submissions that the proponent has received, they will come forward with their final proposition with respect to the project. That will allow us then to take a look at the required offsets, but ultimately that is then a decision for Planning as to the adequacy of those. We will provide our input, but there are a number of steps that still need to happen.

That being said, I think you are also getting at this issue of temporary and permanent inundation. What my staff have told me is that there was an agreement, in effect, to take a look at historical models of inundation using Monte Carlo predictions over a 200,000-year period—quite an extensive period of time—to come up with what is the likely maximum inundation during a 20-year estimate. That is what has been used to form the foundation of figuring out what the inundation impacts look like and, therefore, what the initial calculations with respect to offsets are. That being said, it is quite technical. I am very happy, if it is helpful to the Committee, to come back and explain what we have come up with as a group of agencies as the approach to managing or predicting the possible inundation areas. Certainly we can provide detail on that to you, if that would be helpful.

**The Hon. PENNY SHARPE:** I would welcome that, but obviously the crux of all of this in terms of the costings for this project is whether it is considered temporary or permanent and the required offsets as a result

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of that. Can I just clarify that the position of EES remains that it should be considered permanent? Is that correct, or am I wrong about that?

**DEAN KNUDSON:** My understanding—again, I do not want to mislead the Committee. But my understanding is that we have done that analysis to figure out what the likely maximum impact in an average 20-year period would look like and based the proposed offsets on the basis of that. So it is not necessarily tied to whether it is permanent or temporary, but to what is the expected impact associated with an average 20-year period. What I would suggest is that I come back with the specifics on—here is how that 20-year estimate, just to use shorthand, was derived, and here is how it then has led to a calculation of offsets. I know that there is also downstream versus upstream impacts that we are trying to take a look at. There is real complexity if you think about—if there is any attempt to try and do offsets with respect to Aboriginal cultural heritage, et cetera. That is something else—

**The Hon. PENNY SHARPE:** Well, you cannot offset one of the songlines in terms of those pools.

**DEAN KNUDSON:** That's right.

**The Hon. PENNY SHARPE:** Similarly, given the numbers with regent honeyeaters, if their habitat is killed and they are basically unable to survive then it is a pretty permanent impact, even if the inundation might only be temporary. Look, we have had this argument before. I am not trying to draw you on it. I am just trying to understand how it is actually going to be resolved. Mr Fleming, you had your hand up.

**ATTICUS FLEMING:** I just wanted to add: I think it is a question that you should direct to Planning, because Planning is the agency that ultimately determines the offsets. But, just to add to what Mr Knudson is saying, our understanding of the way in which this assessment is unfolding is that a line has been drawn, which Mr Knudson has described as essentially, for want of a better term, a 20-year event line. That is 1,400 hectares, and there is an assumption that there is within that area, if you like, complete loss of biodiversity. That is the basis for the offsets. Please do confirm that with Planning, because they are the entity that is responsible for it. The impacts are being assessed wherever they occur, but the basis for the offsets is around that 20-year period and assuming complete loss of biodiversity there, which is arguably a greater loss than will occur within that area. But, on the other hand, it is not taking into account some of the impacts outside of that area.

**The CHAIR:** Ms Sharpe, could I just ask a follow-up on that one?

**The Hon. PENNY SHARPE:** Yes.

**The CHAIR:** Sorry to jump in.

**The Hon. PENNY SHARPE:** No, that's fine.

**The CHAIR:** If I understood you correctly, this 20-year average for offset determination was agreed by your agency. Is that correct?

**ATTICUS FLEMING:** My understanding is that the Government agencies involved in this assessment did agree, yes. That would be the basis for proceeding. I am using the 20-year term quite colloquially because Dean Knudson did a great job of trying to explain it. I did not fully understand it; it is complex. But it is around 1,400 hectares in total, of which a bit over 1,300 hectares is national park.

**The CHAIR:** EES has sort of signed on to that approach?

**DEAN KNUDSON:** That's correct.

**ATTICUS FLEMING:** Correct.

**The CHAIR:** And do you think that is consistent with the biodiversity assessment methodology?

**DEAN KNUDSON:** It isn't, and it doesn't need to be, because this is being assessed under the former legislation and the former framework.

**The CHAIR:** Okay, thank you. Ms Sharpe, all yours.

**The Hon. PENNY SHARPE:** Thank you. I think this really is to Mr Kidman. There are three issues, as I see it, in terms of the Aboriginal cultural heritage difficulties with this project. One is that we can call for more consultation with the traditional owners, but they have been pretty clear that they do not support the project, so I am not quite sure how that issue gets further resolved. But the second issue is that whether there is temporary inundation around biodiversity offsets and those kinds of things, what the traditional owners tell us is that essentially this will be permanently damaged and they cannot be offset. The third issue is—and Mr Field touched on this before—the quality of the assessment in the first place, which there has been general agreement there are



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real problems with. In terms of Heritage NSW, you have given your advice now. How do those issues get squared off? What is your role from now on in terms of providing advice, or is that it?

**SAMUEL KIDMAN:** No, no. I don't think that will be the end of our role. We are, of course, not the approval authority. We have no regulatory authority in this space, as you know.

**The Hon. PENNY SHARPE:** No, no. I know all of that. But we come to you for advice and you have given advice, so I want to know how that gets squared away.

**SAMUEL KIDMAN:** Absolutely. My understanding is that the next stage in the process will for the proponent to review our submission on the EIS and come back to us with a response as to how they will amend the EIS documentation to make it more adequate. In relation to your comment about offsets, you are quite right. We made the point quite strongly in our submission that the cultural values—whether they be tangible, like rock art and grinding grooves, or intangible values such as songlines and stories—are unique to that part of the valley and they cannot be offset in any other part of New South Wales. You are correct in relation to that. Was there another question? I am sorry, Ms Sharpe.

**The Hon. PENNY SHARPE:** Yes, sorry, just a follow-up with that. So far, how many times have you met with WaterNSW in relation to these matters?

**SAMUEL KIDMAN:** Look, I'd have to take that on notice.

**The Hon. PENNY SHARPE:** Take that on notice. I don't expect you to know off the top of your head.

**SAMUEL KIDMAN:** But what I can say is that there has been a very considerable amount of consultation with WaterNSW over the last few years. I came into this job in July last year but my understanding is that the relationship goes back much further in relation to this project, yes. But I will take that on notice.

**The Hon. PENNY SHARPE:** Thank you. Yes, Mr Fleming, I was coming to you in a minute but you can jump in there too.

**ATTICUS FLEMING:** I just wanted to come back to the fact that planning really are the agency running this process. We have given advice, as Mr Kidman has articulated. The next steps from here is really a matter for planning as to what they need to complete their assessment of the project. We assume that they seek further additional information from the proponent. They may seek additional information from us as part of that, but ultimately I think Planning IS the agency you need to ask about where to from here.

**The Hon. PENNY SHARPE:** I have a National Parks and Wildlife question which is to you, Mr Fleming. But I had not realised that you are now the Acting Coordinator General. I think you will still be able to answer this. I want to understand how much consultation the National Parks and Wildlife Service had with the Blue Mountains World Heritage Advisory Committee?

**ATTICUS FLEMING:** I would not be able to tell you off the top of my head the level of engagement—are you talking about our local advisory committee?

**The Hon. PENNY SHARPE:** Yes.

**ATTICUS FLEMING:** I understand they have made a submission to the EIS. That information has come to me via the national parks staff. I can only assume that there has been some level of engagement, as I assume there is ongoing engagement, really, with that committee.

**The Hon. PENNY SHARPE:** Thank you. I am very happy for you to come back to us about that. Again this flows on a little bit from what Mr Field was asking previously, do you think there is going to be a need for more field work in relation to fire and flood impact that has occurred since, you know—

**ATTICUS FLEMING:** I think we have identified the issues that need further consideration. Again it is really up to planning and the proponent to determine whether they need to do field work in order to adequately address the issues that we have raised. I think if you go through our submission there probably are a few instances where it is suggested either by Mr Knudson's team and biodiversity or the by the park's component of the submission where some additional field work may be needed, I stand to be corrected if I am wrong about that, but I think it is flagged in a couple of instances in the submission. But ultimately it is a question for planning and the proponent to address adequately the concerns that are raised and to determine if they need to do field work in order to do that.

**The Hon. PENNY SHARPE:** I have got one more question, which is for you Mr Knudson. Has there been any preliminary discussion with the Federal Government in relation to this project and, in particular, the Commonwealth environment department?

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**DEAN KNUDSON:** Yeah, so because this is being assessed under an assessment bilateral agreement with the Commonwealth, going back several years, there would be considerable engagement with the Commonwealth department because, as you know, that is one assessment that serves for the decisions for both levels of government. That being said, it is planning that is the main interlocutor with the Commonwealth environment department on this, but it is an absolute given that there will have been engagement with the Commonwealth on a project of this magnitude and significance.

**The Hon. PENNY SHARPE:** Okay, thank you for that, that is actually helpful. How does that work given the role that EIS has under the Environment Protection and Biodiversity Conservation [EPBC] Act in terms of assessments and advice with impact on World Heritage values? I mean you are saying planning is the kind of main go to, where does your agency fit within that?

**DEAN KNUDSON:** If you think about it, Ms Sharpe, we are providing our advice to planning on issues related to World Heritage, threatened species, et cetera. Planning then compiles that along with the various other aspects that they are pulling together. They then share that with their Commonwealth counterparts who do pretty much the same thing, that is, what I used to oversight in the Commonwealth. You have the assessment scheme which is equivalent to planning and then they have their expertise on threatened species, on heritage, et cetera that then support them to make their decisions, so the exact same model in parallel.

**The Hon. PENNY SHARPE:** I do not think I understand that, but that is okay. I will ask another question and maybe I will understand it better. In your previous comment you said you know it is basically a joint assessment project with the two, so there would have been discussions, which I understand all of that. But I had thought that under the EPBC that EIS is an accredited assessor. Are you now saying that the assessment would actually be happening at the Commonwealth level, not through you guys, because as a result of the way this project is configured in New South Wales that planning is the assessor? I might be completely miss understanding this?

**DEAN KNUDSON:** I think I have made this more confusing than it needs to be. You have planning and you have the equivalent in the Commonwealth. Those two, which is the environmental assessment and approvals area, pull together their expertise within their organisations on threatened species, heritage, et cetera. That is where we fit in. We are the advisors who provide that expertise along with Sam on heritage issues, for example. The Commonwealth has the exact same sorts of thing. What is happening in reality under assessment bilateral agreements the State, nine times out of 10 at least, will take the lead, do most of the work with the proponent, come back to the Commonwealth. The Commonwealth then takes a look at the State assessment, decides whether it is adequate, decides whether it wants to add additional conditions or make a different decision than the State has made, and that is the way it works. Basically the Commonwealth relies on the State to get it to very close to finish than they do effectively a check against their legislative responsibility before making their decision.

**The Hon. PENNY SHARPE:** I understand it now. That essentially also means—I think you have said this in various different ways today—heritage, yourselves and national parks will basically work through planning then planning will go to the Commonwealth and the Commonwealth will do the final check under the EPBC. Is that correct?

**DEAN KNUDSON:** That is correct.

**The Hon. PENNY SHARPE:** Thank you, sorry, that was quite complicated. That is it from me for the moment, Chair.

**The CHAIR:** One quick follow-up from me then I will hand to the Government. You will not, Mr Knudson, have any interaction with the Commonwealth at that point? That will be between the Commonwealth and the New South Wales planning department. Would you have knowledge of whether or not those discussions are already happening or whether or not it will only get referred to the Commonwealth once they have finished the assessment report?

**DEAN KNUDSON:** The normal practice from my past life would be there are regular discussions that happen, say, every couple of months. Both jurisdictions sit down and go through all the projects they are assessing what are key issues? How are they being resolved, et cetera? It is almost a health check and they will share different chapters as you are working your way through. We are all very conscious about the timeframes associated with the legislative decisions, et cetera. But to the specifics of this project, I think your questions best refer to planning to find out how they are going with respect to their engagement with the Commonwealth, what are the proposed next steps, et cetera. There is also a scenario where the Commonwealth receives a project that it feels is fully assessed, the conditions are more than adequate, et cetera and they literally will make a decision to says "Do what the State said." It really can run a very large gamut of outcomes.

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**CORRECTED**

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**The CHAIR:** Okay, we will certainly get into that this afternoon with planning. Can I throw to Government members now? Are there any questions from the Government.

**ATTICUS FLEMING:** May I add a couple of comments, Mr Field?

**The CHAIR:** You may.

**ATTICUS FLEMING:** I just wanted to go back to the question from Mr Searle and add an additional example. One of the other factors that needs to be considered in more detail is the impacts of sedimentation post flooding and, in particular, the risk of invasion by weeds. That is the sort of thing under the National Park heading needs a bit more. Ms Sharpe, I am told that there has been significant engagement with the advisory committee and that has included, I think they get regular briefings or have had quite regular briefings from WaterNSW.

**The CHAIR:** Thank you, Mr Fleming. Mr Mallard, have you got any questions for these witnesses?

**The Hon. SHAYNE MALLARD:** I do, thank you, Mr Chair and I see Taylor Martin is there, so I will defer to him in a minute. Mr Fleming, that was a good segue to my line of questions. We had the delight to trek into the catchment, probably two years ago now during the drought, I think. You just talked about sedimentation and weed infestation but what I saw in the margin where we went—I think it is called Soldier's Point—was a lot of sedimentation, a lot of feral pig damage, damage from wild horses and a lot of weeds. Have you seriously assessed the quality of the margin that is impacted by this proposed inundation for flood mitigation? Have you guys done that assessment of the quality of that margin?

**ATTICUS FLEMING:** We have not done that assessment. I think the question is whether the EIS has assessed any change in quality that might be effectively be an impact of the project. So it is up to the proponent and planning if you like to ensure that that assessment is done.

**The Hon. SHAYNE MALLARD:** No, but when you cite a percentage of the national park could be inundated, you must have done an assessment of that margin, the quality of that margin?

**ATTICUS FLEMING:** I am not sure I understand the question. The 1,400 hectares that is the focus of a lot of this—1,300 of that, I think 1,303, is in national parks.

**The Hon. SHAYNE MALLARD:** That is right but the balance is Crown land, is it?

**ATTICUS FLEMING:** The balance is WaterNSW land, I think, yes. That's correct, a combination of WaterNSW and Crown.

**The Hon. SHAYNE MALLARD:** Right.

**ATTICUS FLEMING:** Are you asking if we have baseline data on the quality of attributes in that area?

**The Hon. SHAYNE MALLARD:** Yes. I would have thought what we saw was not good quality for a national park—a lot of pig damage, horse droppings everywhere, horse hooves' marks everywhere and a lot of weed infestation. This may well be inundated now because it was part of retreated water, but it was pretty poor.

**ATTICUS FLEMING:** Let me try to answer in this way. We will not have comprehensive data on the health of that area of land, not systematic, comprehensive data. What I can say is that we have significantly increased, over the last few years across the parks estate, including in that area, the level of feral animal control, fire management targets and so on. I can also say, I know from speaking myself to various scientists that there are certainly very important areas within the impact area. So there is absolutely no doubt—if your question is: Is this in good shape? I think the answer is going to be there will be areas that have been impacted by fire and by feral animals, that is true, and by weeds, that is true. Some of those impacts will be a result of the original construction of Warragamba Dam. But, nevertheless, there is no doubt there are very high conservation values, that is, it is on the World Heritage List. Not much of the country is going to be inundated.

Ms Sharpe mentioned the region honeyeater earlier. When you have one of the birds that is one of the rarest birds in the world, and there are five, maybe, six key breeding sites in the country and this is one of them, and you are talking about a block of land that is very, very important. I hope that answers your question.

**The Hon. SHAYNE MALLARD:** Well, correct me if I am wrong, having hiked into there as well, the further away from the water edge, to my layman's eye, it appears to be a better quality national park. There was no apparent serious amounts of damage that we saw right down to the water's edge?

**ATTICUS FLEMING:** Sorry, are you saying the further away you get from the water the better—

**The Hon. SHAYNE MALLARD:** I am saying further away from that margin that will be inundated is a better quality ecosystem environment.

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**CORRECTED**

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**ATTICUS FLEMING:** It is hard for me to answer your question objectively and with data so I qualify my answer by that. I think what you are can you describing is the fact that the edge of the dam is an area that is impacted, that is, it is subject to various levels of inundation over time, depending on what is happening in terms of water and what this proposal will do is expand that area. In other words, the impacts you saw close to the water's edge will now be spread across an extra, at least, 1,400 hectares.

**The Hon. SHAYNE MALLARD:** Alright. That is enough questions from me. I don't know if any other government members want to contribute. Taylor, or Wes?

**Mr MARK TAYLOR:** I think Wes has covered it.

**The Hon. WES FANG:** I concur with the Parliamentary Secretary for the Upper Hunter.

**The CHAIR:** Then I might just ask a couple of more questions if I could and just a follow-up on Mr Mallard's line of questioning there and to you, Mr Fleming. I remember seeing that area where the water had retreated zone. I think it would be fair to say that some of those impacts, sediments, weeds and then they become more attractive often to feral animals, that impact is going to be visited further up into the reaches of the incoming river systems to the dam because of the temporary inundation that would result from this project. Would that be fair?

**ATTICUS FLEMING:** Yes, that is correct. I think that is what I was trying to say in my response to Mr Mallard. I think that is accurate. I mean, Mr Mallard, you may have been talking about the area effectively below the high watermark and some of that is actually outside of the park, depending on when you were there and what the level of the water was when you were there. But the general point is, the areas that are inundated or temporarily inundated are certainly impacted and so this proposal will result in more of the national park and the world heritage area being impacted in that way.

**The CHAIR:** Mr Knudson or Mr Fleming, I will let you work out who is best to answer this question. I refer to the level of certainty from the current EIS that we can around impacts based on what has been described by some and, I think, acknowledged to a degree by the proponent, certainly Infrastructure NSW, we do not know what the operational controls or conditions around the proposed dam wall would be. We do not know how the wall will be operated as a flood mitigation dam. We do not really know how quickly water will be released post a flood. We do not know much water by volume would be released during any particular event. All those things seem to me to have some degree of impact both upstream in terms of periods of inundation and downstream in terms of prolonging flooding events. I am trying to understand whether you feel you have sufficient information to make a judgement about whether the biodiversity and other environmental impacts associated with this project can be adequately assessed based on the information you have.

**DEAN KNUDSON:** I think, Mr Chair, that given our submission, we would not feel confident, at this point, with what has been included in the EIS forming a sufficient basis for a final decision. Though I will say, that is not all that unusual for it to have an EIS, the first version of it, to have deficiencies. The real test will be what is included in the next version and how adequately they address the series of issues that we have laid out in quite some detail in our response back to planning through to the proponent. The other piece I would say, which I do not think will surprise you, there is always a certain degree of uncertainty with every project. That is where planning needs to weigh up what approach they take with respect to, in effect, the precautionary principle in terms of not only the construction but the operation of the facility because, as you rightly point out, both will have different aspects and that is a good element to explore with planning and the proponent when you see them this afternoon. ..

**The CHAIR:** Go ahead, Mr Fleming?

**ATTICUS FLEMING:** I would just add to what Mr Knudson is saying, and I guess reinforce it by saying the process is intended to work in a way that you put stuff out, people provide comment, identify the deficiencies and they should be addressed in the next stage. So what we are seeing is a process whereby the issues are getting out there, the issues are attracting comment and, as Mr Knudson said, the challenge is for planning and the proponent to address those in the next stage. So the fact there are issues now is not surprising, nor is it sort of fatal to the project in any way. It is what you would expect at this stage of the process.

**The CHAIR:** So I could understand uncertainties and responding to feedback but this is sort of central to how this project is going to operate. It is the operational rules for the dam. The entire project is based on flood mitigation but the rules around how the dam will operate in that way have not been specified. Do you think that they should be specified before the project is actually finally assessed by planning on the basis that you would need that information to make a final and full judgement about the environmental impacts?

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**CORRECTED**

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**DEAN KNUDSON:** So I will give a qualified answer. My instinct, right, because I am not a biodiversity expert, I am not a modeller and all that sort of stuff, right? Normally how I have seen this done is you do model that, right? You model what the impacts are of the inundation area. You model the impacts of the operations. You have got different scenarios that you run through to try to articulate what those potential impacts could look like and then you build your EIS and the ancillary decisions like offsets et cetera accordingly. That is my assumption as to how that type of scenario that you are painting, Mr Chair, would be dealt with. It would be through the modelling of the potential impacts. If I have that wrong in any way for this particular project, we will come back on notice and correct the record. But that is not unusual for us to have some level of uncertainty around the operations of the facility or its potential impacts but to, instead, model that and have various scenarios run through. If I have got that wrong at all, we will come back.

**ATTICUS FLEMING:** Mr Chair, could I add also, you will be aware, I will get the legislation wrong, I think it is the Water Management Act or the Water Act does require an operational, effectively a management plan to be prepared which I am pretty sure the environment Minister has a concurrence role with that management plan. I think that is intended to deal with a lot of the operational detail. You have people from WaterNSW appearing before you. I am sure they can provide a more accurate summary of how that regime works.

**The CHAIR:** Are you talking then, Mr Fleming, about the management plan that was a requirement of the 2018 legislation?

**ATTICUS FLEMING:** Yes.

**The CHAIR:** My understanding is there is a difference between that management plan which seemed to be about how to respond primarily to temporary inundation as the result of the dam wall rising. There is a difference between that and the actual operational rules for how the dam is going to be operated. I think the biggest impact could be that it may well extend the time period of inundation upstream and that has not been specified in this EIS. I pick up your point about modelling, Mr Knudson. I am not sure if that has been sufficient to recognise the potential differences the operational rules for the dam could have. The suggestion has been made by Infrastructure NSW this morning, and in other commentary around this project, that the Government is waiting to understand the conditions that would be put on it by the planning department before they make a judgment about the operational rules. I guess I am asking, is that good enough, given those rules could have a substantive impact—it is substantive when considering the impacts of this proposal—on biodiversity both upstream and downstream? That is my question to you. Do you have sufficient information without those rules to make a judgement? If they are not going to be provided until after approval, or after consideration by the planning Minister, is that adequate?

**ATTICUS FLEMING:** Mr Chair, I very much understand your question but, unfortunately, I do not have a definitive answer for you. I would have to come back on that to explain, on behalf of my staff, in effect, how they deal with that uncertainty and whether they feel that there is adequacy in terms of what has been provided to date with respect to both the upstream and downstream impacts, because I think both are very relevant and I just do not know the answer to it. So I would have to come back.

**The CHAIR:** Okay. Thank you. Well, that is all I have. I will just go around the room and see if there are any other questions. Anyone, raise hands if you do? I thank the witnesses for their evidence today and attendance online. I think some questions were taken on notice by you, in particular, Mr Knudson. The secretariat will contact you in relation to those. You will have 21 days, based on previous resolutions of the Committee, to provide answers to those questions.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

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**CORRECTED**

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**DAVID GAINSFORD**, Deputy Secretary, Development Assessment, NSW Department of Planning and Environment on former affirmation

**ERICA van den HONERT**, Executive Director, Infrastructure Assessment, NSW Department of Planning and Environment, affirmed and examined

**JAMES MICHAEL BENTLEY**, Chief Executive Officer, NSW Water Sector, NSW Department of Planning and Environment, sworn and examined

**DAVID HARPER**, Project Director, Major Projects, WaterNSW, on former affirmation

**RONAN MICHAEL MAGAHARAN**, Executive Manager, Assets, WaterNSW, sworn and examined

**BOB TILBURY**, EIS Project Director, SMEC Australia Pty Limited, affirmed and examined

**The CHAIR:** I will pause for one minute and try to correct my headset. Does any witness want to make a short opening statement. Given the number of you perhaps it could be kept to just a few minutes.

**DAVID GAINSFORD:** Yes. Thank you for the opportunity to appear before the Committee. I am pleased to provide the Committee with an update of the environmental impact assessment process for the proposal. The Department of Planning and Environment accepted the Warragamba Dam Raising Environmental Impact Statement on 20 September 2021 and the EIS was placed on exhibition on 29 September 2021. The department's standard exhibition period is 28 days. However, given the expected high level of interest in the EIS, the exhibition period was initially set for 45 days to end on 12 November 2021.

During the exhibition period the department recognised that there was a high level of interest in this EIS and in response to requests from the community, extended the exhibition period to 62 days, ending on 29 November 2021. The department was made aware that some supporting information had not been included in the EIS for public exhibition. Therefore, the department requested that WaterNSW provide the missing information and place this on public exhibition with an extended end date on 19 December 2021—a total period of 82 days of exhibition. The department notified stakeholders of the updated information and the extension to 19 December 2021.

The department has provided a copy of all the submissions and a report summarising the issues raised in submissions to WaterNSW now, and requested that a submissions report, and a preferred infrastructure report, be prepared. A preferred infrastructure report has been requested because we believe further assessment is required to address the issues raised in submissions and this may result in changes to the proposal. A total of 2,586 submissions were made on the EIS, of which 60 were in support, 2,475 were objections, 53 were from organisations, and seven were from public authorities. This includes 519 emails and hard copy letters, received without privacy and/or political donation statements which will be treated as submissions but which will not be published on our website.

Once the infrastructure report and the preferred infrastructure report are received from WaterNSW, the department will determine if a further public exhibition of the preferred infrastructure report is required, and then undertake a detailed assessment of the project considering the EIS documentation, issues raised in all submissions and WaterNSW's response to these issues. At the completion of the assessment report by the department, we will then refer the documentation with a recommendation to the Minister for Planning and Homes. Should the Minister approve the proposal, the Commonwealth Minister for the Environment would also then consider the project in accordance with the Environment Protection and Biodiversity Conservation Act. Thank you.

**The CHAIR:** Thank you, Mr Gainsford. Before we move on, Mr Harper, you have just come on, and we just need to do a quick sound check to make sure you can hear us and we can hear you. You are on mute or we still cannot hear you. Secretariat, you might need to provide some assistance. Maybe we can do this via a phone hook-up. Ms van den Honert, do you have an opening statement you would like to make?

**ERICA van den HONERT:** No, thank you.

**The CHAIR:** Dr Bentley?

**JIM BENTLEY:** No, thank you, Chair.

**The CHAIR:** Mr Magaharan?

**RONAN MAGAHARAN:** Yes, thank you, Chair. Thank you for the opportunity to provide evidence to the select Committee today. To provide the Committee some context, the New South Wales Government's flood strategy for the Hawkesbury-Nepean is delivering nine integrated outcomes to reduce the high flood risks that

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exists downstream of Warragamba Dam. WaterNSW, as the owner and operator of Warragamba Dam, has been tasked by the New South Wales Government to deliver outcome two of the flood strategy which is to undertake detailed design and obtain environmental planning for the Warragamba Dam raising project. At all times WaterNSW has sought to discharge its important responsibilities with transparency in the highest standards of professional integrity.

The environmental impact statement was prepared in accordance with the Environmental Planning and Assessment Regulations 2000. The document includes analysis and assessment of the project's potential impacts including management measures and offsets for unavoidable impacts. The EIS provides extensive detail of the strategic need and justification of the project. Chapter 4 summarises the taskforce assessment and recommendations of the flood strategy and examines the contemporary analysis and reassessment of flood mitigation alternatives and confirms the proposal to raise Warragamba Dam for flood mitigation as the preferred option.

In keeping with an infrastructure proposal of this size, preparation of the EIS was a robust process including multiple opinions and inputs and opinions from professionals and experts. The EIS was developed over five years and involved thousands of hours' work, field analysis, modelling and peer review. It contains 29 chapters and 26 appendices, and is more than 8,000 pages long. We also undertook an assurance process during the drafting of the EIS, including peer and agency consistency reviews to ensure the approaches and methodologies undertaken complied with the SEARs and relevant guidelines. Following this process and after DPIE had determined the EIS adequately addressed the SEARs, the EIS was displayed for public exhibition. The public exhibition of the EIS was of longer duration for most exhibition periods for projects of this size.

In response to requests from the public, the Department of Planning and Environment, rightly, extended the public exhibition twice, eventually to 82 days nearly three times the minimum 28 days and ran from 29 September until 19 December 2021. The EIS consultation also included nine public webinars, multiple briefings to local councils and various stakeholder groups. And 800 copies of the EIS summary were available from 12 civic amenities and public buildings across Western Sydney. The public exhibition of the EIS summary were available from 12 civic amenities in public buildings across western Sydney. The public exhibition for the EIS has now concluded and more than 2,000 submissions received by DPIE, over the coming months WaterNSW will consider the matters raised in the submissions and will formally respond to DPIE and a submissions report will be published under the department's major project website. As the project proponent responsible for development of the EIS, WaterNSW appreciates the opportunity to be a witness at the select Committee hearing today. I will be happy to take any questions.

**The CHAIR:** Mr Harper, do we have you?

**DAVID HARPER:** I can hear you. Can you hear me, Mr Chair?

**The CHAIR:** We can indeed. I mentioned before that you have already appeared before this Committee, so we will seek your evidence today on the basis of your previous oath or affirmation. Do you have an opening statement?

**DAVID HARPER:** No, I do not.

**The CHAIR:** Mr Tilbury, do you have an opening statement?

**BOB TILBURY:** Yes, please, Chair. Thank you for the opportunity to appear before the Committee today. My name is Bob Tilbury from SMEC Australia Pty Limited. I have been the project director for the Warragamba Dam raising EIS since the start of SMEC's engagement five years ago. Borne out of the Snowy Mountains Hydroelectric Scheme more than 70 years ago, SMEC Australia is today an Australian-based engineering management and development consultancy. We provide technical expertise and advanced engineering services, including environmental assessments for significant infrastructure projects.

In July 2017 SMEC Australia were contracted by WaterNSW, to conduct the EIS for the Warragamba Dam raising project. SMEC Australia was specifically engaged to provide objective environmental and social studies, impact assessments and community engagement services according to a scope which included the Secretary's Environmental Assessments Requirements or SEARs for the project. There is no doubt that this EIS is very significant in scale, complexity and detail. It is one of the largest technical assessments ever undertaken in New South Wales, which is reflected in EIS documents that, in order to address the SEARs, total over 8,000 pages.

Throughout the entire process SMEC Australia has ensured that its work, and that of its sub consultants and technical specialists who are engaged to provide inputs to the EIS, have met all our obligations under State and Federal legislation and guidelines. This included consultation with relevant agencies and stakeholders

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throughout the EIS development. As is normal and entirely appropriate, the EIS has been published in full to provide the regulatory agencies and the community with the opportunity to provide their feedback via a submission on the EIS. We are currently in the process of assessing and responding to matters raised in the more than 2,000 submissions that have been received. Our responses to those submissions will be published in a submissions report in the future. I will be very pleased to help the Committee with any questions it has today.

**The CHAIR:** Thank you, Mr Tilbury. We might start questions today with Ms Sharpe, if you are there? We might come back to Ms Sharpe.

**The Hon. PENNY SHARPE:** Sorry my apologies, I am sorry about that. Thank you everyone for coming in today. I am not quite sure if it was Mr Gainsford, but this Committee had evidence this morning and I am not sure how many of you were watching or have had this reported, that indicates that the Colong Foundation has some legal advice that suggests that there are deficiencies in the EIS that mean it could be open for challenge. I hear what Mr Tilbury just said in his opening statement. Could I get a response from whoever—maybe it is Mr Gainsford, I think, in relation to that?

**DAVID GAINSFORD:** Yes, I did hear Mr Chalk's evidence this morning and I guess that mirrors what was put forward as part of the Colong Foundation's submission. I guess, all I can say is that we are confident that the department is following due process here. One of the things that Mr Chalk did not mention this morning—he referred to the preferred infrastructure report which I referred to in my opening statement. The department has discretion to determine whether the preferred infrastructure report goes on exhibition. So depending on the information that we get back in the preferred infrastructure report, if we feel that there is a need, because of that information that is received, to determine that no further public exhibition can occur then we can progress with that. That obviously would give the community further opportunity to formally make submissions.

**The Hon. PENNY SHARPE:** Mr Gainsford, given the allegations particularly around the SEARs, who decides whether they are adequate or not?

**DAVID GAINSFORD:** So the process that we went through is what we do for all major projects that we receive. So the department—I think I have given some evidence around this in my previous times—

**The Hon. PENNY SHARPE:** I do not want you to have to repeat all of that, sure.

**DAVID GAINSFORD:** No, so ultimately what we do is, once we have received the documentation from, in this case WaterNSW, you know in receiving that information we do consult with other government agencies to have some confidence that the requirements that have been set in those SEARs have been met, and once we form that opinion—we do not do a merit-based assessment. There is no merit-based assessment at that point in time. It is really making sure that the terms that have been outlined in the SEARs have been met. Once we get to that point, in this case we got to that point in September, then we determine that the EIS is ready for exhibition which is what happened.

**The Hon. PENNY SHARPE:** So if there is a dispute about the adequacy or not it becomes a legal question and whether it is challenged or not, making no judgement about whether or not it would be successful. Is that correct?

**DAVID GAINSFORD:** There are legal avenues that people can avail themselves, you know, in terms of those. But what I would say, which is what I have said consistently in previous evidence, is that the EIS is one step in the process. There are, as I mentioned, opportunities through the response to submissions, and also Preferred Infrastructure Report to provide additional information and to continue to address, I guess, the requirements that have been set in those SEARs.

**The Hon. PENNY SHARPE:** Thank you. That is very helpful. So there has been a lot of discussion and I am glad that people have seen it this morning around the potential needs for legislative change as a result of the approval and whether there has been legislation drafted. Are you aware of whether any legislation has been drafted in relation to allowing the dam to proceed?

**DAVID GAINSFORD:** I am not aware. No, I am not aware.

**The Hon. PENNY SHARPE:** Is anyone else? Maybe WaterNSW?

**DAVID HARPER:** I am not aware of any legislation which has been drafted in that respect.

**The Hon. PENNY SHARPE:** Thank you. We had a lot of discussion this morning, and a lot of the agencies pointed back at the group of people sitting here in relation to it being a question for you. I wanted to understand where discussions with the Commonwealth are in relation to the EPBC Act and any approvals that will need to go through there?



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**DAVID GAINSFORD:** Yes, I can answer that, Ms Sharpe. I heard the evidence given by Mr Fleming and Mr Knudson earlier today. They were spot-on in terms of the description around our engagement with the Commonwealth. So, yes, we have regular engagement with the Commonwealth with regard to the assessment that we do on behalf of the Commonwealth, and ultimately as Mr Knudson said, once that assessment has been completed, with the advice from EIS and other government agencies then we will refer that assessment across to the Commonwealth and it will be up to the environment Minister at the Commonwealth level to make a decision. So we have regular and ongoing conversations with the Commonwealth. We have actually got an embedded officer from the department of agriculture, water and environment that actually worked closely with our assessment team. So we have lots of engagement with them.

**The Hon. PENNY SHARPE:** What is the timeframe from here to the start of constructions? What timeframe are we looking at for a decision point in the first instance and then the starting of construction, if approved?

**DAVID GAINSFORD:** I think that would be a question better for WaterNSW in terms of the time frames.

**RONAN MAGAHARAN:** Yes, thank you Mr Gainsford. I think obviously we have just received, as I pointed out in my opening statement, and Mr Gainsford has pointed, out a large number of filed submissions which we now need to work through and provide to the department in the form of that submissions report. We still are establishing what we believe is the timeframe we are going to need to respond to those adequately, and as such that is where we are in the process. That process we will then hand over to Mr Gainsford and sit down to what next steps need to be taken in terms of determining the EIS.

**The Hon. PENNY SHARPE:** Thank you for that. That is the process, but are you able to give me any ballpark figure? How long do you think that will take WaterNSW to get to that point where it then goes to planning?

**RONAN MAGAHARAN:** We are still working through that, as you appreciate—

**The Hon. PENNY SHARPE:** Yes, I know I appreciate it. A month, three months, six months?

**RONAN MAGAHARAN:** It definitely will be more than a month. The process will be months.

**The Hon. PENNY SHARPE:** Three months? I will not hold you to it. I am just trying to get an understanding of the timeframe is in terms of decision making.

**RONAN MAGAHARAN:** I am happy to take that on notice and come back to you with an estimate for a discussion with the team to understand what we believe we can do.

**The Hon. PENNY SHARPE:** Thank you. I think maybe, Mr Gainsford, this is one for you. The Preferred Infrastructure Report is that something that you do, if it goes ahead?

**DAVID GAINSFORD:** No, no this is a document that WaterNSW prepares, which is a document that sits next to the response to submissions, and basically that document outlines any design changes, any further additional assessment work that has been conducted as part of, I guess, the response to those submissions.

**The Hon. PENNY SHARPE:** Mr Magaharan, does that mean you anticipated that report would come forward with the submissions to then go to planning?

**RONAN MAGAHARAN:** Yeah, as I currently understand. So we will be reviewing the submissions. Those submissions then we need to consider and understand if any of those submissions or we would propose any changes to what is the design of the project then we would be submitting that with the submissions report.

**The Hon. PENNY SHARPE:** Just to be clear then, Mr Gainsford, the discretion is on your behalf about whether that is then publicly exhibited again?

**DAVID GAINSFORD:** Yes, that is correct. Just to be clear, all documentation that we receive, once we receive the response to submissions and the Preferred Infrastructure Report, will be made public. So we will put it up on our website as soon as that information is received. The discretion that we have is whether we choose to exhibit the Preferred Infrastructure Report and, in effect, solicit further submissions from the public.

**The Hon. PENNY SHARPE:** Thank you. I might hand over to my colleagues. I have got more questions, but I will let them have a go.

**The Hon. ADAM SEARLE:** Mr Chair, I have got some questions, if that is okay. [Audio malfunction] I will proceed until interrupted. This is a question to WaterNSW. Ms Sharpe asked about whether or not any legislation had been prepared in relation to the issue of statutory limitation of liability for the operator of the dam.

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I think the answer was no, but has WaterNSW sought from government as part of this process any commitment to such legislation, bearing in mind there is a 2015 document from WaterNSW saying that extensive legislative change around those issues for directors, officers and others in relation to the operation of the dam was necessary as part of this project?

**RONAN MAGAHARAN:** Thank you for that question. I would first say if the project was to proceed there are a number of elements related with WaterNSW's operating licence and its works approval which a change would need to be made to as a result of the change in operation of the dam. The item which you refer to I would have to take on notice and answer that further in order to provide the Committee with an adequate response.

**The Hon. ADAM SEARLE:** By "the item" you mean the document I was referring to?

**RONAN MAGAHARAN:** I do not have a copy of that document.

**The Hon. ADAM SEARLE:** I am happy to provide a copy of this to the Committee so it can be forwarded to you, so you can take this on notice. It is the Hawkesbury-Nepean Valley Flood Management Taskforce. It is dated July 2015 and it says, "WaterNSW would require amendments to its enabling legislation to provide a complete statutory limitation of liability to the operator, its directors, officers and employees for actions taken by WaterNSW in discharging its statutory duty. A comprehensive dictionary/set of definitions as part of the amendment of legislation is required to provide clear direction", and it goes on basically detailing, from my perspective, a quite extensive list of legislative amendments that are necessary in the view of WaterNSW.

Just going back to your evidence a moment ago, is it the case that from your perspective, or from the perspective of WaterNSW, that the changes that you have just mentioned are actually necessary for this project and not kind of just they would be good; they are actually necessary to deal with the changed operation?

**RONAN MAGAHARAN:** Certainly the changes I mentioned, potential changes to the operating licence and the works approval under the Water Management Act would need to be changed. That, as I understand it, does not require legislation to do that, they can be done as is through the department.

**The Hon. ADAM SEARLE:** What if those changes to the legislation that you have touched on are not forthcoming? What would be the consequence?

**RONAN MAGAHARAN:** Just to clarify that changes to the operating licence and the works approval would not require a change in legislation. Those changes would enable WaterNSW to operate Warragamba Dam as a flood mitigation dam. So at present the operating licence and the works approval does not allow for WaterNSW to operate the dam as a flood mitigation dam. Its sole purpose is for drinking water for Sydney.

**The Hon. ADAM SEARLE:** Is it your evidence that any legislative changes are necessary?

**RONAN MAGAHARAN:** I am not aware and I would have to take that on notice to understand that in more detail, but, as it stands, we do know that those changes to our works approval and operating licence would be required.

**The Hon. ADAM SEARLE:** Perhaps I could ask [audio malfunction]

**The Hon. PENNY SHARPE:** We cannot hear you.

**The Hon. ADAM SEARLE:** Dr Bentley, can you hear me?

**JIM BENTLEY:** I can now.

**The Hon. ADAM SEARLE:** Recently—

**JIM BENTLEY:** Sorry, Mr Searle, I am unable to hear you, you keep dropping out.

**The Hon. ADAM SEARLE:** Sorry. I am now addressing my questions to Dr Bentley. Can he hear me?

**JIM BENTLEY:** Yes, I can.

**The Hon. ADAM SEARLE:** You recently wrote to the former environment Minister Mr Debus in his capacity as chair of the Colong Foundation, did you not?

**JIM BENTLEY:** I do not recall, but if you have the document in front of you I will accept that, but I do not recall that letter.

**The Hon. ADAM SEARLE:** I do have that document in front of me and it does touch on the need for changed legislation in this area. What can you tell the Committee about the need for changes in the legislation for WaterNSW to make this project a reality?

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**CORRECTED**

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**JIM BENTLEY:** I cannot add to anything that WaterNSW has just said. WaterNSW is the owner and operator of the dam and is the proponent of the project and it is not within my job to run this project for them, as it were. So I cannot add to anything that Ronan has just said and I would support what he has said.

**The Hon. ADAM SEARLE:** I will have to leave it there as you do not have a copy of the correspondence in front of you. I might come back to that. Mr Chair, I might just put a pin in that and see if anybody else has questions. I do have questions for other witnesses but I am perhaps happy to do them a little bit later.

**The CHAIR:** Could I just check if people can hear me now? [Audio malfunction]

**The Hon. ROD ROBERTS:** Sorry, Chair, we could when you asked and then as soon as you asked it went terribly.

**The CHAIR:** [Audio malfunction] on to others. Okay, let us see. Dr Bentley, I have that same letter in front of me that Mr Searle was mentioning. Clearly, it is a response to Mr Debus and you specifically respond with regards to legislative changes around the operation of the dam and then say, "In terms of any changed liability along the lines of any legislative change required for the dam wall raising, this would be considered by government at the appropriate time." I know that does not necessarily give anything away there, but clearly the secretary asked you to respond to this question on their behalf. I am just wondering what are the potential liability issues that would need to be considered? Clearly you felt the need to respond to suggest they will be considered at the right time, so I am just wondering the nature of the liability issues that the department and the Government are concerned about.

**JIM BENTLEY:** Yes, but I am not qualified to answer that question. My answer in that letter—which I do not have in front of me but one of my colleagues is sourcing for me so that I will be able to read it—but if my answer was whether any legislative changes required will be considered in due course, that is not me suggesting that I know that there will be a change required and it is not me that would be doing that review. My role as the lead for water within DPE has very little touch on this project because this project is a flood project, not a water project as such. I know flooding and water are very closely related, but it is very important that I do not meddle in things that are someone else's responsibility, particularly when they are of such an important nature as this. So I do not meddle in those things, but that response on behalf of the Secretary, as it were, I think was stating what is obviously fact, that whether such change would be required will be considered in due course, but I am not the person to do that consideration.

**The Hon. ADAM SEARLE:** Just on that point, Mr Bentley. You are not aware of that earlier document from WaterNSW saying that legislative change in this area was needed?

**JIM BENTLEY:** No, I am not.

**The CHAIR:** Then I might ask this of Mr Magaharan in the first instance: Does WaterNSW have a view about whether it can operate the dam as a flood mitigation dam without some sort of protection from liability for the operation of the dam in that way?

**RONAN MAGAHARAN:** Much like I said earlier, as I understand, we would need our operating licence changed and our works approval changed to allow us to operate that dam as a flood mitigation dam. I do not have in front of me an understanding of the view whether or not any legislation would be required to be changed nor anything else related to that. As I said, I am happy to take it on notice and provide further evidence for the committee.

**The CHAIR:** I am not talking about the operation of the wall of the dam itself, the operating licence or works approvals; I am talking about, as that 2015 document alluded to, liability issues associated with the operation of the dam. The suggestion from that letter was that it created liability issues for the Government and I inferred from that that legislative change may well be required to limit the potential liability on the dam operator should something go wrong, should downstream properties be flooded as a result of the management of the dam in that way. Is there anyone on this panel that can speak to that potential risk? Has Government sought advice around that risk, quantified that risk in any way or is everyone just flying blind about that risk? Perhaps I will start with the WaterNSW reps and go from there.

**RONAN MAGAHARAN:** I cannot add anything further to what I have said at this point.

**The CHAIR:** Then, Mr Gainsford, I do not know where the planning department comes in in consideration of these issues. Obviously, you are making a judgement and the Minister ultimately will make a judgement about the approval. Where do those considerations fit into the planning assessment, if at all?

**DAVID GAINSFORD:** Mr Field, ultimately we make decisions in accordance with the Environmental Planning and Assessment Act; it is common practice for developments to have to seek other licences or approvals

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**CORRECTED**

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under other legislation. So whilst our expectation would be that those sorts of issues would be discussed and part of an assessment process, ultimately what happens under those other bits of legislation is not a matter that we consider as part of our finalisation of assessment.

**The CHAIR:** I do have one follow up before, Mr Tilbury, I would like to direct some questions to you. Mr Gainsford, a follow up to the questions that came from Ms Sharpe earlier: What is the threshold, in your view, for making a decision about whether or not the preferred infrastructure report would go out for public consultation?

**DAVID GAINSFORD:** Yes, thank you, Mr Field. Ultimately the discretionary part of that is really if our view is that there is sufficient new assessment information or sufficient change to the development which would be of interest to people, then we would use our discretion to put it on public exhibition.

**The CHAIR:** Whose call is it? I am not sure if you specified earlier to Ms Sharpe's question. Is it yours or the Minister's?

**DAVID GAINSFORD:** It is the department's. It probably does lie with me under delegation, but it is a role that the department plays and has discretion under the legislation to make that decision.

**The CHAIR:** We obviously had a discussion around some of these questions at a former hearing where there was a preliminary view put by agencies around the draft EIS, some of those were leaked—I think, Mr Gainsford, you were at that hearing—and we were told that there has been this ongoing engagement between Planning, the agencies and the proponent to address those issues. How did we get to a point where the EIS was so inadequate that this additional work would need to be done and a PIR be prepared, when there has been active engagement with the planning department between interested agencies and the proponent?

**DAVID GAINSFORD:** What I would say, Mr Field, is that this is not unusual. We do for complex infrastructure projects quite often have preferred infrastructure reports; that is a document that, as an example, for a current project that we are considering, the Beaches Link, there is a preferred infrastructure report requirement for that development. So this is not unusual. To the other point of your question around, I guess, my previous evidence and discussion around the draft EIS and progressing that to an EIS exhibition, yes there was lots of engagement with WaterNSW and with agencies. Our interest was really to ensure that the issues that have been raised around the draft EIS were as much as possible addressed so that we could progress the EIS to a public exhibition because I think it was in our interests, and I think the public's interests too, to have an EIS that was on exhibition and enabling people to view the complete documentation and provide the submissions.

But again I would highlight the fact that we and the other agencies at that point in time prior to the EIS going on exhibition were not doing a merit-based assessment; it was primarily to make sure that the issues or the terms of reference, if you like, in those assessment requirements were sufficiently addressed that it enabled the exhibition of the EIS to occur, and that is the judgement that we came to.

**The CHAIR:** You can understand a private developer trying to push the limits like this, but we are talking about government agencies here and I think the fact that it was not a merit-based assessment, it was really an analysis of adequacy against the SEARs, points to a really troublesome situation where WaterNSW ultimately submitted an EIS that did not address the requirements of the SEARs, which is quite evident now based on the fact that you have pushed back and they have to do a third infrastructure report. That would not be usual, would it?

**DAVID GAINSFORD:** Mr Field, I guess I would draw some distinction there, that I think a lot of the advice that we have now received from agencies, and obviously there has been a number of submissions which I referred to as well that have raised concerns and issues, quite a few of those issues are really around some of the merits of the proposal. So I would draw some distinction between the advice that we received prior to the EIS going on exhibition and the advice that we have now received subsequent to the EIS exhibition.

**The CHAIR:** I will not push that one. I think it is evident to everyone how we have gotten here. Mr Tilbury, has SMEC been engaged to do any additional work for WaterNSW on the preferred infrastructure report?

**BOB TILBURY:** Thank you, Mr Chair. Not as yet. Our work is to assess the submissions that have been received and respond to those submissions and help prepare the submissions report. We have not yet addressed the question of a preferred infrastructure report; that is really a matter for WaterNSW, I think.

**The CHAIR:** And responding to the submissions, putting together that response and analysing the submissions, was that part of the original contract?

**BOB TILBURY:** Yes, it was.

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**CORRECTED**

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**The CHAIR:** Obviously you have done the bulk of the work on this EIS on behalf of WaterNSW. It has come in for a bit of criticism from agencies well ahead of now and also now that the EIS has been formally lodged. I guess I just offer you an opportunity to comment on where you think things might have gone a bit astray in getting an EIS completed that met the requirements of the SEARs, which you acknowledge in your opening statement was the requirement of the contract.

**BOB TILBURY:** Firstly, I would say this situation is not unusual to us; it is common in large projects to receive a significant amount and detail of submissions on the EIS documents. So we followed the process. The draft EIS was provided to Planning for consistency review and approved for public exhibition, as Mr Gainsford has described, and the process from there is not unusual. We acknowledge that is not a merit assessment, that is a consistency assessment. So not unusual, and if there are issues raised in those submissions that require further assessment, then we will include those in the submissions report.

**The CHAIR:** Are you able to provide the Committee with advice on the value of this contract to SMEC?

**BOB TILBURY:** I think that is a matter of commercial in confidence between SMEC and WaterNSW. I am happy for you to direct that question to WaterNSW, if you choose.

**The CHAIR:** Have you had to renegotiate the contract at any stage during its life?

**BOB TILBURY:** There have been changes to the contract as it proceeded, as is normal with most significant contracts.

**The CHAIR:** There has been obviously some public discussion about the concerns raised by staff who have worked on this project about the process. I guess I would just put to you, have you found or do you have a view about whether or not WaterNSW have administered this contract fairly and in good faith?

**BOB TILBURY:** I could not say I have a view on that, Mr Chair. It is a large, complex contract, a piece of work that is significant and has spanned a good period of time. But my short answer would be we are happy with the administration of the contract.

**The CHAIR:** But we heard previously from Ms Rachel Musgrave, who I know worked on this contract, concerns that the report was changed in some ways from her advice—I think I am not misrepresenting that previous evidence. Did you have a role in changing the work that Ms Musgrave had done?

**BOB TILBURY:** Not me personally, Mr Field, but certainly her work was subject to a standard peer technical review process and as a result of that process some changes to wording were made.

**The CHAIR:** Can you just talk to how that process actually worked in terms of engagement with Ms Musgrave, your other employees who have worked on the contract and WaterNSW? What was the process that went through to get that ultimately changed?

**BOB TILBURY:** As is standard with large technical and scientific studies, they are all subject to peer review. So the wording of some sections of the EIS were peer reviewed internally by SMEC staff, senior technical staff with significant experience in environmental impact assessments. There was an interpretation of the framework for biodiversity that was not binary, it required assessment of a number of different factors. As a result of those technical reviews there was a change to wording that we felt better reflected uncertainty around what the impacts to some aspects of biodiversity might have been.

**The CHAIR:** I am familiar with these sort of peer review processes. Was that done before it was submitted to WaterNSW?

**BOB TILBURY:** I think over a five-year period many, many drafts of chapters and sections of the EIS were produced, so I could not say for sure, but I would say that they were contemporaneous with reviews by technical peer reviews also by WaterNSW specialists.

**The CHAIR:** But some of it might have been in response to WaterNSW pushing back on particular elements and then there was a peer review done by senior staff and changes were subsequently made.

**BOB TILBURY:** We received commentary from WaterNSW; we received that in the form of comments on different sections of the EIS. We considered the comments, but that does not mean we adopted the comments. So our own internal staff made technical assessments of the appropriateness of the wording of the EIS and, as a result, some of those changes were made and they were the responsibility of SMEC.

**The CHAIR:** Mr Searle, I think I noted that you might have wanted to jump in there.

**The Hon. ADAM SEARLE:** Yes, just on that point. Mr Tilbury, the evidence this Committee has received previously from Ms Musgrave and Dr Crates was not some kind of minor or in the ordinary course peer-

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**CORRECTED**

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reviewed modifications as part of a usual process. The evidence, if I am not putting it too highly, was that they both felt that the substance of their work was being changed in a way that was not appropriate and that pressure was coming down onto them from management at SMEC as a result of pressure from WaterNSW. Are you telling us that that just did not happen and that their evidence to this Committee is not correct?

**BOB TILBURY:** I cannot comment on their feelings and how they perceived—

**The Hon. ADAM SEARLE:** I am not asking about their feelings, I am asking about their professional judgements here. They felt—their evidence was their professional work was being compromised.

**The Hon. WES FANG:** Point of order: The witness was adding to his answer when he was interrupted by the Hon. Adam Searle. I would ask that the witnesses be given the opportunity to respond. Obviously with the Webex system there is a little bit of delay and so I think that we all need to be a little bit patient and allow witnesses to finish speaking before we ask another question.

**The CHAIR:** I take the point. I think the exchange has been pretty respectful to date. We have all seen the evidence before the Committee, so I think it is reasonable to ask these questions and to allow them to be answered. Thank you, Mr Searle.

**The Hon. ADAM SEARLE:** I think Mr Tilbury was in the process of responding.

**BOB TILBURY:** My response is that it was a normal technical peer review process. These assessments are not completed by one individual; they are subject to normal technical peer review.

**The Hon. ADAM SEARLE:** Perhaps I can ask WaterNSW, Mr Gainsford, whether any investigations have been conducted into the allegations made by Ms Musgrave and Dr Crates at the previous hearing of this inquiry and, if so, what the outcomes of those investigations were?

**DAVID GAINSFORD:** Sorry, I was unable to hear your full question. I am not sure if that was directed at WaterNSW.

**The Hon. ADAM SEARLE:** It was directed to WaterNSW and I think it was directed to Mr Gainsford, but perhaps he is not the right person. Whoever the right person is, the question is whether or not any investigations have been conducted into the allegations made by Ms Musgrave and Dr Crates at the previous hearing of this Committee that their work was, in essence, interfered with inappropriately?

**RONAN MAGAHARAN:** I am happy to respond to that question, Mr Searle. Obviously WaterNSW is aware of the allegations made at the previous hearing and I would like to make a number of points in relation to this both in response to allegations but also those steps taken in developing the EIS. Following that evidence, DPE wrote to WaterNSW to seek additional factual information relating to those allegations. To inform WaterNSW's response on 25 November 2021, we engaged an external law firm, MinterEllison. As a consequence of that retainment, MinterEllison has made inquiries about the factual circumstances surrounding these allegations. That work is ongoing and, as you would appreciate, it would not be appropriate for me to speculate on this matter while the process is still underway.

I would, however, like to make the following general comments about the process of developing the EIS and the points that Mr Tilbury has made. For the development of the EIS it has been subject to a rigorous peer review which has been robust and it is not uncommon through this kind of process for various experts to have different views and ultimately assess the impact associated with the project. I note that in characterising the future impacts of the [inaudible] that was quite a careful consideration. I am not sure if the discussion of the evidence was provided around that, where appropriate evidence was requested throughout that process to ensure that it could back the statements.

In completing the EIS, and separate to any internal review that has been conducted, WaterNSW also conducted assurance processes, so engaged separate experts: Cardno, to complete both their technical review and also a separate legal firm to complete a legal review of the EIS. These reviews were obviously additional to those reviews that were undertaken, and the feedback, which has been talked about by the relevant agencies on the draft EIS, that feedback was taken on board and it was addressed in the EIS that has now been placed on public exhibition. So right now, as per the requirements of the planning process which we have already discussed, we will respond transparently to each person in relation to that through the submissions process.

Finally, I would like to make the point that much of the commentary has been centred on direct and indirect and I note that the approach as presented in the draft EIS was wary about that commentary. This included us taking an agreed approach with the relevant agencies for determining the impact area, which has been used for the purposes of the FPA and, for clarity, this approach, as I have said, was agreed by all the agencies, and with

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**CORRECTED**

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the impact area the EIS now takes a precautionary approach to the upstream inundation area and the [inaudible] in that impact area.

**The Hon. ADAM SEARLE:** I have got a couple of follow-on questions for Mr Magaharan. In relation to those investigations being conducted by the external law firm, do you have an estimated time frame within which you think they will be completed?

**RONAN MAGAHARAN:** We understand that will be completed in the coming weeks.

**The Hon. ADAM SEARLE:** [Audio malfunction]

**RONAN MAGAHARAN:** Sorry, Mr Searle, I was unable to hear you.

**The Hon. ADAM SEARLE:** Can you inform the Committee of the outcome of those investigations?

**RONAN MAGAHARAN:** At this point it is not appropriate for me to discuss or speculate while that process is still underway.

**The Hon. ADAM SEARLE:** I am not sure whether this question should be directed to you or to Mr Harper. Given the substantial shortcomings identified by various government agencies to do with the EIS, is WaterNSW happy with the EIS that has been prepared by SMEC?

**RONAN MAGAHARAN:** WaterNSW, as I stated, has gone through a very rigorous process with SMEC in developing the EIS. That EIS has been put on public exhibition and, as per the process, we are now reviewing the submissions that have been received. As has been stated by others here today, it is not unusual to receive feedback on an EIS. I think it is a very robust part of the process where the public has an opportunity to respond and then WaterNSW will consider all that feedback and provide that in the form of a submissions report to the department for that to be considered further.

**The Hon. ADAM SEARLE:** Yes, but are you happy with the [audio malfunction].

**RONAN MAGAHARAN:** Sorry.

**The Hon. ADAM SEARLE:** I heard what you said but the question is, was WaterNSW happy with the work done by SMEC on the EIS?

**RONAN MAGAHARAN:** WaterNSW has continued to work with SMEC on the development of the EIS and we have put the EIS, as agreed by the department, on public exhibition as it was deemed adequate.

**The Hon. ADAM SEARLE:** I do not want to put words in your mouth but I have now given you two opportunities to say that WaterNSW was happy with the EIS prepared by SMEC. It is just a matter of record that you have twice not taken up that opportunity. Is that correct?

**RONAN MAGAHARAN:** WaterNSW has a contract with SMEC and we continue to work with SMEC on delivering the requirements and the outcomes of that contract. We still have further work to do and we are continuing to work with SMEC throughout the process to develop the submissions report.

**The CHAIR:** Sorry, Mr Searle, could I just jump in there? I will give you a chance on this but I have certainly heard information to this effect: Have there been any threats of legal action from SMEC to WaterNSW with regards to this contract?

**RONAN MAGAHARAN:** Not that I am aware of.

**The CHAIR:** Potentially, Mr Tilbury, would you be able to confirm that is the case, that SMEC has not made any legal threats with regards to the operation of this contract and the ongoing nature of this contract?

**BOB TILBURY:** No, we have not taken any legal action in relation to this contract.

**The CHAIR:** Have you made suggestions in writing that legal action may be taken should there not be agreements around aspects of the contract?

**BOB TILBURY:** No.

**The CHAIR:** No, okay. Then I might just finish up on the line of questioning I had around Ms Musgrave, if I could, and then I will open up the questions to other Committee members. Mr Tilbury, the Committee previously received and tabled correspondence from and including yourself and Ms Musgrave and others at SMEC, outlining her concerns about changes made to the report and changes that she believed put at risk her accreditation as an accredited assessor. Her name, of course, was kept on the report as the accredited assessor despite her raising these concerns. Can you explain why her name ultimately was maintained on the report when she had raised these concerns?

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**CORRECTED**

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**BOB TILBURY:** Thank you. In fact, we had agreed to remove Ms Musgrave's name from the report at that point. It was, in fact, an editorial error that it remained on the report at that particular point in time.

**The CHAIR:** Okay. And to the concerns that she had expressed in these letters—and I am sorry, they were previously tabled but I do not have one to be able to share with you right now and I am happy if you want to take it on notice—she explicitly raised concerns about the degree to which the proponent was pushing back on aspects of her assessment, and her disagreement that the language that ultimately was agreed upon through the internal processes with SMEC sufficiently retained the sentiment around her assessment of biodiversity impacts. Can you speak to that?

**BOB TILBURY:** As I think I said earlier, we certainly undertook our own internal technical peer review as well as receiving peer review commentary from WaterNSW. We assessed the comments received from WaterNSW and our technical team made decisions around changes to the wording in the document.

**The CHAIR:** But you would accept that the initial process that kicked off this assessment in that regard was concerns raised by WaterNSW.

**BOB TILBURY:** No, I do not agree with that statement. This was this issue around direct and indirect, and the way particularly the upstream biodiversity was to be assessed was a very complex, technical matter and our senior technical staff came to a conclusion that the impacts upstream of the dam could be described as infrequent, cumulative and/or difficult to measure, which is in line with the definitions in the framework for biodiversity for indirect impacts. As previously presented to the Committee, there was an agreed approach amongst agencies that an area upstream of the dam would be described as an impact area and that provided a precautionary view of an area that would likely be impacted or considered likely to be impacted for the purposes of assessing offsets required for the project.

**The CHAIR:** I think what you have suggested there, Mr Tilbury, and I do not want to put words in your mouth so I will give you a chance to confirm this if I have got it wrong, but it seemed that SMEC was involved in this agreement that was reached between agencies about how impacts were going to be assessed, and instead of using the framework for biodiversity assessment and direct versus indirect impacts, there was this agreement around impacts that was reached, and I guess this goes to one of the concerns raised around the 20-year averages that was described this morning—I am trying to keep it simple, but that is sort of the easiest way to describe it—and that SMEC was sort of involved in those discussions and ultimately the report was written to reflect that agreement between agencies about how those offset requirements were going to be addressed. Is that right?

**BOB TILBURY:** To clarify, SMEC was not involved in those discussions directly, but this was a complex, technical issue where we sought, or WaterNSW, rather, sought clarity amongst agencies. That discussion took place and ultimately resulted in the approach to upstream assessment that was presented in the EIS.

**The CHAIR:** But you could see how an accredited assessor writing a report that all of a sudden had that sort of direction given would feel that their work was being changed and it was not necessarily consistent with how an assessment might be conducted in normal times.

**BOB TILBURY:** I cannot comment on how Ms Musgrave felt about that.

**The CHAIR:** It does seem here that you have got a situation where experts commissioned to do an EIS were effectively directed by the proponent about how to assess the offset requirements for that project.

**BOB TILBURY:** I do not agree that the proponent directed the assessment.

**The CHAIR:** Okay. Thank you, Mr Tilbury, I appreciate your responses there. Can I just check in with the Deputy Chair in the first instance?

**The Hon. ROD ROBERTS:** Nothing thanks, Mr Chair. Mr Searle covered my line of questioning.

**The CHAIR:** Then members of the Government. Mr Mallard or Mr Martin or Mr Fang? I think they might have stepped out.

**The Hon. WES FANG:** I just wanted to say that I am good with the questioning for the moment. I am happy just to continue to monitor.

**The CHAIR:** I might just check in with Mr Searle, if you wanted to continue?

**The Hon. ADAM SEARLE:** Yes, thank you, Mr Chair. I am not sure if Mr Magaharan is the right person but I might start with this question which is in relation to the Aboriginal cultural values. Why did WaterNSW not assess Aboriginal cultural values as part of the World Heritage assessment? I mean, the cultural heritage of the Blue Mountains is explicitly stated in the UNESCO listing criteria. How could such an oversight have occurred?



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**CORRECTED**

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**RONAN MAGAHARAN:** Thank you, Mr Searle. I point the Committee to chapter 20 of the EIS, which covers the protected and sensitive lands and details the assessment undertaken on World Heritage status, noting ultimately that that assessment of this work is up to the department and the process in the EIS assessment. The EIS, I think in that chapter, demonstrates that we did assess that, but obviously we have received feedback throughout the submission process that it has not been done sufficiently, and like with that feedback raised with the other process, WaterNSW will review and respond to that feedback in the submissions report.

**The Hon. ADAM SEARLE:** Given the strength of those criticisms, can you tell the Committee what steps WaterNSW will take to come to grips with those criticisms?

**RONAN MAGAHARAN:** With SMEC we are reviewing that in detail and we are going to take the steps required to address those in our submissions report. The World Heritage assessment certainly includes considerations from the Aboriginal cultural heritage assessment that was completed. So there is information there, as I said, in chapter 20, plus one of the supporting appendices. So we will be reviewing the detail that we provided and ensuring that we address the comments made through the submissions.

**BOB TILBURY:** If I might, Mr Searle, I could also direct the Committee to appendix J, section 6.1, which has a description of Aboriginal cultural heritage values in the World Heritage Area. But we will respond to the submissions that have been received on that matter.

**The Hon. ADAM SEARLE:** Thank you for that, Mr Tilbury. Can you tell the Committee who wrote appendix J or what were the qualifications of the person or persons who did do appendix J?

**BOB TILBURY:** The qualification is a technical principle in environment and planning at SMEC.

**The Hon. ADAM SEARLE:** A SMEC employee?

**BOB TILBURY:** Yes. Obviously that chapter is based on a number of other technical reports contained in the EIS.

**The Hon. ADAM SEARLE:** But they were not [inaudible].

**BOB TILBURY:** Sorry, Mr Searle, I could not hear that last piece.

**The Hon. ADAM SEARLE:** They were not an expert in making cultural assessments.

**BOB TILBURY:** No, they relied upon the specialist cultural heritage assessments in other chapters such as appendix K and chapter 18.

**The Hon. ADAM SEARLE:** Perhaps I could go back to Mr Magaharan. How does WaterNSW plan to fund this project if it is to be ongoing? Has there been or have you sought any commitment from the New South Wales Government around funding?

**RONAN MAGAHARAN:** Can I just clarify that question, Mr Searle? You are talking about the completion of the process we are currently in or construction of the project?

**The Hon. ADAM SEARLE:** I was referring to the construction of the project. Where are you up to with Government over the funding, or what is WaterNSW's plan on how it would have the project funded?

**RONAN MAGAHARAN:** That process is ongoing and that is ultimately a decision which will be made by government if the project does proceed. But there has certainly been initial work started on the options to fund that.

**The Hon. ADAM SEARLE:** [Audio malfunction]

**The CHAIR:** I do not think anyone heard that, Mr Searle.

**The Hon. ADAM SEARLE:** I just wanted to see if anybody else had any questions. I do not wish to monopolise this.

**The CHAIR:** I am happy to jump in for a little bit. I wanted to continue with some of my questions from earlier, but this time redirect them to WaterNSW, so potentially you, Mr Magaharan. The contract with SMEC, are you able to provide the Committee with advice on the value of the contract to prepare the EIS?

**RONAN MAGAHARAN:** I do not have that number in front of me, but I understand those figures are available on our website and in our annual reporting.

**The CHAIR:** I will have a look there. Can you provide us with advice on how many times the contract has been renegotiated since, I think it was initially 2017 when it was started?

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**CORRECTED**

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**RONAN MAGAHARAN:** No, I would not be able to provide you that advice here today. I do not have that in front of me.

**The CHAIR:** Could you take it on notice?

**RONAN MAGAHARAN:** Sure. Yes, absolutely.

**The CHAIR:** That would be great, thank you. Obviously you have been directed by the department to prepare the preferred infrastructure report. Who do you intend to do that work?

**RONAN MAGAHARAN:** As I understand, it is part of the original scope that was part of SMEC's contract, but I am happy to take that on notice. The process occurring with a PIR is obviously highly connected to the submissions report and understanding the impacts as a result of those submissions. So, yes, that is my understanding [audio malfunction].

**The CHAIR:** I think Mr Tilbury said before that they were not responsible for the PIR or had not heard about how WaterNSW wanted to go about preparing the PIR. Mr Tilbury, maybe you can just confirm that that is the case? Is SMEC doing the PIR or not?

**BOB TILBURY:** Thank you, Mr Chair. My earlier comments, I think, and correct me if I was wrong, said we had not contemplated as yet the commencement of a PIR. It is in our contract that, if necessary, we would assist with the preparation of a PIR, but as you already heard from other witnesses, PIR is discretionary. So at the time of the contract it was not clear in scope whether it would be required or not.

**The CHAIR:** Well, can you say whether or not the development of the PIR is currently funded under the contract or whether or not it would require, you know, clarification and change with regards to funding?

**BOB TILBURY:** Well, I think that is a commercial matter between WaterNSW and ourselves.

**The CHAIR:** Far be it me to try to coordinate your contract agreement in the Committee but, Mr Magaharan, is it your understanding that that is funded, or you need more funding to continue that work with SMEC?

**RONAN MAGAHARAN:** I will ask Mr Harper to respond.

**DAVID HARPER:** Thank you, Mr Chair. Can you hear me?

**The CHAIR:** I can.

**DAVID HARPER:** Yes, I did not want to come off mute as it will upset the speaker at the other end, I understand. But to answer your question, the PIR, as Mr Tilbury has already pointed out, was part of the scope. Whether it was needed or not was not known at the time. However, there are sufficient funds for undertaking a PIR. The PIR would have to be developed probably in collaboration with ourselves because it probably has, potentially, design infrastructure changes, which is the whole purpose of the PIR.

**The CHAIR:** Okay. Well, it seems like you have not started that process yet, the discussions have not started. It is a highly technical piece, I think as Mr Magaharan mentioned. There was some discussion about timeframes, I think, earlier in today's session, it may be as short as three months. Mr Tilbury, can you give us any advice on how long you would think it would take to prepare a PIR for WaterNSW?

**BOB TILBURY:** I cannot speculate on the timeframe required. The main purpose of a PIR involves whether there are infrastructure changes to the proposal and that is not in our scope so I would have to defer to WaterNSW on that point.

**The CHAIR:** Okay. We have got a few hands coming up here now. Mr Harper, I might ask you to clarify, first, and then I will throw to you, Dr Bentley.

**DAVID HARPER:** So, as I said before, it is funded. The PIR will be undertaken, commenced after we have unpacked all the submissions, which we are currently doing, and working through them, as Mr Magaharan pointed out. The PIR probably will not be as extensive as the submissions report, I would say, from what we have gathered so far today.

**The CHAIR:** Dr Bentley, do you have something to add?

**JIM BENTLEY:** Just very briefly, thank you, Chair, and I am trying to be helpful here not anything other. I think you said in your question maybe as little as three months. I do not think WaterNSW said any information about timescale other than to say that they would come back with a timescale for you.

**The CHAIR:** Okay, I did not mean to misrepresent that. I must have misheard and may be that was in regard to the response to submissions anyway. So I certainly do not want to confuse the record there, thank you,

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**CORRECTED**

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Dr Bentley. Thank you, that sort of concludes my line of questioning around that element. I was hoping to go to the World Heritage assessment. It is quite clear that UNESCO has concerns around this project, and think it is fair to say that they feel it is inconsistent with Australia's obligation under the World Heritage Convention, and that was subsequent to the EIS coming out. So we have sort of moved on from where we have asked questions around this before because the EIS is now completed and they have had a chance to see the assessment.

So can I get a clarification, I guess, possibly from Mr Gainsford, about what is the engagement with the planning department with the World Heritage side of this question now, working with UNESCO to ensure that it will meet Australia's obligations? And I appreciate that there are also Federal ramifications here but ultimately the planning Minister makes decisions before it even goes there for, I guess, concurrence to a degree. Can you explain how that will work now?

**DAVID GAINSFORD:** Yes, thank you, Chair. As you mentioned, we have now received a submission coming from UNESCO, which also contained advice from the International Union for the Conservation of Nature [IUCN], and so as part of that process, we have submitted that to WaterNSW again as something to be responded to, along with the other submissions. With regard to our engagement directly with UNESCO, we do not have a direct engagement with UNESCO. That has been done through the Commonwealth. The Commonwealth are the ones that administered World Heritage. Obviously, as I mentioned in my earlier evidence, we do have regular conversations with the Commonwealth about a range of matters, including the EPBC Act assessments that we are doing on its behalf, but it is the Commonwealth that has the direct engagement with UNESCO. But we have received that submission and submitted it to WaterNSW.

**The CHAIR:** Okay. Now, if, ultimately, UNESCO does not support the project, I guess that is a question for the federal Government what it does about that, whether or not it would be prepared to sign off on the project, if it did not meet, you know, World Heritage obligations, or is that not the case? It still could well be approved even if it is assessed as not meeting World Heritage obligations?

**DAVID GAINSFORD:** Mr Chair, I guess my expectation again would be, as per all the submissions that have been received, is that WaterNSW will be able to respond and address the issues that have been raised and I do not want to speculate, but, you know, I guess we would be seeking some further advice through the Commonwealth of UNESCO and those players at that point in time.

**The CHAIR:** Okay. So we have obviously seen the public submissions to the EIS. But in these interchanges between the Commonwealth and State around this question, is any of that evidence going to be made public, or is that largely between the department and the Commonwealth department now in terms of negotiating on how those issues raised will be addressed?

**DAVID GAINSFORD:** Can I just clarify, Chair? Are you talking about the regular meetings and dialogue that we have with the Commonwealth or, obviously there are formal bits of advice and submissions that we have published. Are you referring to things outside of that?

**The CHAIR:** Well, yes. Now that we have seen the public submissions, including IUCN's review, obviously you have sent advice back to WaterNSW. They will respond. But there will be this ongoing interaction with the Commonwealth around both World Heritage issues and, ultimately, EPBC. Is any of that advice, back and forwards, going to be made public as it gets to the point of determination or is that, largely, just correspondence that is in between the planning department and the Commonwealth agency?

**DAVID GAINSFORD:** I would characterise it as largely being correspondence, part of the usual correspondence and discussions that we have with the Commonwealth. So, yes, I guess at this point in time we would normally publish that material but I am happy to take some of the detail on notice there.

**The CHAIR:** If you could, that would be great. The reason I ask this question is because this Committee has made quite a lot of effort, and also some individual members through Parliament, and other Freedom of Information processes, to get access to information around this project. Much of it has been considered Cabinet-in-confidence and not provided. I guess my second question is: would you consider that correspondence to be Cabinet-in-confidence, given it is really not about the consideration of Cabinet but rather about the consideration of the planning assessment process?

**DAVID GAINSFORD:** Oh, Chair, I mean, if it is part of the usual course of conversations that we are having to do with our assessment, there would not be Cabinet-in-confidence protections on that, I would not have thought.

**The CHAIR:** If you could come back to the Committee and confirm the status of that, that would be useful, because I am sure that there might be some efforts to try to see some of that information through the process.

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**CORRECTED**

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**DAVID GAINSFORD:** I am happy to take that on notice.

**The CHAIR:** One of the issues that has been raised throughout this process is the requirement for free and informed consent of traditional owners. That has come about because of the Indigenous Land Use Agreement but also the issues around World Heritage, and obviously the cultural heritage implications there. Can you explain your understanding of the interaction of the Indigenous Land Use Agreement with this project and whether the department feels that free and informed consent would be required before this project could proceed?

**DAVID GAINSFORD:** Chair, I guess, obviously we take advice from Heritage NSW, and obviously they have made a submission which has been part of the process. I wonder if it might help that I actually refer you to Ms van den Honert to talk a little bit more about how the department is looking to engage with Aboriginal groups associated with the project, which might help answer your question?

**The CHAIR:** Thank you. I think you might be on mute, Ms Van den Honert.

**ERICA van den HONERT:** Thank you, Mr Gainsford. One of the things the department has done has been to engage original consultants called Murawin to help us ensure that the registered Aboriginal parties and any Aboriginal stakeholders understood the environmental impact assessment process, which as we know is complicated, and to help them make a submission. We have also reached out to those groups and expressed a desire to go on country if they would like to invite us. We are waiting to hear back from them. We will continue that engagement through the process to help us in our assessment of the proposal.

**The CHAIR:** Can you clarify, Ms van den Honert, which Aboriginal parties have been engaged by your consultant at this point?

**ERICA van den HONERT:** I will have to take the detail of all the names of the RAFs on notice and come back to you. I will get back to you on that one.

**The CHAIR:** That would be great. We are now quite some time since the EIS was published. Submissions have obviously closed. So I am just checking that they were all engaged in a timely fashion. I guess to the question that I had originally asked Mr Gainsford, what is the relationship in the mind of the planning department between the Indigenous Land Use Agreement and the assessment process for this project? How do you see those two things interacting?

**ERICA van den HONERT:** I might ask—

**DAVID GAINSFORD:** Ms van den Honert might answer that.

**ERICA van den HONERT:** I might take that on notice and refer to my colleagues at Heritage NSW for their advice, unless Mr Gainsford has got anything to add.

**The CHAIR:** Sure. They have obviously provided their advice and this issue of free and informed consent has come up consistently through the process. I guess I am just asking, ultimately, the part of government who will make a recommendation to the Minister is free and informed consent of the registered Aboriginal parties, and those parties that are party to the Indigenous Land Use Agreement, required in your view?

**DAVID GAINSFORD:** Chair, thank you for that question. So obviously the Secretary's Environmental Assessment requirements do require very detailed consultation and involvement of the Aboriginal groups and that would be our expectation. The documentation that has been submitted, I guess, demonstrates the extent of work that was done as part of that work. Heritage NSW, as Ms van den Honert was saying, has raised some concerns with the assessment. For partly those reasons, we have engaged a consultant to help us come to an understanding around that engagement and making sure that there is the involvement of the right Aboriginal groups to do with the assessment process.

**The CHAIR:** Right. Many of those groups have given evidence to our Committee and have been highly critical of the assessment process to this point. I am sure you are no doubt aware of that. What is the timeframe around this consultant's work to be able to provide that advice back to you?

**DAVID GAINSFORD:** I might refer that to Ms van den Honert.

**ERICA van den HONERT:** So the answer to a previous question you asked is we engaged Murawin during the exhibition period while the EIS was out on exhibition so that they could assist any Aboriginal party make a submission. Their engagement with us is ongoing for as long as we need it which I anticipate will be through the processes that we are at the moment and then the submissions report and preferred infrastructure report come in as well.

**The CHAIR:** How many submissions do you think engaging that consultant ultimately led to being made by various Aboriginal parties?

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**CORRECTED**

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**ERICA van den HONERT:** I do have the numbers. I just do not have them right at my fingertips but I will try and get them and report back to you shortly.

**The CHAIR:** Obviously if that process was used to assist in the provision of submissions it does not really go to this broader question about the Indigenous Land Use Agreement and what happens next in this process. I am sure that those groups will be keen to understand the response to submissions by the proponent and should any additional information that relates to Aboriginal cultural heritage ultimately end up in the preferred infrastructure report. What will the department do to ensure that those communities continue to be engaged and to be able to understand the process?

**DAVID GAINSFORD:** Thank you. I guess I would reiterate my answer earlier, which is around the process that we will use to determine whether the preferred infrastructure report requires a further exhibition and, as you are alluding to there, if that does include additional information that we feel would be worth putting on public exhibition, including Aboriginal groups, then we will do that. But as an additional step, as Ms van den Honert, has outlined, we are looking to do that direct engagement with Aboriginal groups as well.

**The CHAIR:** Just to confirm, before I pass on to others, Ms van den Honert will you come back with the groups that were engaged by the consultant, it would be much appreciated. I will pass around the room. Thank Deputy Chair, do you have any questions for these witnesses? Government witnesses? Mr Mallard? Mr Fang?

**The Hon. WES FANG:** No, I am okay, thank you.

**The CHAIR:** Mr Searle, do you have any remaining questions from the Opposition?

**The Hon. ADAM SEARLE:** No, not at this stage, Mr Chair.

**The CHAIR:** We may well have an eight-minute early mark. It has been a long session. I thank the witnesses for their time together and your persistence with some of the technical challenges with sound this afternoon. We had a good morning. We did not have a great afternoon, but that is alright. A number of questions have been taken on notice. The secretariat will be in touch with you about providing those answers within 21 days.

**(The witnesses withdrew.)**

**Committee adjourned at 14:53.**