

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 2 - HEALTH**

**INQUIRY INTO CURRENT AND POTENTIAL IMPACTS OF GOLD,  
SILVER, LEAD AND ZINC MINING ON HUMAN HEALTH, LAND,  
AIR AND WATER QUALITY IN NEW SOUTH WALES**

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney on Friday 27 October 2023**

**The Committee met at 9:00.**

**PRESENT**

Dr Amanda Cohn (Chair)

The Hon. Susan Carter (Deputy Chair)

The Hon. Greg Donnelly

Ms Cate Faehrmann

The Hon. Emily Suvval

The Hon. Bronnie Taylor



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**The CHAIR:** Welcome to the fourth hearing of the inquiry of Portfolio Committee No. 2 - Health into mining impacts. The inquiry was established to inquire into and report on the current and potential impacts of gold, silver, lead and zinc mining on human health, land, and the air and water quality of New South Wales. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the land on which we're meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today.

Thank you for attending today's hearing. Today we will be hearing from a number of stakeholders for our inquiry, including Mr Anthony McClure, Managing Director of Bowdens Silver; witnesses from Regis Resources; the chair of the NSW Independent Planning Commission, Professor Mary O'Kane; and various government agencies. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage committee members and witnesses to be mindful of those procedures.

**Mr ANTHONY McCLURE**, Managing Director, Bowdens Silver, before the Committee via videoconference, affirmed and examined

**The CHAIR:** I welcome our first witness via Webex. Thank you for making the time to give evidence. I understand you're in a different time zone today. It is much appreciated by the Committee. Would you like to start by making a short statement?

**ANTHONY McCLURE:** Yes, thank you. First of all, thank you for the opportunity to present to the Committee today. As stated, I'm the managing director of Silver Mines Ltd, which is an Australian company listed on the Australian Securities Exchange. I'm also the managing director of its 100 per cent owned subsidiary, Bowdens Silver Pty Ltd. The Bowdens Silver project is a significant asset for the State of New South Wales. From day one we set out to create an environmentally robust, and socially and financially responsible, development. Our environmental impact statement is one of the most comprehensive EISs done for a metalliferous mine proposal in New South Wales. We are very proud of what we have done, and more so now we've received development approvals from the Independent Planning Commission. The mine will initially produce around six million ounces of silver per year with by-product credits of zinc and lead. It will create 320 jobs during construction and 228 ongoing local jobs doing operations on the site. There will be many more jobs created in local service industries and small businesses.

Silver is an essential commodity for our society, and in particular for the transition of our economy. The reason for that is that silver is the best electrical conductor of all the metals. It is commonly used in electronics of all kinds—think of computers, TVs, mobile phones, all types of vehicles including electric vehicles, robotics, aerospace, medical equipment and nanotechnologies. In addition, silver has striking antibacterial, antiviral and antifungal properties, and is a critical element in water purification. It is used in hospitals to sterilise medical equipment, and is used in pharmaceuticals and biosciences.

Last year approximately 10 per cent of world silver production was used in the production of photovoltaic cells for solar power. This is expected to double over the next few years. Approximately 85 per cent to 98 per cent of all current global silver reserves is predicted to be consumed by 2050 by solar power alone. That's in 26 years' time. Without silver, the world cannot decarbonise. Where does silver come from? Mexico, China and Peru are the largest producers, producing over 50 per cent of the world's silver. A total of 84 per cent of all photovoltaic cells for solar power are made in China. Most electric vehicles are made in China. The security and supply of silver and componentry is a major supply issue for the world going forward. I would suggest that these are the key points as to why silver is classified in the New South Wales Critical Minerals and High-Tech Metals Strategy.

I would also like to comment on socio-economic issues as they relate to our local communities. Coalmining has been fundamental to the prosperity of our region for many years. At present, coal accounts for 79 per cent of the region's export from the LGA. However, as we move forward to net zero emissions and coalmining operations close down, our community will lose an important source of economic activity. With that, jobs will be lost and businesses will close. A number of local towns close to us are struggling. For example, Kandos, a town of 1,200 people 25 minutes from our site, has been in socio-economic decline for many years after industries closed. Now we are seeing the consequences: few jobs, low incomes and welfare, and very poor educational and health outcomes.

In regard to health, diabetes, heart disease, kidney disease, mental health and strokes are roughly double the State average. Lung conditions are over three times the State average. The Government needs to consider what happens to towns like Mudgee post-coal. Silver mining provides an opportunity to diversify the local economy and ensure economic prosperity. The last point I'd like to make concerns the Bowdens Silver environmental impact statement, the department of planning's environmental assessment report and the Independent Planning Commission's development consent. The IPC stated on approval:

After consideration of the material, the expert evidence before it, in the absence of any outstanding concerns regarding health impacts from NSW Health or the NSW Environment Protection Authority that are unable to be managed, and the conditions imposed by the Commission, the Commission is satisfied that the Project can meet all relevant requirements for protecting human health and safety and that on balance, the Application is in the public interest.

Thank you.

**Ms CATE FAEHRMANN:** Thanks for appearing, Mr McClure. I turn to the issue of water firstly. How much water will the mine need for its operations? Do you know this level of detail?

**ANTHONY McCLURE:** Yes. Through the life of the mine we will require about 1,800 megalitres of water per year. Just to break that down, that is the amount of water that is available to us through the various items. I'll break those down a little bit further. Rainfall and run-off is about 900 megalitres per year. Advance

dewatering in the open cut is about 380 megalitres per year. Pit groundwater inflow is about 430 megalitres per year. Water harvesting is predicted to yield about 27 megalitres per year. That's a total of 1,800 megalitres per year. The on-site demands—what we will use—range between 1,000 megalitres per year and 1,300 megalitres per year, so we'd have excess water. The other point to make is we will continue and we are continuing to satisfy our water requirements. Obviously we are in a position where we satisfy our water requirements even in difficult drought conditions, but as you can appreciate, we'd like further insurance. That's why we continue to monitor water requirements. We've had some wins in terms of—

**Ms CATE FAEHRMANN:** Mr McClure, time is short. With the 1,800 megalitres per year, that sounds like a significant amount of water in terms of the impact on other users of water in the area around Lue and Lawsons Creek, doesn't it? Has the impact been fully assessed against what it means for other users?

**ANTHONY McCLURE:** Yes, it has been, and comprehensively. I think the key point to make in the assessment and even from the outset of what we wanted to achieve when we took over the operation is we did not want to take water away from agriculture and we did not want to take water away from environmental flows, and we've achieved that.

**Ms CATE FAEHRMANN:** When you're saying it has been comprehensively assessed, my question was the 1,800 megalitres. I understand that DPE assessed the project on the basis of 177 megalitres per year being lost to the catchment. You've just said 1,800 megalitres. My question was whether the impact of the loss of that has been assessed. It doesn't sound like it has.

**ANTHONY McCLURE:** Yes, it has.

**Ms CATE FAEHRMANN:** Who by?

**ANTHONY McCLURE:** Well, a range of consultants who came into the project. Jacobs—

**Ms CATE FAEHRMANN:** Was it assessed by the Independent Planning Commission?

**ANTHONY McCLURE:** Well, overall it was, yes, indeed.

**Ms CATE FAEHRMANN:** That 1,800 megalitres?

**ANTHONY McCLURE:** Jacobs reports to ourselves and the DPE. That's obviously peer reviewed by ourselves. The process through the assessment of the groundwater exercise through the State's consultants is also comprehensively reviewed, and that obviously pipes up to the Independent Planning Commission. So the EIS is a document which is comprehensive. It is some 10,000-odd pages in the EIS, and the detail that goes into it—and groundwater being one of the fundamental assessments in the whole exercise—has been done expertly and comprehensively.

**Ms CATE FAEHRMANN:** So the DPE did assess the project on the basis of 177 megalitres per year being lost to the catchment. Do you agree with that information?

**ANTHONY McCLURE:** I don't know that number, but I'm happy to check that. I think if you review the assessment report by the DPE, the balance of the numbers that you might require will be in there. If not, they're in the environmental impact statement.

**Ms CATE FAEHRMANN:** I'm aware of the numbers in there. It's 177 megalitres per year that is being lost to the catchment. That's what it is assessed on. Are you aware of what Lawsons Creek looked like during the 2019 drought? Were you around the area of Lue at that time, Mr McClure?

**ANTHONY McCLURE:** Yes, I was.

**Ms CATE FAEHRMANN:** Was there water in the creek?

**ANTHONY McCLURE:** No, it dried up. Yes, that's right.

**Ms CATE FAEHRMANN:** So that was in 2019, before your mine. What's going to happen to all of the users around Lue—the producers of the agriculture, wine, everybody who relies on it, the school, the stock and domestic? What is going to happen if your mine goes ahead and you're taking 1,800 megalitres?

**ANTHONY McCLURE:** The assessment is done under severe drought conditions, so all of that is taken into account consideration. It's not done as a study that looks at when we're all flush with water.

**Ms CATE FAEHRMANN:** Mr McClure, a significant quantity of the water that you will be taking is rainfall runoff from what I understand are 59 existing dams that are on the area of land within the project site. The vast majority of the water that you will be taking is unlicensed. Is that correct?

**ANTHONY McCLURE:** No, that's not correct. All of our water is licensed. One last point to make on that item, as I mentioned before, our water take—and this has been the intention of our company right from the beginning—will not affect environmental flows and will not affect agriculture in the region. We're very pleased that we've been able to, on the whole, basically achieve that—albeit with slight differences in the numbers as we go forward but, fundamentally, that's what we set out to achieve and we have achieved it.

**Ms CATE FAEHRMANN:** I'll have to put questions on notice to you and other witnesses because of time, but I dispute your 1,800 megalitres—saying all of that water is licensed. I'll deal with that later.

**ANTHONY McCLURE:** It's in the reporting.

**Ms CATE FAEHRMANN:** It's not in the approval that I have before me, the IPC statement of reasons for decision. The water licences held by Bowdens is nowhere near 1,800 megalitres here.

**ANTHONY McCLURE:** I don't think that's right.

**Ms CATE FAEHRMANN:** Mr McClure, are you comfortable with the fact that one of the conditions of consent for your mine is for the children of Lue to get their blood tested for levels of lead?

**ANTHONY McCLURE:** Maybe I can just go back one step.

**Ms CATE FAEHRMANN:** There are not many steps to go back. It's a straightforward question.

**The Hon. GREG DONNELLY:** Point of order—

**ANTHONY McCLURE:** Let me put it this way—

**The CHAIR:** I need to hear the point of order. Excuse me, Mr McClure.

**The Hon. GREG DONNELLY:** I think we know how this goes: The question is asked; the witness is entitled to answer. Do not follow it up, when he commences, with another question.

**Ms CATE FAEHRMANN:** Sure.

**The CHAIR:** As per the estimates hearing yesterday, members are entitled to ask follow-up questions after the witness has started giving an answer to that question. Sorry, Mr McClure. Continue.

**ANTHONY McCLURE:** The testing of children or any other humans, for that matter, is something that we proposed three years ago in our environmental impact statement. Indeed, it was our idea; it was our proposal. The reason for that idea was to allow for the community to understand that, indeed, there are no issues. Now, if you look at the health impact assessment, if you look at the several peer reviews that have been done, and if you look at the work that has been done by NSW Health, the EPA and then the DPE, following the IPC, you will see that there are fundamentally no health issues resulting from this mine development. However, for us to satisfy the community, we offered the opportunity of testing water tanks, testing people and testing the soils to satisfy the community that, indeed, that is the case. We will be doing that, and it is voluntary. For the DPE to recommend that that be a condition, that is on the back of what we recommended and what we wanted to do. So it's there not to cause an issue, and explain the issue. It is to show two things: one, that the mine does not contribute to negative health impacts—

**Ms CATE FAEHRMANN:** Sure, thank you.

**ANTHONY McCLURE:** Please allow me to finish. The other point is for the community to understand what lead and other metals are already in the environment. Lead occurs naturally—

**Ms CATE FAEHRMANN:** Can I check now, are you doing baseline health studies? Is the mine company paying for that now? Is your company paying for baseline health studies in the community?

**ANTHONY McCLURE:** We're designing that now, yes.

**Ms CATE FAEHRMANN:** So you're going to do it. You're designing and paying for it. That's taking place?

**ANTHONY McCLURE:** Correct.

**Ms CATE FAEHRMANN:** I wanted to ask why there was—in 2019 the original SEARs had an external water supply from Ulan coalmine. Basically there was a 60-kilometre pipeline from Ulan. The EIS was amended in March 2022 to remove that and all water needed to be sourced from the mine site. Why did that occur?

**ANTHONY McCLURE:** Good question. Thank you. At that point in time, the mine site was deficient in somewhere between 15 per cent and 20 per cent of its water requirements.

**Ms CATE FAEHRMANN:** Is that because it was drought at that point in time? Sorry, just to be clear, when you are saying "at that point in time it was deficient", when was that?

**ANTHONY McCLURE:** Because we didn't have that amount of water onsite at that point in time. We couldn't demonstrate that. We later—

**Ms CATE FAEHRMANN:** Sorry, just to be clear, when was the point in time, when you're saying "at that point in time"—in 2019?

**ANTHONY McCLURE:** The point of time is irrelevant because it's a study of flows in good and bad conditions. It obviously takes into consideration bad conditions and the worst case scenario. For us to pipe water in was something that—it looked like we wanted to do it, and we may well do it in the future if we needed to do it. However, we completely satisfied our water requirements onsite through two primary mechanisms. One was the further assessment of groundwater, and two was an optimal process in the recycling of water onsite.

**Ms CATE FAEHRMANN:** In terms of your dam construction onsite with those 59 dams, are you able to provide the Committee with a time line of the construction of those dams, when each one was built? Are they historic or have a number of them been constructed in recent years?

**ANTHONY McCLURE:** We have not built any dams yet.

**Ms CATE FAEHRMANN:** So there are 59 and possibly more to be built?

**ANTHONY McCLURE:** I don't know the number offhand, but there will be dams cut.

**Ms CATE FAEHRMANN:** One last question just in relation to the tailing seepage. I understand that the tailings dam will be leaking or seeping—and this is in the EIS—at a rate of 1.6 megalitres, or 1.6 million litres, per day into Lawson Creek. Is that just a cost of doing business that is okay to you, that 1.6 megalitres of a tailings dam is seeping every single day into the creek?

**ANTHONY McCLURE:** Well, actually, I think the number you referred to is per year. However, the assessment that was done was for a clay liner of the tailings dam. There were various options looked at, then there's full assessing options. However, the seepage was curtailed and can be further curtailed through the planning of a bituminous geomembrane that will cover the dam, so that will reduce. During mining operations, drains would direct seepage from the collection pond, and it would then be pumped back to the decant pond. That will reduce and capture seepage and be returning it into the system.

I think the key point to make is back on the assessments as well. Any seepage that does happen over time has—the work that has been done doesn't take into consideration the degradation of minerals. As an example, cyanide—which is a small commodity that will be used, not to the extent of a gold mine—will break down in sunlight over time. It will break down to carbon and hydrogen over time. Those assessments of minerals in terms of chemical breakdowns or other breakdowns are not taken into consideration. It's a complex issue. Again, I refer you to the detail of the assessment report.

**The Hon. SUSAN CARTER:** Thank you, Mr McClure, for making yourself available. I'm very interested in a lot of the testing and assessment that's gone into the various approvals that have been given for the Bowdens mine. Could you talk a little bit about the air quality assessment, especially with respect to dust in the atmosphere? This is an assessment you commissioned. Could you talk about that, at all?

**ANTHONY McCLURE:** Yes. The primary work was done by a group called Ramboll, who are specialists in the field. That dovetails into other reports like the health impact assessment, and goes through peer reviewing, DPE and EPA and so forth. It's a comprehensive process, as you can appreciate. I think one point to make on that is—and apologies for providing data—the air quality assessment presents impacts of outcome. We're looking at lead as an example. It looks at lead particles that are generated by the mine, and that's expected to peak at the mine at 0.001 micrograms per metre cubed per year. Just to put that into context, a microgram is a millionth of a gram, so 0.001 micrograms per cubic metre per year is added to the mine—a minuscule amount. The reference criteria, as put forward by the EPA, is 0.5 micrograms per cubic metre per year. The EPA's criteria is 500 times the peak predictions from the mine.

**The Hon. SUSAN CARTER:** I noticed that they're predictions, and it's been expressed as a peak prediction. What ongoing monitoring is there to test—what is effectively a model to test in the real world situation that the expectations are being met?

**ANTHONY McCLURE:** Throughout our tenure on the site, which is seven years, we've done dust sampling. We understand what's in the natural environment very well. I think it's topical, and obviously it's been an item for this Committee in assessing what we can do better and what the industry can do better in terms of

monitoring. For us, obviously we're pre-mining. We haven't commenced mining operations. We're still planning. We're doing other optimisation work at the moment—

**The Hon. SUSAN CARTER:** I suppose that's my question, Mr McClure. What planning are you doing for ongoing monitoring? I understand that these are the predictions, but what ongoing monitoring will there be to test whether these predictions are being exceeded or whether they were overly generous, and what the actual impact is an ongoing way?

**ANTHONY McCLURE:** It will be a comprehensive array of monitoring devices—live, real-time devices that will be available and will be distributed around the mine site. That will be an exercise that we will be undertaking through our consultants but also in dialogue with the EPA and DPE.

**The Hon. SUSAN CARTER:** Who will have access to the results of that monitoring?

**ANTHONY McCLURE:** That will be public information.

**The Hon. SUSAN CARTER:** Do you have any idea with what frequency that information is likely to be reported?

**ANTHONY McCLURE:** That will be part of the design work that we're doing at the moment in consultation with our consultants and also the EPA. We will work out what is the most comprehensive array and how that might be provided live to government, community and so forth. It's work that is upon us at the moment, so we're getting ahead of ourselves a little bit, but our management plans will be complete hopefully by the end of this year.

**The Hon. SUSAN CARTER:** If the models aren't correct and if the metal dust exceeds what the predictions are, what happens then? If there's a report that says it's exceeded EPA levels, what happens?

**ANTHONY McCLURE:** It is a good question. I think when you look at the project as it is, obviously lead is topical. There are other elements which may be in other mines and are being mobilised in dust and so forth. Effectively we are a silver mine which has very small by-products of zinc and lead. There has been some talk out there that we are another Mount Isa or a Broken Hill or whatever. It's nothing of the sort. We have very low levels of lead. We obviously rely on consultants. The health impact, the dust criteria and so forth, then the peer reviews and then the Government's work, which is comprehensive as well—I think there can be significant reliance on that.

**The Hon. SUSAN CARTER:** But despite all those consultants, you really can't tell us what's going to happen if dust levels are monitored and show too much lead in the dust.

**ANTHONY McCLURE:** That will be a matter that's between the company and government, but I think all the studies can be relied on.

**The Hon. SUSAN CARTER:** On page 8 of your submission you talk about the idea of a personal monitoring program, and we've heard discussion of this before from witnesses in terms of perhaps people monitoring their blood levels for lead and other minerals. What are your comments about the utility of a personal monitoring program and why is it personal rather than a broader monitoring program?

**ANTHONY McCLURE:** Well, it will be a broader monitoring program. Effectively the dust will be monitored and people who would like to may have themselves tested. We will have routine analysis of water, soils and housing. We will have a comprehensive array of monitors. So it's obviously not just personal monitoring. It is important to reiterate, as I said before, the community monitoring is a voluntary exercise that we've provided for the community to understand, in the first instance, what minerals are already available in the current environment. So that's naturally occurring and it's throughout the region. People consume lead and other minerals through eating fresh vegetables and so forth. It's all upon us. Obviously there's some significant detail provided in the assessment reports and the environmental impact statement.

**The Hon. SUSAN CARTER:** So Mr McClure, if somebody undertakes the personal monitoring program, regularly has blood tests, and they find elevated lead levels in their blood, who do they call?

**ANTHONY McCLURE:** They would call NSW Health or the EPA. But I think, comprehensively, if a person in the community, and there will be—most people in the community will have trace elements of various minerals in their blood right now, and that's before mining. So the purpose of a baseline is to test what happens in the natural environment. Also, we have lead in old housing and paint, and lead flashing and guttering and so forth. To understand what is in the environment now, whether natural or man made, pre-mining. So that assessment that is done post-mining—



**The Hon. SUSAN CARTER:** Mr McClure, I understand the general idea of lead in the atmosphere. But if five of your neighbours found elevated lead in their blood within two years of the mine's opening, what's the mine's response?

**ANTHONY McCLURE:** I think it's a dialogue between the mine and government and the people concerned. But I think we need to get back to the assessment reports that have been done, the comprehensive work that has been done, which sees that these health issues that have been talked about—there is nothing in those reports. This is by some of the best people—toxicologists and whatever—who have undertaken these studies, peer reviewed, peer reviewed again, then to NSW Health and then to EPA. None of those studies demonstrate that there's any negative health outcomes from this mine. So I think that needs to be put into context.

**The Hon. SUSAN CARTER:** I entirely accept the results of studies that you've provided us, and I'm very grateful for them. I'm just checking about the ongoing monitoring of the mine to confirm that the results are as predicted in the studies which have been provided and reviewed by EPA and a host of the other bodies.

**ANTHONY McCLURE:** Obviously we're working through our management plans at the moment. When we have our monitoring design work done and have those discussions with NSW Health and the EPA, we will have more to say about that.

**The Hon. SUSAN CARTER:** Are you in a position to comment—although it sounds as though you are still developing these plans—about your plans to manage dust generation on the site, especially metalliferous dust generation?

**ANTHONY McCLURE:** Yes, we are. Obviously we are a small- to medium-sized mine, so we don't have the issues of, say, a big coalmine or a large metalliferous mine. To put it into context, we will process about two million tonnes of ore per year, versus Cadia, which might be 32 to 35 million tonnes per year. We're very much smaller than the local coalmine. Our dust generation is miniscule compared to other operations. Having said that, we still have the mitigation process that a typical mine will have in terms of watering, blast patterns and so forth, to minimise dust. But it's an operation and it's a management process that is continual. Fortunately in Australia, we are very much best practice in those. We are arguably the best in the world in monitoring those sorts of things. Again, we'll have more to say on the dust mitigation management plan as part of our management plan development during the course of the balance of this year.

**The Hon. GREG DONNELLY:** Thank you for making yourself available today. Can I just continue on that line of questioning about the community concerns, and this is on a continuous basis, after the mine is commissioned and opened, in regards to matters to do with dust and the content of the dust. I take the point made that the comprehensive and detailed work associated with putting in, in effect, the application to get the mine approved and going through what are quite comprehensive steps has been done and achieved. But I presume that you are concerned about the community anxiety about the content of the dust once the dust starts to manifest when the mine's opened. You would appreciate that point, wouldn't you?

**ANTHONY McCLURE:** Yes. Just very quickly, the idea of a dust event, if you will—if there are extreme winds and they're blowing the wrong way or whatever—those events can be shutdown events. If there's an environment where it is blowing towards the township or whatever and there's a whip up, I think the opportunity of that happening in our operation is fairly limited given the setting and where we are. Certainly in larger operations, whether it's coal or large metalliferous operations, they can be shutdown events until weather patterns change or whatever. Just to pick up on one point you mentioned about community concern, yes, there is community concern. We acknowledge that. We have an open pathway for people to come and see us and look at the data and whatever, and that's an ongoing exercise. The negativity out there is a minority in the community.

The balance of the community is hugely supportive of the operation. Having said that, the community, on the whole, wants to see a responsible, environmentally sound project. Yes, they want jobs and all those sorts of things as well, but people don't want jobs for the sake of it. They want to see a proper project. We've demonstrated that well. That's why we have comprehensive and overwhelming support for the project. There is a noisy element out there. We encourage people who do have concerns to come and see us. Book time with us. We have a huge amount of information on our website. We have an open-door policy where people can sit down with us and talk to our experts and so forth. We encourage all of our neighbours or anyone with any concerns whatsoever to come and see us and talk about those concerns, and hopefully we can alleviate the bulk of them.

**The Hon. GREG DONNELLY:** I'm sure you would appreciate, would you not, that the manifestations of the concerns in real terms, or practical real terms, is when the rubber hits the road in terms of the mine opening, and then what flows from the actual mine opening. There are the anticipated concerns from the community, which we have received evidence of when we had our site inspection and visited the community, but there are the concerns which will manifest in practical terms when the mine opens. In answering an earlier question I think

from the Hon. Susan Carter, about what happens if monitoring does indicate that there's something to be concerned about, you said that would be something that you would expect people would contact the EPA or the Government about. I think those were the words you used, or thereabouts. Obviously they can also make contact with the company as well about the concerns. But you would appreciate that the answer, that they could contact the EPA or the Government in such general terms, is not very satisfying to the local community. This is quite a large project. I presume you're not going to just accept that it's left to people to find the phone number for the EPA or the phone number for the Government regulator and it's up to individuals.

**ANTHONY McCLURE:** Yes, but—

**The Hon. GREG DONNELLY:** Let me finish. In terms of the size of the project, I presume there will be pretty clear and unambiguous channels that people can go down, and go down relatively quickly, to deal with concerns if there are these higher levels identified. Would that be the case?

**ANTHONY McCLURE:** Yes, just to be clear on that, I think the regulator is there, of course, but in reality it needs to be open and transparent dialogue with the regulator—the EPA, the community and the company, of course. That's how issues get resolved if they arise. Perhaps I wasn't clear enough on that, but just calling up the EPA or whatever—I think it's a greater dialogue that has to happen between each party if there are issues raised. That's why the State is so comprehensive in its management of mining operations. The regulator is thorough; the EPA is thorough. We, as mining companies, are responsible in what we do. We're best practice. We're some of the best in the world in the way we manage mining operations. I think people can draw comfort in that. Just one other point about when you mentioned there was a site visit. The site visit actually got cancelled; the site visit didn't happen, unfortunately. But we still have an open invitation to the Committee for that local visit to the site.

**The Hon. EMILY SUVAAL:** Thank you so much, Mr McClure, for appearing today. Just a final couple from me. Could you detail for us the community consultation that you have undertaken for the project?

**ANTHONY McCLURE:** Yes, good question. We're very proud of what we do and we've been very detailed in community dialogue even before we took over. We took over the project in mid-2016, and before we completed the operation we were immediately into consultation. Just to summarise, I do have a couple of key points that lists what we have done over the seven or so years we've been involved. We've mailed out in excess of 25,000 community newsletters across the region. That's not just locally; it's across the region. Personal interactions, whether it's correspondence, e-mails, phone calls or whatever is immeasurable. We have an open-door policy, as I mentioned before. That's often well attended. We have community open days and information town halls in Kandos, Rylstone and Mudgee. Those have been successful.

Even during COVID we had a process. We had virtual open days and information sessions. Obviously the EIS was a big process for us. With that, we provided commentary of over 800 pages back to the community from the consultation process, from the EIS, and there were another 1,600 pages of appendices. It was very comprehensive. The list goes on and on. Obviously we have community consultative committee meetings that happen generally every quarter. We're in the third iteration of that committee, which is about to kick-off, given we're post-approvals. When you look at other things we do in the community, we're involved in each of the local schools. Education is a big part of our DNA.

We sponsor various outfits: The Rylstone-Kandos show, we're the major sponsor; men's, women's and children's rugby, we're the major sponsor; Mudgee girls' netball, we're the major sponsor; and we sponsor things like the Mudgee Show and the Rylstone Street Feast and so forth. Importantly, we're in the Max Potential program for schools. We're very active community-wise. I think the most important point, and it separates us out from perhaps other industries and what other people do, is that we have that open-door policy. So anyone—whether negative, positive or otherwise—in the community who has concerns, ideas or just wants to come and have a chat, that's something that we do. We take pride in being transparent. I think that's why we have a very supportive local community on the whole.

**The Hon. EMILY SUVAAL:** Mr McClure, if you could just elaborate further for us, if any, on the local socio-economic issues and local health issues in this area.

**ANTHONY McCLURE:** Yes, I've mentioned some of it in my opening statement, but I think the key point in there is what the mining industry provides locally. If you look at the country, just in general, the top 10 export earners for Australia are mining operations—so mining commodities. The three others are beef, education and travel, and I think financial services. But the top seven export earners for the country are mining operations. That's a big part of our economy. When you zero it down into New South Wales, coal is a huge part of our economy. That's obviously going to decline over the coming decades as we hit net zero. This year alone, those coalmines will produce about \$6 billion of revenue for the State, plus taxation, plus employment and income

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tax and so forth. When you look at the size and the quantum of what it does, whether it is national or State, when you think of hospitals, schools, roads and aged care, and all those sorts of things that we deliver—when you zero down further into our local economy, we've got three very large coalmines, and that's basically the lifeblood of Mudgee.

So 79 per cent of the exports from our LGA are from those three coalmines. When they decline over the next coming decades, what is going to fill that gap? There's nothing there to fill the gap. Yes, there are solar farms and a few other things, but they do not carry the density of employment. A lot of employment to build a solar farm—a lot of people build a solar farm, but after that it's basically pretty low employment. If we look at the closure over the next 20 or 30 years of coalmining in our region, we may be facing some of those issues that I mentioned before, some of those health issues we see at Kandos, which is obviously close to us, where they had the industry closing. For us to diversify the region in silver and other commodities is another potential that we will hopefully deliver over time. There's potential for expansions of the mining operation. There's potential of commodities in our exploration tenure in the region. That is what is perhaps going to be doing the heavy lifting over time in our area. Coal has got a finite time line, and that's a real issue for the State.

**The CHAIR:** Thanks very much for your time this morning. We are out of time. The secretariat will be in touch with you about any questions on notice.

**(The witness withdrew.)**

**Mr WAYNE TAYLOR**, Project Delivery Director, McPhillamys, Regis Resources, affirmed and examined

**Ms DANIELLE WALLACE**, Health, Safety and Environment Manager, Regis Resources, sworn and examined

**The CHAIR:** Welcome. Thank you for attending to give evidence today. Would you like to start by making a short opening statement?

**WAYNE TAYLOR:** Thank you for the opportunity to present the McPhillamys project to the Committee. Danielle Wallace and I are both based in Blayney with the project. Regis Resources is the fourth- largest gold producer listed on the ASX, with interest in two significant operations in Western Australia and a growth project, which is McPhillamys, in New South Wales. The company purchased the McPhillamys project in 2012, and since that time has invested more than \$160 million in further exploration and development studies, including those studies in support of the project approval. We have a project team of approximately 18 local people based in our Blayney office and, for this financial year, a budget in excess of \$20 million.

I think I can speak for all of the McPhillamys team in saying that we are proud of this project, proud of the work undertaken to refine the project to incorporate stakeholder input, and we also see ourselves as members of the local community. Our office includes active members of the RFS, WIRES, the RSPCA and local sporting and interest clubs. This project will bring significant benefits to the local community and the State. Once in operation, we anticipate 260 full-time roles, injecting \$67 million per annum in employment-related income to the local community. In addition, there will be further support for local businesses through supplying services, for the council through rates and through other community investment programs. We also acknowledge that there will potentially be some adverse impacts on some in the community, especially those at Kings Plains.

We have willingly sought input from the community, including those near-neighbours, on practical means of reducing these potential impacts that the project brings. We take our community engagement seriously and, as a measure of our engagement, since 2018 we have had over a thousand meetings, over 2½ thousand phone calls and more than 20 quarterly CCC meetings. If we were to look at measures of community support, I would direct the Committee to look at the results of the late 2022 independent survey, which indicated that 70 per cent of the local community supported the project, 15 per cent were neutral and only 15 per cent opposed it. This outcome was further supported by a number of submissions to the IPC. While there were 240 negative submissions, there were 473 positive submissions reported.

I point out that one of the positive submissions consisted of 318 unique, handwritten submissions delivered to our Blayney office, the vast majority of which came from local people. I take this as a very relevant reflection of the overwhelming community support for the project to proceed. My personal experience while at the local shops has been keen interest from businesses to see the project proceed to lift the local economy, and from the wider community looking for improvement in local community employment opportunities. I would briefly like to touch on the rigorous approval process. For McPhillamys, this started in 2018. The 6,300-page EIS was submitted to DPE in 2019, followed by a submissions report and three amendment reports. These reports require many thousands of hours of involvement by many leading experts.

The State-significant development approval was granted by the IPC in March this year and the Federal EPBC approval in May. The IPC approval came with extensive and detailed requirements involving 162 conditions, along with the EPBC approval with a further 31 conditions. Our team is currently working through these conditions to incorporate them into a number of management plans that will provide the operational framework for our site activities. To give an example, the water management plan, which is currently in draft, covers the site water balance and the approach to site storage facilities to ensure we meet the non-discharge requirement outlined in the conditions. Each of these management plans needs to be reviewed and approved by the relevant government bodies prior to starting.

In summary, this is a significant mining project which has been well considered, studied and designed. Regis welcomes the conditions placed on it to develop and operate the project, and also understands the significant responsibility it has been entrusted with to bring this project forward in a way that provides benefits to all stakeholders.

**The Hon. BRONNIE TAYLOR:** Thank you very much for your time in coming here today. You said in your opening submission there were 260 jobs. Would that be in Blayney? Surely not 260 jobs in Blayney.

**WAYNE TAYLOR:** They are all local jobs.

**The Hon. BRONNIE TAYLOR:** That's a lot of jobs.

**WAYNE TAYLOR:** It is for something the size of Blayney, yes.

**The Hon. BRONNIE TAYLOR:** Yes, I know Blayney well, so I'm really surprised. What are the impacts that you are seeing for Kings Plains that you mentioned, from your perspective? I'm aware of the things in your submission, but what are you seeing the issues are and what are you doing to mitigate those?

**WAYNE TAYLOR:** There is clearly a visual issue. For the houses located to the south of the project, a number of them will have an outlook that will see some of the activity on the site. We have provided a number of those residents there, who have willingly taken it up, with some visual barriers—so some tree plantings and the like. I guess there is some concern around noise, and we recognise that the operation is relatively close. We will be providing some mitigation measures for that also.

**The Hon. BRONNIE TAYLOR:** What would you do for the noise as a mitigation measure?

**WAYNE TAYLOR:** Well, the modelling that we've done shows that—and I'm sure Dani can talk in more detail around the specifics of it—we won't be hitting trigger limits, but the concern remains. To deal with that concern, for a number of houses we have offered double glazing on some of the properties.

**The Hon. BRONNIE TAYLOR:** I'm just really interested. I am someone who lives opposite now a quarry and I actually moved houses because of a wind development. It's got nothing to do with that. I'm just one of those people. It ruined my view and I felt my view across the paddocks was as good as a harbour view, but it is what it is. It had tree mitigation, and that was great. But it's all about how that situation is really handled, isn't it? Although the noise level, I suppose—like, for me, the sound of the quarry wouldn't exceed a noise limit, but sometimes it was quite annoying. But I think that that offering of double glazing—could you tell me, honestly, how people have responded to that offer? Has that mitigated their concerns?

**WAYNE TAYLOR:** We have a number of properties there. I think it totals 18. We have agreements signed up I think with nine at the moment. We have active discussions with quite a number of the others. I think we have one who doesn't want to engage with us. So for all of the others we have talked about what mitigation measures we can look at to help deal with those concerns. But I just go back to the fact that in all of the modelling that has been done, we don't hit trigger limits for noise, dust or anything of that nature that would typically trigger a VLAMP requirement.

**The Hon. BRONNIE TAYLOR:** I really appreciate that. I'm not trying to be difficult at all because I live in the regions. I think that's a lot of jobs. We are very grateful, a lot of the time, for that and for the opportunities it brings to our communities. It's not just the jobs, but it's the positive effect it has on schools and other services when families and partners move in. That's jobs at hospitals and things like that. But I guess what I would say, Mr Taylor—great last name too—is please don't give up on that one person or the other people because myself, in my own experience of being quite a difficult negotiator, when this happened to myself, the fact that people don't give up and keep trying to find those solutions, you end up really appreciating that. That increases people's social licence in areas. There are always going to be people who don't, but even though it's not a trigger level, it's sometimes not relevant when you're the human being and your family is living there. Modelling is great, but—

**The CHAIR:** Sorry, Mrs Taylor, do you have a question?

**The Hon. BRONNIE TAYLOR:** Yes. I thought I had a question. I was suggesting—I'll move on. Susan, you go.

**The Hon. SUSAN CARTER:** Thank you for being here. I'm interested in the landowner mitigation and compensation agreements that you reference in your submission. Can you tell me something about the process of those, and what the type of mitigations that people have requested have been? We've heard about double glazing, but are there any other things to do with dust or water quality or air quality?

**WAYNE TAYLOR:** I'm not across all of the detail around this, but in some cases there's been air conditioning, as I said, the tree barriers and certainly the double glazing. I'll just suggest Dani might have some more history on this and can probably provide a bit more insight.

**DANIELLE WALLACE:** Yes, sure. As Wayne said before, we don't actually trigger the VLAMP. However, we do acknowledge that there is still concern within the community of any potential impacts. Some of the types of mitigations that we've been working with the community on in addition to the double glazing—in some cases air conditioning, in some cases first flush systems for their tanks and their water systems, obviously the tree screens both on their properties and also on our property to help and break up that viewpoint that they've got. We've been working in with them as well. If there are additional requests that they've got, for example if they've got an entertainment area out the back that would have a view of the mining project, we've been looking at ways we can help modify that so they can still continue with entertaining and their daily lives. It is on a case-by-case basis, individualised to each property.

**The Hon. SUSAN CARTER:** The principal concerns, then, raised by the community for this project appear to be noise and aspect or view. Are there any concerns about air quality or dust generation?

**DANIELLE WALLACE:** That's obviously still a concern for the community. But, again, we don't trigger that VLAMP level. All the modelling done for the project shows that we'll stay within those allowable limits for air quality and also for noise as well.

**The Hon. SUSAN CARTER:** I think it's tremendous you're engaging with the community and trying to solve things on a one-by-one basis, but what measures can you and are you taking as a mine to, for example, keep air quality good so it doesn't get to your neighbours?

**DANIELLE WALLACE:** One of the key things that we're currently working through at the moment with a number of government agencies including the EPA is, for example, our air quality monitoring program. We are proposing a real-time network and it is quite extensive. We will have our own internal trigger levels set well below those compliance limits, the intention of that being that we will become aware through alarming systems internally. That will notify the shift bosses and the dispatch centre that we're having an upward trend, and we'll be then able to modify our operation accordingly, whether that's moving a piece of gear or switching a piece of gear off, with the intention that we won't allow ourselves to reach those exceeding limits. In addition, in relation to dust we do have some other engineering controls, so our coarse ore stockpile will have a cover over it. That's an engineered, physical barrier to prevent dust lift-off, in addition to dust suppression being applied to key areas around the site.

**The Hon. SUSAN CARTER:** If members of the community become concerned about air quality or dust emissions, who do they call?

**DANIELLE WALLACE:** They can absolutely call us. We'll be contactable 24/7. That's often a really good starting point, because if we're aware of an issue we can immediately move to address it. Obviously as well, they are able to contact the regulators, who would in turn obviously get in touch with us. Of course if there was some sort of exceedance, there would be an investigation protocol both with ourselves and, if an exceedance was identified, the regulators as well. Again, all of that is publicly notified.

**WAYNE TAYLOR:** If I could just add to that, the notification is not trying to find Dani's number. There is a hotline that is set up that is monitored 24 hours a day. That is a fairly accessible number.

**DANIELLE WALLACE:** Yes, absolutely.

**The Hon. BRONNIE TAYLOR:** Have you formed a community consultative committee, and how many people are on that committee?

**DANIELLE WALLACE:** Yes, absolutely. We've actually had the CCC in place for quite some time. I think we've had over 20 quarterly meetings so far, so it's been in place for quite some time. There are a variety of members from local community groups, people from Kings Plains, and also members of the councils and other interest groups and water groups, for example. That's been in place for some time. All of the minutes and presentations are also all publicly available on our website, so other members of the community can have a look at those.

**The Hon. BRONNIE TAYLOR:** Have you got an independent person chairing or organising that outside of your company?

**DANIELLE WALLACE:** Yes, we do. There is an independent chair that is appointed through the Department of Planning.

**The Hon. EMILY SUVAAL:** Thank you both for appearing today and for travelling. Noting your submission, could you expand for us on the approvals process that Regis was required to undertake for this project?

**WAYNE TAYLOR:** Time for you, Dani.

**DANIELLE WALLACE:** Absolutely. It was an extremely rigorous process that for us started back in 2018. That was when we lodged our original scoping report, and obviously that culminated in the issue of our SSD consent in March this year and then the EPBC approval in May this year. That process involved the development of an environmental impact statement which had over 25 supporting specialist reports. That then went through a public exhibition process, and we received a number of submissions. We then provided a response to those submissions with additional specialist reports. We then went through a process of three amendments to the project, again with in excess of 30 specialist reports between those different amendments.

Those amendments were really allowing Regis to continue to optimise the project, but also to take on board feedback from the community. As an example of that, we did actually relocate our site access road, and that

was to reduce potential noise impacts to residents in the Kings Plains community. It was identified as a significant concern for them. Once we submitted those amendment reports, we obviously then went through the IPC process, again resulting in the approval. The process remains ongoing. We're still in the process of finalising our environmental management plans which go through extensive consultation with community and the regulators, and also obtaining our other supplementary approvals such as our EPL. It's an extensive process.

**The Hon. EMILY SUVAAL:** Yes. It sounds like it. Can you outline—it may be a question for you, Danielle—some of the consent conditions that are in place to protect the community once the mine is open?

**DANIELLE WALLACE:** We do have over 162 conditions in our development consent from the State, and a further 31 conditions in the EPBC approval. Those conditions are fairly wideranging, from requiring numerous environmental management plans, which have extensive monitoring requirements and consultation requirements, but they also outline some very detailed criteria for amenity impacts such as air quality and noise emissions. It also has very extensive requirements in relation to ongoing consultation with the community throughout the life of the project, and also requirements around compliance and auditing. It is ultimately going to result in good outcomes for the community, and transparency in the regulators being able to ensure that we are complying with those limits.

**The Hon. EMILY SUVAAL:** Just to clarify, it was 162 conditions from the—

**DANIELLE WALLACE:** The State consent.

**The Hon. EMILY SUVAAL:** And 31 from the IPC approval—

**DANIELLE WALLACE:** Sorry, in the EPBC approval.

**The Hon. EMILY SUVAAL:** My apologies. In terms of the benefits for the local Blayney community and generally within the Central West area, can you expand on what those benefits will be as a result of this project?

**WAYNE TAYLOR:** Sure. In addition to the 260 full-time roles that we have, and obviously the income that that'll bring into the local community, there will be certainly a focus on local businesses, supply and services, and tapping into the marketplace there, which is obviously well supported also by Orange and Bathurst. We have a VPA—a voluntary planning agreement—which will be a fund which is quantified at 1 per cent of the capital investment value, which will be there for community benefit. We'll be certainly helping Blayney shire with an uplift in its rate take once we get started.

State Government royalties, I think the number in the EIS was \$56 million over the life of the project. It will be obviously different under today's gold prices. And probably an extension to that is that there will be some biodiversity improvements around the place with a stewardship site and, also, we'll look to undertake a significant uplift and improvement in an over-three-kilometre section of Belubula River, which is showing signs of exotic trees and damage from farming.

**The Hon. EMILY SUVAAL:** That 1 per cent of capital investment value, do you have an approximate figure for what that will be, or is that speculative at this stage?

**WAYNE TAYLOR:** It is expected to be north of \$4 million, I would think.

**The Hon. EMILY SUVAAL:** It is significant.

**The Hon. GREG DONNELLY:** Thank you both for coming along today, representing the company, and thank you for the helpful and informative submission that you've made. I take you to page 2 of the submission. So you've got the helpful map there. Two paragraphs below it states:

Over a mine life of approximately 15 years (2 years construction, 10-11 years operations and 2-3 years rehabilitation) ...

It then goes on about the reserve. Could you explain for me where are you up to, presently, at this point in time, if we look at literally today in the cycle? Just so I have the full context of the life span.

**WAYNE TAYLOR:** We're at about year minus one, so we haven't got to zero yet. As Dani mentioned, we're still pulling together management plans. We're also going through an exercise of updating all the project costings. As everyone would appreciate, with in an inflationary environment, when we make a final investment decision it needs to be done with the prices of today. So we're going through an exercise to reprice the project and that will feed into taking a final investment decision.

**The Hon. GREG DONNELLY:** With this question I don't mean to press you into areas of commercial-in-confidence, but with the fluctuation of gold prices over time, what challenges does that generally pose to a goldmining company like yours in terms of making an investment decision?

**WAYNE TAYLOR:** I will keep the response quite general. So you'd typically take a relatively conservative view of the gold price when you assess the project. The gold price is not typically overly volatile, so you've got a margin that you try to keep up your sleeve when you take that decision. So the key there is taking a conservative assumption at the time at which you make a decision.

**The Hon. GREG DONNELLY:** The reason I'm asking is not to press into this area of commercial-in- confidence, but obviously at critical stages—some stages are more critical than others, presumably—decisions are made to invest. So, in a sense, to use the vernacular, it's a bit of a gamble in the sense that it is based on the assumptions of best projected prices or average prices over time, isn't it? Once the commitment has been made to investment, you can't just unwind it, can you, because the commitment has been made at least for a period of time. Is that a generally correct statement?

**WAYNE TAYLOR:** There are lots of things that are variables that feed into a final investment decision. Gold price is one of those. There are a range of technical assumptions we'd make on projects as well, like recovery, and even to down how much gold we think is in the ground. Costs are also an assumption that we have to make. So yes, I wouldn't consider it a gamble, not by any stretch of the imagination. That is why we spend a lot of time studying these things. But we have to make an assessment, make some assumptions, take a view on where we think all of these inputs are likely to land and we then come to a bottom-line position on the project and we take a decision on that.

**The Hon. GREG DONNELLY:** That is very important, isn't it? I was being tongue in cheek about the gamble. But I'm glad you responded in this way because a project of this size has implications in a range of areas, doesn't it? The employees, the community—I could go on and on. You really use your very best endeavours to make that judgment about the ability to invest, and that that investment will be sustainable over a period time, won't it?

**WAYNE TAYLOR:** There are many stakeholders involved here, and we consider the outcomes for all stakeholders. It's not in our interests, it's not in the company's interest, to make a fundamental mistake in that respect. That's across a range of stakeholders.

**The Hon. GREG DONNELLY:** One of the areas that has come through from our inquiry as we've looked at the matters of extractive mining in the State is this issue of monitoring what could be matters arising once the mine site opens. There have been criticisms, not directed at your proposition, but generally speaking, by members of the community that there is really an insufficient standard that currently exists to be able to monitor and respond to what could be issues that arise. I use "issue" in the general sense. I understand from some earlier evidence this morning that you talked about real-time monitoring. I'm wondering if you could expand on that, as far as you can, about what that is going to look like and how it is going to work.

**WAYNE TAYLOR:** Dani is the best one to provide the detail around this, but what I'd like to say as a starting comment is that the standards that are looking to be applied are very different from what has been applied. So I need to be conscious of commenting about legacy standards versus where we're headed.

**The Hon. GREG DONNELLY:** I'd like you to expand on that.

**WAYNE TAYLOR:** Dani can run through that. We've spent a lot of time looking at monitoring networks and so forth, looking at what's cutting edge at the moment, and engaging with people like the EPA. I'm stealing Dani's thunder now, so I'll let her speak.

**The Hon. GREG DONNELLY:** Can I invite you to give that context of what's been perhaps traditional or the previous standards vis-a-vis what the standards you will be aspiring for?

**DANIELLE WALLACE:** Yes, sure. As you said before, we are proposing a real-time monitoring network. A lot of mines, historically, don't have that real-time component. They will have a static gauge or something that will require them to attend on a monthly or weekly basis, collect the data and then deal with the results post any events happening. What we're proposing with our real-time network is the ability to proactively manage the results as they're coming into us in a live stream. As an example, in relation to the air quality network, we're proposing a number of monitors which will be able to send alarms to the staff onsite—obviously it's a 24/7 operation, so there will always be people present who can receive those alarms—review those alarms, review the data and identify whether or not this result is actually from an activity at the operation or if it's some sort of other event.

We're proposing real-time monitors for not only air quality but also noise and blasting as well. We're proposing a network that provides coverage around the extent of the site. So we are covering all directions. Then further, with a key focus on those areas that have prevailing climatic conditions. For example, where the prevailing winds are, we've got some additional monitors planned. We're also cognisant of existing conditions. For example,



in the case of our project we have a highway that sits immediately south of our project, and between our project and the Kings Plains community. So we're placing additional directional monitors there so that we can better identify whether the noise we're recording is actually from trucks on the highway versus trucks operating at the mine site.

**Ms CATE FAEHRMANN:** What's the overall size of the project site?

**WAYNE TAYLOR:** We have a 60 million tonne ore body.

**Ms CATE FAEHRMANN:** What is the size of the land?

**WAYNE TAYLOR:** The service disturbance footprint is about 1,100 hectares.

**Ms CATE FAEHRMANN:** How much of the whole site has been assessed in terms of cultural heritage impact?

**DANIELLE WALLACE:** The extent of the site has been assessed. When it comes to Aboriginal cultural heritage, we've had a number of archaeologists, anthropologists and, in some cases, a geoarchaeologist attend the site and undertake extensive field surveys with representatives of the Aboriginal community. That has covered the extent of the site. We have covered the entire disturbance footprint in the assessment for both the mine site and also the water supply pipeline aspect.

**Ms CATE FAEHRMANN:** This Committee heard evidence that Orange land council a couple of years ago undertook the original cultural heritage impact assessment. They said it was about 15 per cent that they were able to survey closely—about 15 per cent of the 5½ thousand acres. Then they requested to come back, as I understand, considering the significance of it. In their words, their request to come back was ignored three times by Regis. Is that what happened?

**DANIELLE WALLACE:** I guess there are probably two elements to address there. In relation to the request for access, we don't have any record of requests coming to us that we've denied. We don't have any record of that. Orange lands council representatives have undertaken field survey at the project, as you referenced, for the original field surveys. I would note that representatives of the Orange lands council have also attended the site on numerous times since then as well, including several times this year alone.

**Ms CATE FAEHRMANN:** I think there's been a change of people at the land council. Is that right? When you are saying in the last little while, they've come and undertaken cultural heritage impact assessments of the whole area?

**DANIELLE WALLACE:** Yes, they have attended the site on several locations since then for various field survey activities. There have obviously been some staff changes, but I probably can't comment too much on the staffing of another organisation. I'm sorry.

**Ms CATE FAEHRMANN:** There are registered Aboriginal parties, as I understand, that are being denied access. You're saying that all registered Aboriginal parties, if they request access to your site—you're telling this Committee that you will allow them to come on and undertake cultural heritage impact assessments of the site?

**DANIELLE WALLACE:** We do have a number of RAPs for the project and RAPs have been offered opportunities to attend the site. In terms of what future access might look like, I can't comment yet other than to say that we are in the process of developing a heritage management plan for Aboriginal cultural heritage, which will be in consultation with all of the registered Aboriginal parties as well as various government agencies. That document will outline what access to the site would look like in the future and for future works.

**Ms CATE FAEHRMANN:** There's a huge discrepancy, as far as we have been informed, between what was the heritage—a second company was employed or hired by the company to undertake a cultural heritage impact assessment that seemed to miss dozens of scar trees and dozens of artifacts that were first identified. Do you find that concerning? Do you think there needs to be another independent cultural heritage impact assessment to really make sure there isn't all of this incredible Aboriginal cultural heritage that is going to be destroyed by the mine?

**DANIELLE WALLACE:** What I would say to that is that we have been questioned in relation to this issue by the Department of Planning, and we did provide a formal response to that which is publicly available on the major projects website. In that response we articulated the reasons why some sites that were potentially identified historically were no longer shown, and the reason for that is that since that time we've had a number of experts assess previously identified sites. What we can confirm is that there are no known Aboriginal scar trees on the site. As I said, there is a detailed response available on the major projects websites in relation to that.

**Ms CATE FAEHRMANN:** I have to move on to another issue. Mr Taylor, when the Coalition asked you what people are raising as their key concerns in relation to the mine, I think you said visual issues and noise. Is that—

**WAYNE TAYLOR:** They were a couple of the points that get raised, yes.

**Ms CATE FAEHRMANN:** Water—does that come up?

**WAYNE TAYLOR:** Water does come up, yes. You're correct.

**Ms CATE FAEHRMANN:** Does it come up because constructing a tailings dam at the headwater of Belubula River is deeply concerning to everybody downstream?

**WAYNE TAYLOR:** The tails facility is designed to be built in the upper reaches of the Belubula catchment area, yes—part of it.

**Ms CATE FAEHRMANN:** I understand there are 24 or so springs that will be plugged for the tailings dam to essentially be built right on top of the springs at the headwaters of Belubula River. Is that actually what your company is going to do?

**WAYNE TAYLOR:** It's a good point for us to address. The springs have been studied in a huge amount of detail. Dani will probably jump in and offer some more comments on this, but what I would say is any significant land development will come across issues like this. The springs over this area—springs or seeps—don't run all the time. In dry weather, they dry up. I think it's around half of them basically have stock dams immediately below them, so they don't actually feed into the Belubula River per se. With the development of the site, we actually don't take the water out of the ground. If we were to cover one of these wet areas, the water stays in the ground and it continues to move through the ground and it will come out at the next point of weakness, which would be further—let's call it downstream, and effectively feed back into the Belubula anyway. We're not actually taking any water out of the system, and this is a common feature when you have to work over a large tract of land. It is just one of the things that comes with the development.

**Ms CATE FAEHRMANN:** Is it common to plug springs at the top of Belubula—at the headwaters of a river that flows into the Lachlan and flows into the Murray-Darling Basin?

**WAYNE TAYLOR:** As I said, we don't take any water out of the system. The water remains in the ground and continues on its pathway, and will feed back into the Belubula further downstream.

**Ms CATE FAEHRMANN:** What happens if the tailings dam wall falls?

**WAYNE TAYLOR:** I can assure you that it will not fail. With the design of it—

**Ms CATE FAEHRMANN:** I'm sure Cadia said the same thing about their tailings dam.

**The Hon. BRONNIE TAYLOR:** Point of order: I think the witness is answering the question, and you're using—

**The Hon. EMILY SUVAAL:** It's a bit like adverse mention as well.

**The Hon. BRONNIE TAYLOR:** Yes. You're using—

**Ms CATE FAEHRMANN:** What is adverse mention?

**The Hon. EMILY SUVAAL:** You're accusing Cadia—

**Ms CATE FAEHRMANN:** How is it adverse mention saying Cadia dam would have said the same thing. For goodness' sake.

**The CHAIR:** I think there may have been a bit of argument in the question. Can you perhaps restate the question as a question?

**Ms CATE FAEHRMANN:** The question is you can't say that it's not going to fail. Even in terms of extreme weather events, we've seen—

**The Hon. BRONNIE TAYLOR:** Point of order: You cannot say to someone that they can't say something. Mr Taylor is here in his own time coming to give evidence. He's given the evidence. Accept his evidence, but you can't tell him what to say. You can't say that.

**The CHAIR:** There's been a fair bit of commentary with questions, like "Isn't that the case?" today. I think the member needs to phrase it as a question and I'll allow it.

**Ms CATE FAEHRMANN:** Climate change and extreme weather events—have you factored in the one-in-100-year extreme rain events that we're seeing? How can you guarantee that a tailings dam won't fail? Because they do and they do all over the world, and we saw it at Cadia. Wouldn't you agree?

**WAYNE TAYLOR:** I'm familiar with the basic design principles of the Cadia dam. Our dam is not constructed in the same manner. Our dam is constructed to handle a one-in-10,000-year rainfall event, so I think it's a pretty high level of design criteria. It is the best in the world.

**Ms CATE FAEHRMANN:** Some 10 per cent of tailings dams fail, as I understand, around the world. You're saying that yours won't be one of those?

**WAYNE TAYLOR:** Ours is a downstream construction methodology, which is the safest dam wall that you'll get.

**Ms CATE FAEHRMANN:** Say it did fail, because we've seen extraordinary scenes, haven't we, in terms of extreme weather around the world in the last few years beyond anything we have imagined possible—just say it did fail, what happens?

**WAYNE TAYLOR:** It's not going to fail.

**Ms CATE FAEHRMANN:** What are you doing with the void after mining has been completed?

**WAYNE TAYLOR:** The void remains as it is.

**Ms CATE FAEHRMANN:** Why aren't you rehabilitating it?

**WAYNE TAYLOR:** There is a level of rehabilitation that gets undertaken around it, but the void will remain as it is.

**Ms CATE FAEHRMANN:** As this big pit forever. Does it fill with toxic water?

**WAYNE TAYLOR:** No, it doesn't fill with toxic water. It will fill, over time, with water.

**Ms CATE FAEHRMANN:** Why wasn't thought or consideration given to the tailings dam, being at the completion of the mine, being put into the void and cleaning up that area? Was that considered?

**WAYNE TAYLOR:** It hasn't been considered as a viable option, no.

**Ms CATE FAEHRMANN:** Why isn't it viable?

**WAYNE TAYLOR:** It becomes cost prohibitive. The other thing is that, from a mining professional point of view, you want to maintain access to something like the McPhillamys ore body. We had a comment about gold price and inputs. These operations can change over time with different inputs, so potentially it could become bigger. Resource stewardship is you want to maximise recovery of what you're starting to extract, and having that void there allows you to get access to material that continues to go deeper.

**The CHAIR:** We're out of time today. Thank you very much for your time to give evidence today. The secretariat will be in touch with you about any questions on notice.

**(The witnesses withdrew.)**

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**Professor MARY O'KANE**, Chair, NSW Independent Planning Commission, sworn and examined

**Dr PETER WILLIAMS**, Former Commissioner and Panel Chair for NSW Independent Planning Commission's assessment of the McPhillamys Gold Project, sworn and examined

**Mr JAMES INNES**, Legal Director, Independent Planning Commission, sworn and examined

**The CHAIR:** Would you like to start with a short opening statement?

**MARY O'KANE:** Yes, I would. Thank you for the invitation to appear today. I will speak very briefly to the role and processes of the Independent Planning Commission. The commission has a very narrow and specific role. Its key function is independently determining projects, many of which, of course, are highly contentious. It's not unusual, for example, in a mining case to get over 1,000 submissions. The commission can be thought of as a tribunal. It makes the final decision on whether certain major private sector developments—State-significant developments—should be granted consent. In doing this, it is obliged to stay within legislative and policy frameworks and, under law, it must weigh the impacts and benefits in the public interest. But, after determining the consent, the commission has no further involvement in the case—nothing to do with monitoring, regulating or enforcing compliance for that particular case.

I will speak a little bit on process. State-significant development applications come to the commission if one of the following criteria apply: there's been a political donation, there are greater than 50 unique objections or the local council objects. When cases come to the commission, it stands in the place of the Government and makes the decisions independently of the direction and control of the Minister of Planning. As such, the commission functions as a probity body and maintains the highest and most rigorous standards of ethics and transparency. Our role as a decision-making tribunal commences when the Department of Planning provides us with its assessment report on a particular application, along with any recommended conditions of consent. I then appoint a panel of commissioners, generally three, to hold a public hearing, if we're so directed, and to constitute the commission to decide the case. The whole-of-government assessment report from the department contains advice from all relevant State agencies.

For major mining projects, that will always include the EPA, NSW Health, Transport and several other agencies. The department also often commissions advice from external bodies that's in the assessment report. Once the report comes to the commission, we have a limited time—84 days for a mine—within which to carry out the processes. We conduct meetings with key stakeholders, such as the applicant, the Department of Planning and other agencies and councils; attend a site inspection; conduct a public meeting or public hearing; analyse and consider submissions; and prepare the statement of reasons and any conditions of consent. We fit all of this, as I said, into a very short amount of time, and almost everything is done transparently and in full view of the public.

Every decision that the commission makes is explained in a detailed statement of reasons, which is made public. This serves as the final and definitive statement of the reasons for the commission's decision. Once the panel makes its decisions and publishes these reasons, it cannot unpick, change, add to or elaborate on these reasons after the fact. Dr Williams, who chaired the McPhillamys case, and I can assist the Committee with questions about the commission's procedures and approach. In closing, I note the Bowdens case is under appeal, so that might limit what we say on that.

**The Hon. EMILY SUVAAL:** Can you detail for us—and I note that you canvassed some of this in your opening statement—the work that is done during the consent process to ensure monitoring and health standards?

**MARY O'KANE:** That work is primarily done in its detail by the department as part of the assessment report that I referred to. They will check with the appropriate agencies and they will check that what is proposed by the applicant complies with the legislative and policy frameworks that I mentioned. They will note that and write it into the assessment report. If it doesn't comply but can be conditioned, they'll propose a condition, explaining in the assessment report what happens. When the situation comes to us, when we get the assessment report, we'll check that they've done that. We're effectively their checking process—checking and then weighing up the various issues to come to a final conclusion. We'll be looking through to see that every piece of the puzzle—every piece of legislation and every piece of policy—has been appropriately considered on that monitoring issue, or whatever issue is under consideration at that time.

**The Hon. EMILY SUVAAL:** Did you have anything to add, Dr Williams?

**PETER WILLIAMS:** Just to say that we have to be satisfied that, as Professor O'Kane has mentioned, all statutory and discretionary requirements have been properly considered at the assessment stage and that all additional information that comes to us during the hearing process is all before us as well. We have to balance

those submissions but, fundamentally, we have to ensure that the effective Government policy and the relevant guidelines, standards and controls are all satisfied as part of our decision.

**The Hon. EMILY SUVAAL:** What work is done after the consent to monitor?

**MARY O'KANE:** The department or the relevant agency will be doing that. As I said, we step out at the point where we hand down the statement of reasons with the associated conditions.

**The Hon. EMILY SUVAAL:** How has this process changed—if you could both comment—over the past five, 10 or 20 years? Is it stricter? How has the process changed?

**MARY O'KANE:** The Independent Planning Commission came into being, I think, on 1 March 2018. There have been predecessor bodies to it. The Planning Assessment Commission was the immediate previous body. I was appointed to chair the commission on, I think, 1 February 2018, so I had a very short period on the PAC before coming onto the commission. When I came on, I spent a lot of time checking that we had the power to do assessments. We tended to do more independent assessments, as well as getting the material from the department, but we didn't have an independent secretariat. There are a lot of pieces to this story, but I'm sort of jumping through the main things.

In 2019, in response to a minor administrative error on our part, the Government called a review of the Independent Planning Commission. That was run by the State Productivity Commissioner, Peter Achterstraat. It was a helpful review—helpful from our point of view as well as from the point of view of New South Wales generally. It put a lot of emphasis on the fact that we had taken quite a long time to decide cases. It said we should sit within various time limits, which were now brought through in a statement of expectations to the commission. It suggests we shouldn't duplicate in our assessment processes. Efficiency would encourage it to happen at the department's side and we should do things. The Government took all the recommendations of that review on board. We implemented all of them, and we did it faithfully and rigorously. We think it did improve the overall process in terms of speed and quality of decision.

The other big change that happened when I came in as chair was we moved to a very high-transparency model, where every meeting is transcribed and where we do things like, on site visits, we invite the community to come. We can't have everybody who wants to come, because the applicant can't accommodate it, but we do invite representatives of community groups. We've tried to be very transparent, very open and very rigorous in noting that we're checking what is done in the assessment report and talking to people, making sure we have a very good consultation process, giving people plenty of time to get their submissions in and to talk within that very tight time frame. In summary, we've tried to tighten up the general process, speed it up, but also be very rigorous and very transparent in what we do. Peter, have I forgotten anything?

**PETER WILLIAMS:** No, Mary. The main thing I'd just reaffirm is the transparency and the consultation. I began with the Planning and Assessment Commission a little bit earlier, before Mary arrived at the IPC, and I could see a considerable—not that it was poor before, but nonetheless tremendous—improvement in transparency, particularly everything being transcribed and the consultation. The use of discretion, quite often to the benefit of extension of consultation processes, is one thing I've noted also.

**The Hon. EMILY SUVAAL:** You've canvassed the past five years and the various iterations, and I appreciate that you may not have been around so you may or may not be able to comment. But can you comment on whatever body there was, say, 10 or 20 years ago to perform that important role?

**MARY O'KANE:** Ten or 20 is beyond us a bit.

**PETER WILLIAMS:** Before the Planning and Assessment Commission it was the commissioners of inquiry, and they began in 1980. So there's been a government body that has, for example, determined or provided advice or at least recommendations on significant government projects or significant planning decisions or matters, or provided advice on policy. There's been a body of a similar type of function within the planning system under the Environmental Planning and Assessment Act since 1980.

**The Hon. EMILY SUVAAL:** But I suppose the one that we have now is strengthened compared to what it was, in being independent, having the degree of transparency that you described and having adopted those recommendations.

**MARY O'KANE:** Yes, I think it's strengthened, although the proof is, of course, in what you as the Parliament want of us and what the people of New South Wales think. But we certainly strive to operate and act as very much a learning operation too. We are trying to improve processes all the time, while keeping enough stability on the website for people wanting to comment in doing things.

**The Hon. EMILY SUVAAL:** We've heard at length in this inquiry about the importance of consultation, so it's great to hear that that is a key function and has improved. Has anyone looked overseas or perhaps interstate at the functions of various other independent planning commissions and other examples of best practice that may be out there?

**MARY O'KANE:** Yes, that's a good question. When Minister Stokes was our Minister, he was very keen that we look at international examples and examples around Australia, and so we contacted several in other countries and in other States and held one conference. He had been keen that we get an annual conference going. Even though it was a great meeting, we found that none of them were close enough. They were all different enough that an annual meeting just never happened again, but the one-off discussions were good. We learnt a little bit from them, and we hope they learnt a little bit from us. But we are very interested in international examples so, if anyone can point to any more that are relevant, that's very good. We also try to encourage our colleagues. We can't set policy; we can't change legislation; that's your job. But we are pleased when we see the practice in the whole system getting better.

**The Hon. EMILY SUVAAL:** And that's been an improvement over time?

**MARY O'KANE:** We hope so.

**The Hon. GREG DONNELLY:** Thank you both for coming along today and making yourselves available. Regarding the work done by the IPC in examining a large project like a mining project—and let's not refer at this point to the ones that are being considered today, in terms of witnesses, but "mining project X"—it falls to the IPC to effectively scope out what will do in terms of its remit to look at the project under the legislation. Is that correct? There are no predetermined boundaries other than the legislation that limit you in any way in scoping out the full work that you do to complete the task in front of you. Is that a fair statement?

**MARY O'KANE:** I think it's fair. But I'd add that in that, we have to be comprehensive and we have to make sure we're in line with the Act, as you pointed out, and any other relevant legislation or regulations. That can be quite a complex set of things, so we try to be as comprehensive as we can. Over the years, with many mines, we have tended to build processes for checking. We have a very good Office of the Independent Planning Commission, our secretariat, which works with the panel to check that all things are there.

We also are particularly looking at the assessment report. That and the site visits and interactions—our interviews with the applicant and so on—will particularly guide us. We might spend more time, I particularly want to emphasise, on particular matters. Certain mines, it'll be noise; others, it'll be dust; others, it'll be the whole lot and the water will be a really big issue. We'll probably end up spending more time, and often the assessment report will be bigger in that area too. We don't have a fine—"You must follow this checklist." But we have an internal, effective checklist of processes and good practice.

We do a fair bit of training of commissioners internally. We have a meeting every quarter in the year—the quarterly commissioners' meeting—where among other things we look over past cases, we look at changes in legislation, we get people in to talk to us and we actively, as the group of 25 commissioners at the moment, will talk about this. We train new commissioners, as they come on, in a staggered way. So, though there is not a checklist, it's a very process-bound organisation, where we try to make sure we're not missing anything.

**The CHAIR:** The Government's time has expired.

**The Hon. GREG DONNELLY:** Hang on, Dr Williams might have something to add.

**PETER WILLIAMS:** I just reaffirm that any development, with any project we consider, is all different. They are all different. We do have the capacity to scope out and to address particular issues that we feel need to be more closely examined and tested. But, in doing that, of course, we are always bound by the framework in which we have to operate within.

**Ms CATE FAEHRMANN:** I want to get clear on the timing in which the IPC addressed those, particularly McPhillamys and Bowdens. I understand they were recommended by the department for approval or consideration very close to the end of last year. Is that correct?

**MARY O'KANE:** Yes, it was the end of last year. I would need to look up the exact dates.

**Ms CATE FAEHRMANN:** Both roughly the same time?

**MARY O'KANE:** One was a bit behind the other.

**Ms CATE FAEHRMANN:** One of them—and I can't remember which one—was on 22 December, I understand. Two business days before the Christmas break it was sent to the IPC with, I think, 12 weeks, so assessing it during the caretaker period.

**MARY O'KANE:** Yes. Thank you. I think I know where we're headed. We are given a limited time to do things. That can be extended if we have to. I am talking in general, at this point. Also, we have rules around the Christmas break where we close down and don't do—

**Ms CATE FAEHRMANN:** Everybody does.

**MARY O'KANE:** Everyone does, but we need time for community to be there. We can hold site visits but we can't hold community consultation until we are reasonably sure people are back. While I think we did make it before caretaker, that wasn't going to inhibit us. While we will try and get within the 84 days that we're asked to keep with - it's 84 days factoring in that break. Another thing that's in here is we have a stop-the-clock mechanism. If we have to go back and ask the department for further clarification on something, that can extend the time. But, yes, it was an extraordinarily complex set of timing issues, you're right.

**Ms CATE FAEHRMANN:** Who sets the time and the deadline to the IPC for these decisions?

**MARY O'KANE:** The time is set through the statement of expectations to the commission.

**Ms CATE FAEHRMANN:** The Minister sets that?

**MARY O'KANE:** The Minister sets that and it's fixed for all. For mining cases—I would need to check—it's 84 days and other cases are so many days. It's in the statement of expectations, which we could table.

**Ms CATE FAEHRMANN:** For each particular mine?

**MARY O'KANE:** No, for general.

**Ms CATE FAEHRMANN:** For State significant development.

**MARY O'KANE:** Yes, for State significant development. Mines with a hearing are longer than a training camp or something over there.

**Ms CATE FAEHRMANN:** So you had these two mines, McPhillamys and Bowdens, just before Christmas. That would have been quite stressful for them at that time. It's not an ideal time to have to conduct hearings and that whole process.

**MARY O'KANE:** No, it's not ideal. But we held the McPhillamys one, the first one, before the break. We're always careful, as I said, to try and recognise particularly the school holiday period because there are so many people away, and that will include both sides of the case. But we had the further complication—which I think you know about—that the first chair of the McPhillamys case, Professor Chris Fell, died on the way to the hearing. We had to reconstitute the panel and Dr Williams very kindly was willing and so I appointed him to chair and appointed Professor Menzies to join the panel. That added a further complication to the complications you are correctly pointing to.

**Ms CATE FAEHRMANN:** Do you think that time period provided enough time for the commissioners and for the IPC to adequately consider and balance everything that they heard? Dr Williams, I might go to you because you chaired the McPhillamys one.

**The Hon. EMILY SUVAAL:** Point of order: My point of order relates to the line of questioning. I think the witnesses outlined at the start that one of these matters is currently under an appeal. I'm just expressing my concerns around the sub judice convention and perhaps would encourage the line of questioning to be more broad as opposed to about a specific project that is currently under appeal.

**The CHAIR:** It was in the opening statement that there may be questions the witnesses may be unable to answer. Given the level of expertise of these particular witnesses, I will allow the question. I note that we may get an insufficient answer because of that, and I accept that.

**Ms CATE FAEHRMANN:** Did it allow, do you think, enough time during that period to consider all of the evidence and all of the community's concerns?

**PETER WILLIAMS:** Yes, I think it did. We actually started with our site inspection on 28 November. The matter was sent to us a couple of weeks earlier than that. I can't remember the date, but we had the site inspection on 28 November. We had community representatives along with us at the site inspection. We had a locality tour on the same day. We had stakeholder meetings with various stakeholders in early December.

**Ms CATE FAEHRMANN:** I have the time line in front of me. I did see it.

**PETER WILLIAMS:** I think so. The other point I would add is that we did have to use the stop the clock a couple of times for various reasons and we also used our discretion to extend time for submissions,

particularly for later submissions from various parties, to give them time to make their point but also to give us time to consider them. In the end, I think we did.

**Ms CATE FAEHRMANN:** I have copies of a transcript of a witness who appeared on the first day of the hearing from the Belubula Headwaters Protection Group. You can see on that page is Dan Sutton, who is from the Belubula Headwaters Protection Group and who is quite scathing, to be honest, about the IPC and the engagement. This is what we've heard from members of the community who have talked to us. They feel like it was an absolute waste of time. They were led to believe prior to the closure of submissions that they'd be able to make all of these submissions and the commissioners would thoroughly consider them. Throughout the whole process there were hundreds and hundreds of hours spent on detailing the issues. This is what all of the witnesses say. Their key concern is that they put in so much work around potential recommendations for conditions of consent and things that would make it slightly better for them based on all of their research, and they engaged independent experts. Not a single one of what they recommended was picked up by you and taken on board and accepted. Why is that?

**MARY O'KANE:** I don't want to comment on the case. I'm not in it. The commission is constituted by the panel. I've read other examples in the transcript from other days, too, so I've seen the pattern you are pointing to. I am very sorry that people feel this way and maybe that's something for us to consider. We do consider because we do take every submission—every submission is read and every suggestion on conditions is definitely read. One of the process improvements we've made in the last few years is to be encouraging people to comment on conditions. We found people used to comment only on general things so we suggested they comment on the assessment report and particularly the conditions. This has led, in certain cases, to quite a change in the conditions. People have suggested to us changed conditions and that has been picked up. In this case, as I said, I won't comment.

But I can assure you that we do read every case, we do look at the condition changes and, on certain cases, they come through. Of course our statement of reasons is fairly large. It's got an assessment report attached to it too. We were encouraged in that review to make them more concise and easier to read. As such, we have cut them down and particular submissions will not always be covered. Sometimes there will be a quote from it. Sometimes in aggregate you'll be able to see one's own submission summarised. If we had several hundred submissions, not everybody's submission is going to be there, but it certainly will be considered and condition changes will be considered against what the department has recommended. Sometimes we'll find a condition or a condition with a small addition to it covers things but it doesn't—it reaches the same area but doesn't necessarily look like the original thing put to the commission. I'm not sure if that's making good sense, but we certainly look at it.

**Ms CATE FAEHRMANN:** Is it unusual for not a single recommendation from anybody other than the proponent to be accepted?

**MARY O'KANE:** No. You do find—and it's one of the things the department complains to us about, about our behaviour—you do find we do change the conditions, on almost every case.

**Ms CATE FAEHRMANN:** Except not McPhillamys.

**MARY O'KANE:** I'm not going to comment on the detail of McPhillamys.

**PETER WILLIAMS:** Could I just add that Mr Sutton joined us on the original site inspection and he spoke and made several submissions. He spoke at the public hearing and several submissions. As Professor O'Kane has said, every submission made—and we had over a thousand—is read by the commission and we take all that on board as best as we can. There's case law recently in the Land and Environment Court that refers to the fact that not every matter we receive has to be specifically referred to in our statements of reasons. We can't refer to over a thousand individual submissions. We do take particular notice, Professor O'Kane said, of suggestions and recommendations that might help us.

Now, we had several meetings of, four or five meetings of two, three hours each, as a panel working through conditions. We had time outside of those meetings working through conditions. We went with a number of ideas, proposals, for example, with how some of the recommendations given to us by some of the members of the community might be able to be incorporated into our conditions of consent. Generally, we were satisfied we could find that either they were unworkable, or that they were already incorporated in draft conditions of consent, or in some cases were able to modify some of the conditions to incorporate some of those concerns. So we did make an active effort to try and incorporate wherever possible the concerns of the community.

**Ms CATE FAEHRMANN:** We were hoping for longer sessions today, but that didn't happen.



**The Hon. SUSAN CARTER:** Thank you for being here to give evidence today. I have some questions, I suppose just about processes, essentially. I understand that the factors to be considered are in the legislation. I wondered if you would mind for the benefit of the Committee going through all of the factors that you need to weigh when you're reaching your decision?

**MARY O'KANE:** If I may, could we swear in the legal director of the planning commission, who is here, Mr James Innes? He can go through that in a more efficient route than I'm going to do it.

**The Hon. SUSAN CARTER:** I'd be very happy with that.

**The CHAIR:** I'm happy.

**The Hon. SUSAN CARTER:** Thank you, Mr Innes. Do you need me to repeat the question?

**JAMES INNES:** No, that's all right, Ms Carter. The starting point for any of these determinations—and the same rules apply to the commission as would apply to a local council, to a regional planning panel, or any planning authority, even the Minister with the Ministers exercising these functions—the starting point is section 4.15 of the Environmental Planning and Assessment Act. That sets out what are called the mandatory considerations. They include things like the provisions of any relevant environmental planning instrument; the suitability of the site for development; the likely impacts of the development; the public interest—

**The Hon. SUSAN CARTER:** Can I just ask you there, impacts being economic?

**JAMES INNES:** Indeed.

**The Hon. SUSAN CARTER:** Environmental, social?

**JAMES INNES:** Social, all of which are explicitly referred to in section 4.15 of the Act. The public interest, of course, weighs very heavily and any submission, any duly made submission received by the planning authority—

**The Hon. SUSAN CARTER:** Sorry to keep stopping you.

**JAMES INNES:** That's all right.

**The Hon. SUSAN CARTER:** I'm wondering, the interaction between public interest and social and environmental impacts, why they are listed twice? Is public interest different to environmental and social impacts? Perhaps if you could tease that out a little bit.

**JAMES INNES:** Of course. It's a very good question, Ms Carter. The public interest is not definitively defined, if I can use that somewhat redundantly. It's not exhaustively defined, I should say, by any legislation. It really falls back to the discretion and sound judgment of the decision-maker. There are a couple of things that the courts have found are necessarily included in the public interest, and they include things like environmentally sustainable development, the precautionary principle, and matters of that nature. But, it is largely a matter of discretion for the panel, exercising sound judgment, but bounded by the law and bounded by the rules of procedural fairness. It has to be something that is relevant to the matter at hand.

The considerations listed in section 4.15 of the Environmental Planning and Assessment Act are mandatory, but they're not exhaustive. The planning authority, be it the commission or a council or anyone, can really look at any matter that is relevant to the objects and purposes of the EP&A Act in making that decision. As an officer of the secretariat of the commission, something that we do very diligently, is ensure that commissioners are properly advised that they must consider the mandatory considerations, but that they have the discretion to exercise sound judgement on matters beyond those mandatory considerations in the Act.

**The Hon. SUSAN CARTER:** In forming a view about those mandatory and other discretionary considerations, are they solely influenced by the material that is received by way of submissions, or can they seek information or expert advice from other sources?

**JAMES INNES:** It's not limited to what's put to the panel in submissions. I can't speak for other planning authorities in saying this, but I can speak for the commission. Everything that the panel considers, whether it's submissions or, say, an expert report commissioned by one of the agencies, commissioned by the commission itself in some instances—all of that is made publicly available on the commission's website. Our guiding principle is everything the panel sees, the public can see too. There are some very limited exceptions to that relating to—a good example is the recent Glendell Coal Mine matter. There was some culturally sensitive material related to a Commonwealth Aboriginal and Torres Strait Islander heritage protection claim that was kept confidential for cultural sensitivity reasons. But other than that, I can't think of any recent examples where we haven't made something public that the commission has considered.

**The Hon. SUSAN CARTER:** In what circumstances might the commission consider it would independently want to source advice or expert evidence?

**JAMES INNES:** Again, a very good question, because that's changed over time, member. As best I can, mentioned in response to a question from Ms Faehrmann, the commission used to do a lot more of this itself. At that time the commission didn't have the time frames that are now stipulated. We had—unlimited is a very bold statement—but we had an undefined period of time within which to make decisions. We also didn't have a memorandum of understanding with the department, which we now do have. That was one of the recommendations of the 2019 Productivity Commission review. One of the matters dealt with in that memorandum of understanding is the circumstances in which when we do consider that we do need additional expert advice, how we do that. I don't have it in front of me, and if I get any of this wrong we'll obviously remedy it in writing after the fact. My understanding of the process, which is rarely needed to be exercised, is we will first go to the department and we will say, "We need more expert assessment of XYZ matters, can you please either commission that or talk to the EPA, NSW Health?"—whatever the agency may be. If we go through that process and still find that we need that additional expertise, we can then go and commission that ourselves.

**The Hon. SUSAN CARTER:** I'm just presenting a hypothetical in order to try and understand the process myself. But if, for example, there were submissions received from community members which raised an issue that the IPC hadn't been adequately addressed by the expert evidence that it had, it might seek to go down that process. Then the final report might address questions relying on expert testimony, not referencing perhaps the individual submissions but those ideas would have been explored and incorporated in the final report. Is that how the process might work?

**JAMES INNES:** That's a very good summation.

**The Hon. SUSAN CARTER:** Good. Thank you. You're the final decision-maker, or appeals are possible from decisions made by the IPC ?

**JAMES INNES:** Appeals are possible to the courts from decisions made by the IPC. We're the final decision-maker in respect of a development consent, but that's one of the many approvals that these projects require. There could be ministerial approval required from the Commonwealth Minister under the EPBC Act, the Environment Protection and Biodiversity Conservation Act, an environment protection licence from the EPA, a mining tenement from the Minister for mineral resources. In terms of development consent, we're the final arm of government that decides it, but appeals to the courts can lie against our decisions. As a starting proposition, they can be appealed either on the merits or on the legality of the decision. However, when the Minister directs us to hold a public hearing—which he did in both the McPhillamys and Bowdens cases—that limits the appeal rights that are available against the decision. The decisions can't be appealed on the merits. They can only be appealed on the legality of the decision, and Bowdens is sub judice on that basis in a judicial review.

**The Hon. SUSAN CARTER:** I'm not asking you to speak about Bowdens, but perhaps if you could explain the legalities—what type of issues?

**JAMES INNES:** Of course. Obviously, I can't give legal advice to the Committee.

**The Hon. SUSAN CARTER:** No.

**JAMES INNES:** But the sorts of issues that are typically—I can answer on a typical basis, what's typically put to us—that there's been a failure on the commission's part to be procedurally fair; that we failed to take into account a relevant consideration; that we have taken into account an irrelevant consideration—matters of that nature. I'm very pleased to say that the commission has a very good record in terms of legality of its decisions. One of our decisions has gone all the way to a special leave application to the High Court. None of our decisions has been overturned on appeal on illegality. They've always withstood legal scrutiny up to and including the High Court.

**The Hon. SUSAN CARTER:** That's an extraordinary record.

**MARY O'KANE:** And, can I suggest, we could give examples of the sort of things people on particular cases, so you could talk about Bylong, for example, or Narrabri Underground. That's the type of appeal pursued.

**JAMES INNES:** Sure. I mean, Narrabri Underground was significantly related to climate change considerations. I think, without wanting to mischaracterise the appeal, a short version is that the commission failed to adequately take into account the consequences of anthropogenic climate change in granting consent to that application. Bylong, which was an appeal against a refusal obviously had very different heads of consideration than we might expect from an objector, but the principles of administrative law constrain the running of those appeals in every instance.

**Ms CATE FAEHRMANN:** Just to be clear, there's no merits right of appeal, though, on these mines—

**The Hon. SUSAN CARTER:** No. It's when there's a public hearing.

**JAMES INNES:** When there's a public—when we're directed by the Minister to hold a public hearing, there is no right of merit appeal against our decision. That's correct.

**The Hon. SUSAN CARTER:** Excuse my simplistic understanding of this process, but essentially in something that's referred to you, you become the consent authority? You provide the development consent?

**JAMES INNES:** Yes.

**The Hon. SUSAN CARTER:** If I'm putting a rumpus room on my house, I would get development approval from the local council, but in the type of project you're considering, you're the development authority?

**JAMES INNES:** Correct. If it's a State-significant development that meets one of the three thresholds that Professor O'Kane referred to, if it's a State-significant development—and that's determined by reference to qualitative and quantitative significance, capital investment value typically—if it's over a certain capital investment value of State significance—it will either be determined by the Minister through his delegates in the department, or by us. The determining factor of whether it would come to us rather than the Minister is whether there's been a political donation by the applicant; there are 50 or more objections to the application; or the local council has objected. Just on that, you're entirely correct—we are the consent authority for those. However, under section 4.6 of the EP&A Act there are certain functions of a consent authority that are done on our behalf by the Department of Planning, so we are not a whole consent authority. We are parts of a consent authority.

**The Hon. SUSAN CARTER:** Could I just ask for your thoughts—and I appreciate you may not have given any thought to this. As I understand the testimony we've received, your responsibility finishes with the decision and there's no ongoing regulation enforcement mechanism. So if my neighbour has a problem about the way I'm constructing the rumpus room or what hours my tradies are working, they can ring the council as the consent authority. What's the mechanism if somebody has a problem, post the consent being given, about the way those works or other matters are being carried out, or whether it aligns with the consent that's been given?

**JAMES INNES:** Indeed. That goes to what I put to you in my previous answer—that we're parts of the consent authorities. The part of a consent authority that would typically be involved in monitoring and compliance is not done by us. In terms of who they can go to, the applicant itself, the Department of Planning, which is the principal regulator, and, depending on the nature of the matter it might be something, although it's covered by development consent, that's more appropriate for the EPA to look into—say, if it's a pollution incident or there might be standards.

**The Hon. SUSAN CARTER:** If I'm a neighbour, how do I know which one of those to contact?

**JAMES INNES:** The conditions of consent typically require applicants to have hotlines and to publish information about that, and they have reporting mechanisms to the EPA, to the department and people of that nature. And, of course, even if the council isn't the immediate regulator, I can't think of any example of when a council would turn someone away with a complaint. I'm sure their practice would be to direct them to the appropriate—

**MARY O'KANE:** And the general question when you don't know where to turn, you're a member of the public and there's noise, ringing the Department of Planning or, with the new arrangements coming, the Department of the Environment.

**The CHAIR:** We've run out of time for this session. Thank you so much, to all three of you, for making yourselves available to give evidence today. The secretariat will be in contact with you with any questions on notice.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Ms GEORGINA BEATTIE**, Chief Executive Officer, Mining, Exploration and Geoscience, Department of Regional NSW, affirmed and examined

**Mr PETER DAY**, Executive Director, NSW Resources Regulator, before the Committee via videoconference, sworn and examined

**The CHAIR:** Thanks everyone. I welcome our next witnesses. Thank you very much for taking the time to give evidence today. Do you have an opening statement today?

**GEORGINA BEATTIE:** No, we don't because this is our second appearance. We don't have another opening statement.

**The CHAIR:** In that case, we'll move straight to questions from the Committee, perhaps starting with the Government.

**The Hon. GREG DONNELLY:** Through the Chair, thank you both for making yourselves available for the second time. We're grateful for that. As you know—I'm sure you've been following the inquiry—we've had the opportunity to visit a couple of places outside of Sydney. We went to Orange where we had the opportunity to meet community members, hear from them, and then have a look at the adjacent Cadia mine. Then we were over in Mudgee—the same thing, community members and an opportunity to look at the proposed Bowdens site.

One of the key pieces of feedback, if I can use that word, from community members in both places and, I might say also in a number of the submissions that we've received—and I'm sure you're familiar with the fact that we've received them and you may have even studied some of them—is a general statement that the scrutiny over the consideration of proposals and then, if those proposals then move through and the mine opens and there's regulation around the operation of the mines, that it's a weak process. The process, particularly with respect to the regulation of mining in the State, is pretty weak. I know it's a general statement and a general question, but how would you respond to the statement of a number of people who have come to us and said, through evidence, "We think the regulation of resource development in this State is weak"? It's an open-ended question. That's a proposition we've heard time and time again.

**GEORGINA BEATTIE:** Sure. Thank you. Look, the regulatory framework that oversees mining in New South Wales is quite complex and involves many parts of government exercising various functions under a number of different pieces of legislation. The different parts of government play different roles in ensuring that the regulatory requirements across those range of pieces of legislation are addressed, and that really begins at the very beginning of a project through the planning assessment process. I know the Committee has heard just before morning tea from the Independent Planning Commission. The overall requirements are set up initially in the development consent conditions, but after that there's a range of other legislation and regulatory approaches that are taken to ensure that those conditions are met, and also new conditions are placed through various other mechanisms.

For me, under Mining, Exploration and Geoscience, our focus is on the safety of workers and also ensuring compliance under the Mining Act, which essentially has a focus on rehabilitation requirements and other matters that are addressed under the mining legislation. I think the point—I think this would apply to all regulators—is that we take an approach of continuous improvement. Requirements are placed on operators, and then it is enforced stringently through—in our case—the Resources Regulator, which takes action where there are issues of noncompliance. If there are complaints that are made, the regulator is very active in investigating those and, I think, has a good record to ensure that there is compliance with those conditions. It is a complex arrangement, the way that various parts of government work together. I might refer to my colleague Mr Day, who can talk through some of the day-to-day operational work that the Resources Regulator takes to ensure compliance.

**The Hon. GREG DONNELLY:** Thank you. That would be helpful.

**PETER DAY:** Thanks, Georgina. Just following up on what Georgina outlined there, we are a specialist regulator for the mining sector, both the Mining Act and also in the mining safety area as well. The mining industry is highly regulated. In the safety side, that's reflected in the statistics. If you go to the Safe Work Australia website, our fatality rate in mining is very low, compared to other industries, such as agriculture, transport and construction. In the metals industry, which is the target of this inquiry, New South Wales has now gone through two years without a fatality, which is major achievement in an industry that is regarded as high-hazard, high-risk industry.

In terms of how we operate as the regulator, we put our focus very much on proactive campaigns. We want to try to prevent accidents and compliance issues from happening before they occur, rather than just focusing solely on reactive, but reactive is also a component of that. The regulator has a proactive compliance program, which includes audits and inspections and target assessment programs. We actually determine and publish a

compliance priority project every six months, based on emerging trends in our own industry compliance data from within New South Wales but also around Australia and overseas, looking at the intelligence there. We also respond reactively to incidences and complaints, and we conduct investigations as appropriate.

In terms of activity, we undertake significant amounts of activity in New South Wales. Just simply with respect to safety compliance action, in the last financial year just completed, in the safety side we conducted over 1,700 proactive mine and petroleum site safety assessments. We received, assessed and responded to just over 2,000 mine safety incident notifications. We took enforcement action in terms of accepting enforceable undertakings, finalising prosecutions, issuing three penalty notices and 18 official cautions. We issued 174 prohibition notices, requiring operators to immediately cease unsafe work practices as well, as well as 889 notices, including notices to address safety compliance issues observed during our proactive campaigns.

We recognise that compliance not only is enforcement but also education, and each year we conduct a number of education and workshop sessions with industry. Last year we conducted about 33 workshops with the smaller mines in New South Wales to improve their capability and awareness of safety, in particular, and, as part of our awareness and communication, we issued 34 safety alerts [inaudible] and information on our investigations as well. As I said before, last year we finalised two [inaudible] prosecutions. In terms of the Mining Act, which [inaudible] rehabilitation, in the last financial year we carried out over 304 site assessments to ensure compliance with rehab requirements. We safety-assessed and responded to 144 allegations of noncompliance within the Mining Act, and we completed about 4,178 [inaudible] assessments, including reviews of licensing and registration applications, high-risk activity notifications, revisions to rehab cost estimates and initial assessments of alleged noncompliance. In the Mining Act as well, we finalised two prosecutions, and we suspended and cancelled two [inaudible] in response to noncompliance and issued 25 directions to improve rehab on mine sites.

Some of our recent events in terms of enforcement action on the safety side included prosecuting Endeavour Coal in August last year for failing to comply with safety duties—they were fined \$300,000 plus costs; Hamiltons Blasting Services in December 2021, failing to comply with safety duties, and they were fined \$304,000; in October 2021 Peak Gold Mine were fined \$480,000 plus costs for failing to comply with health and safety duties. In terms of undertakings, we accepted an undertaking from Winder Controls in January last year for failure to comply with safety requirements. That was requiring them to contribute \$253,626 towards both the industry and community good to rectify those issues. Springvale Coal, enforcement undertaking in November 2020 of \$540,742 in terms of make-good provisions under that enforceable undertaking.

In terms of the Mining Act itself, we've had a number of prosecutions where we prosecuted for unauthorised mining with a family called Walburns, where they were fined \$60,000 each plus costs in December 2021. Narrabri Coal Operations were prosecuted and fined in August 2021 for contravening their exploration activity approvals, and they were fined \$372,500 plus costs. In terms of enforceable undertakings, which are powerful tools as well, we accepted undertakings from explorers of Catalina Minerals in July this year, \$441,000; Rangott Minerals in April this year for \$87,500; and Marble Craft and Granite in January this year for \$71,964. Currently, we've got six matters in the safety side before the court and two Mining Act matters before the court. I think, on reflection of that, we are a strong effective regulator.

**The Hon. GREG DONNELLY:** Thank you, Mr Day. Before my time expires, which might be soon, can I just go back to a point that was made by you, Ms Beattie? I ask you to elucidate about this matter of continuous improvement or continuous enhancement of how the role is carried out. Could you please just explain the reasoning behind that approach? How actually is it manifested to be driven inside the organisation?

**GEORGINA BEATTIE:** Yes, sure. I think, as government and as a regulator, we're always looking to make sure that we are leading practice in terms of the way we regulate the mining sector. So that means that we are always looking to cases to understand and learn what occurs and review and reflect on how we can improve. We regularly review what's happening in other jurisdictions to also help inform and see how we compare. It's not always easy to compare apples with apples, but it gives us a really good insight into how we're going. I know that the Resources Regulator is often visited or contacted by other jurisdictions, whether that's in Australia or overseas, looking to understand our approach and to share their learnings. We learn from that and they learn from that. I think it's really just good practice to be consistently thinking about and making sure that the regulatory framework that exists is fit for purpose, because ultimately our objective is to administer the various pieces of legislation, and in that it talks about safety and sustainable mining.

**The Hon. GREG DONNELLY:** Hopefully I still have some more time. This question is addressed to both of you. Evidence that we've received from various companies that have given evidence, particularly this morning—one in particular I was impressed by—is the reference to monitoring and responding in real time to matters. In other words, instead of a company being reactive when something has happened and it perhaps getting

out of control, they are being alerted as quickly as possible to something, minimising that time to be able to get in there and deal with it.

I'm just wondering, is that analogous in the regulatory area as well, whereby instead of just doing ad hoc checking and looking in the rear-vision mirror, what we're doing now is more systematic and—picking up Mr Day's point—educative to hopefully change attitudes and the way in which things are looked at as the way they should be managed by the particular company?

**GEORGINA BEATTIE:** Absolutely. It has to be proactive and reactive. Mr Day may want to add some specific examples on that.

**PETER DAY:** Certainly, Georgina. I think on the theme of continual improvement and being proactive, the regulator drastically changed its operations about five years ago in terms of moving very much from a reactive point of view. It commissioned a lot of work and moved its entire operation to a proactive, targeted approach. What we did there is look at intelligence from within Australia from our own data, which we have significant quantities of, and from there we target our proactive campaigns to re-target those areas that focus on the risks in terms of safety that will lead to either a catastrophic outcome or a mass fatality in terms of the mine centre as well. We're a high hazard regulator, and we only focus on those high risk areas. That's the entire focus of our proactive campaign.

From that, we have seen significant improvements in safety through the mining industry, in tandem with working with industry closely on that and the recognised approach, from being reactive to proactive. A subject matter that no doubt will be of interest here is the area we work on in terms of dust control in the mining sector. Certainly in terms of New South Wales we were a national leader in terms of being the first jurisdiction to mandate a standard for diesel particulate in the mining sector around exposure. We regulate mine operators around dust exposure—silica and heavy metals—and around regulating that operators must ensure that the workers' exposure within the working environment is as low as reasonably practical and doesn't exceed exposure standards.

The regulations basically require that no person in New South Wales mines is to be exposed to airborne dust and airborne contaminants where the concentration exceeds workplace exposure standards, and mines must ensure the workers' exposure is kept as low as reasonably practical. We have designated levels there—exposure standards that are based on an eight-hour, time-weighted average—for respirable dust, respirable crystalline silica, inhalable dust and diesel particulate matter. The mining sites have an obligation to report those exceedances—I am just giving you an example here of what we do, practically—of inhalable dust, respirable dust, silica dust and diesel particulate. Then, we would investigate that if we are notified of an exceedance, and put measures in place to rectify that. The company does that as well under their own obligations.

The regulations require the companies to actually identify airborne contaminants as a principal hazard, and they must set out a management plan on how they will manage those risks associated with the airborne contaminants and the mine. They have to be proactive in terms of how they manage those high hazard areas. This is part of the continual improvement. We actually changed the regulation last year to have additional requirements for managing silica at metals mines and quarries, which were implemented as part of the regulation in 2022. What that requires is that mine operators of metals mines and quarries where crystalline silica has been identified as a hazard must ensure sampling analysis of that airborne dust at the mine is carried out by a person who is independent of the mining operations and licensed by the regulator—so there's control there—and that they do sampling operations, at least annually or at other times as necessary.

The samples are basically taken from workers at the workface in the breathing zone to ensure that they are not exceeding that exposure standard. Generally the regulation also requires that the mine operators must have and implement a safety management system, a principal hazard management plan for airborne dust and other airborne contaminants, and a health control plan. That applies across all their operations generally for hazards. Once again, that leads us to a proactive approach, in terms of being able to assess how they are monitoring that, how they implement their own controls and that they are rectifying any issues that are happening on the mine site.

**The Hon. GREG DONNELLY:** Thank you both for that very helpful evidence.

**The Hon. SUSAN CARTER:** Thank you for being here today. I have a couple of questions in relation to complaints and investigations. I acknowledge we've had some very useful examples today, especially in relation to the Mining Act and the safety of workers. Is the Resources Regulator reactive in the sense that it has to wait until a complaint is made, or can it be proactive and initiate its own investigations?

**PETER DAY:** I can answer that. Certainly, we can investigate any time we wish based on information, complaints received, industry intelligence, and findings from our own proactive assessments and inspections. We're very active in that regard about investigating any allegations of non-compliance out there. We may receive complaints from workers. We take anonymous complaints. We also have a relationship in terms of administering

the Mine Safety Advisory Council. MSAC is made up of both industry and also unions as well—the AWU and the MEU. They are a source of industry information in terms of where we target our compliance efforts as well.

**The Hon. SUSAN CARTER:** In the past two years how many investigations would you have initiated not as a result of complaints but off your own initiative?

**PETER DAY:** I'd have to take that on notice in terms of giving you that actual figure breakdown itself. Before, I gave you a detailed outline of how many investigations we do over a year, but I can give you—

**The Hon. SUSAN CARTER:** If you could take it on notice, and the difference between these where you're responding and those where you're initiating, I'd be very grateful for that. Can anybody with any concern about any mining project complain to the Resources Regulator?

**PETER DAY:** Yes. In terms of safety, we have a hotline, which is obviously more focused towards workers. Workers and companies can contact that hotline and we would respond. That line is manned 24/7 in terms of notifications. If there was a critical incident on a mine site, we would respond the minute we're aware of that from the point of view of investigating the safety breach. In terms of the Mining Act itself, we have a hotline there as well around any concerns around how mining companies are responding in terms of operating with compliance, with exploration requirements and Mining Act conditions as well. We would investigate that as well.

**The Hon. SUSAN CARTER:** If there was a noise complaint, is that covered by the Mining Act?

**PETER DAY:** A noise complaint is an EPA matter.

**GEORGINA BEATTIE:** Can I just jump in there? If the Resources Regulator received a phone call from a member of the community talking about noise at a mine site, we would refer them to the appropriate regulator—in this case, the EPA—with a phone number about how they can pursue that complaint. While there are different regulators serving different functions under the legislation, we all collaborate and work together regularly. If there was a complaint that wasn't within our remit, we would make sure that that person knew the direction to go.

**The Hon. SUSAN CARTER:** So a member of the public with an air quality concern or a noise complaint rings the Resources Regulator. Which of the hotlines would they be ringing? Would it matter which hotline they rang?

**PETER DAY:** It wouldn't matter. We would look at the information contained and make sure it got to the Government.

**The Hon. SUSAN CARTER:** What would the time frame be? So you would look at it within 24 hours? Seven days?

**PETER DAY:** Depending on when it came in, it would definitely be looked at within seven days. It's initially triaged and given a rating of how critical it is. If it's looked at and assessed as being not our remit, then we would definitely pass it on to the relevant agency as a referral.

**The Hon. SUSAN CARTER:** We've got conflicting information. Do you get back to the person who has made the complaint and say, "You need to ring the EPA", or do you pass it on to the EPA and say, "Ring that person"?

**PETER DAY:** We would pass it on to the EPA but also let the person know as well.

**The Hon. SUSAN CARTER:** So you do both?

**PETER DAY:** Yes.

**The Hon. SUSAN CARTER:** Within what time frame? So I'm Mrs Smith and I'm concerned about air quality from an existing mine.

**PETER DAY:** If they rang us directly—

**The Hon. SUSAN CARTER:** I ring on Friday at six o'clock to the safety hotline. When do I hear back, most likely, from the Resources Regulator?

**PETER DAY:** What would happen then is there would be a—if it's a general hotline in terms of general inquiries, we have an instant hotline that is given to industry for safety complaints like accidents on worksites and that's manned by inspectors. They would respond accordingly. If it was on a weekend for that type of complaint—

**The Hon. SUSAN CARTER:** I'm Mrs Smith, I haven't got the special number.

**PETER DAY:** —it would go to an email or a voicemail and we would come back to them on the Monday morning and let them know that that would be a matter for EPA to investigate.

**The Hon. SUSAN CARTER:** And would you pass it on to the EPA as well?

**PETER DAY:** Yes.

**The Hon. SUSAN CARTER:** Because it seems like there are different ideas as to exactly what's managed. So you're telling me that they would get information within 48 hours as to who the correct authority is?

**PETER DAY:** Yes. If they email or phone us on the weekend and go to the general line, it goes to a voicemail or an email address and then we would respond to that—

**The Hon. SUSAN CARTER:** And if I'm Mrs Smith living near a mine, how do I find your contact details?

**PETER DAY:** It's on our website in terms of Resources Regulator.

**The Hon. SUSAN CARTER:** How do I know that I need to go to the Resources Regulator when I've got a problem with a mine?

**PETER DAY:** On our website we outline there what our functions are and what areas we regulate.

**The Hon. SUSAN CARTER:** What I'm suggesting, Mr Day, is that, if I'm not educated about the way the mine system works, if I'm not working in the industry, how do I know to look for Resources Regulator on the web?

**GEORGINA BEATTIE:** If I could just jump in here—

**The Hon. SUSAN CARTER:** Please.

**GEORGINA BEATTIE:** —for the community, the primary regulator is the EPA. The Resources Regulator is regulating safety for the workers and regulating the Mining Act and, again, we are regulating the mining company essentially for activities that occur on the mining site. So outside—

**The Hon. SUSAN CARTER:** Could you indicate what areas the Mining Act regulation covers?

**GEORGINA BEATTIE:** Yes. The Mining Act is largely rehabilitation. It is also land access arrangements.

**The Hon. SUSAN CARTER:** Would land access include noise from an access road?

**GEORGINA BEATTIE:** No.

**The Hon. SUSAN CARTER:** What would land access cover then?

**GEORGINA BEATTIE:** It's about agreements for accessing land to, for example, undertake exploration activities.

**The Hon. SUSAN CARTER:** So the Mining Act is basically getting into mine in the first place and rehabilitating the mine afterwards?

**GEORGINA BEATTIE:** That's right.

**The Hon. SUSAN CARTER:** In terms of rehabilitation, I understand that companies lodge a bond when approval is given to cover anticipated rehab.

**GEORGINA BEATTIE:** Yes.

**The Hon. SUSAN CARTER:** Are there any issues with insufficiency of that bond?

**GEORGINA BEATTIE:** The bond is a key part of the regulatory framework that we use to oversee rehabilitation activities. It is part of a range of tools that are available. The bond essentially—companies are required to pay 100 per cent of the full cost of rehabilitating that particular site. What that means is that companies are required to regularly review what the disturbance is on their land and regularly update the calculation of what that cost would be. And the rehabilitation security deposit should reflect that cost. We talked before about continuous improvement. The regulatory framework for rehabilitation has—like all frameworks, regularly updated and improved. Recently in 2021 new reforms were introduced, which really strengthened the way that rehabilitation is overseen by the Resources Regulator. That includes now a requirement for progressive rehabilitation—so companies must rehabilitate as they mine—and also annual reporting to the regulator around the disturbance and what progressive rehabilitation is occurring so that we can make sure that the rehabilitation security bond accurately reflects the disturbance on the land.



**The Hon. SUSAN CARTER:** So there are no difficulties with insufficiency of the bond?

**GEORGINA BEATTIE:** Site by site we look at the cases and we ensure that companies are paying. When companies need to assess the disturbance, they do that using a rehabilitation cost estimate tool and then they are required to pay that to us.

**The Hon. SUSAN CARTER:** We're all familiar with issues in typically the building industry, where companies dissolve with liabilities and then arise from the ashes of their dissolution as a new company. That's not something that happens in mining?

**GEORGINA BEATTIE:** The rehabilitation bond—we refer to it as the tool of last resort. It's held by the Government until the mining title is relinquished.

**The Hon. SUSAN CARTER:** We've heard evidence that, if a company's mining activities are frozen—I think was the term we heard; apologies for not having that term in front of me—the bond is not available for rehabilitation works. There was a tailings dam that could not be rehabilitated because, while there was legal action available, the company had no money so there was no point suing it. Who takes care of those situations?

**GEORGINA BEATTIE:** I'm not familiar with that particular case. I'd have to know the details of that to be able to comment on that.

**The Hon. SUSAN CARTER:** But there are no issues about the rehab bond being able to be accessed because the mining company is not currently engaged in mining?

**GEORGINA BEATTIE:** If there is a title and if there is an existing title holder, we would use all other enforcement action before we use the security deposit.

**The Hon. SUSAN CARTER:** How often is the security deposit used?

**GEORGINA BEATTIE:** Very rarely. Because the regulatory framework is strong and the Resources Regulator is strong and takes action, we haven't really needed to access the security deposit. It's a last resort that we have in the event that a mine is completely abandoned and there is no way to recover or require the company to undertake that rehabilitation.

**The Hon. SUSAN CARTER:** So if there was a tailings dam that was built to facilitate a mining site but the tailings dam had failed, the people on whose property the tailings dam was located could apply to the Resources Regulator to have the bond used to remediate that tailings dam?

**GEORGINA BEATTIE:** Again, it would depend on the specifics. If there was a title in place, we would be pursuing that company.

**The Hon. SUSAN CARTER:** What do you mean by "title"?

**GEORGINA BEATTIE:** Under the Mining Act we issue mining leases, so a company cannot operate without a current mining title.

**The Hon. SUSAN CARTER:** But somebody in that situation could apply to you for assistance?

**GEORGINA BEATTIE:** Absolutely. They should contact—as Mr Day referred to, and we would look into that.

**PETER DAY:** Just to clarify the question there around if that happened—if the company was an operating company, then we can issue a notice on the company to rectify that tailings dam.

**The Hon. SUSAN CARTER:** What if they're not an operating company? I think this situation that we've heard—

**PETER DAY:** Then the rehab bond would come into play and we would assess what would be required to be done to it. But, whatever the company that is operating, then the onus is on the company under direction from us to use their own money before they use the bond. As Georgina said, the bond is a measure of last resort. We always require the company to contribute or to make good on any issue under a current title, under a current operation. Companies can't avoid their rehab obligations by going into what is often termed "care and maintenance mode" under the arrangements for rehabilitation. They must apply to us for approval to do that—to go into care and maintenance.

There are often sound operational reasons why companies would go into that; however, they can't avoid rehab because they still have to do what we call progressive rehabilitation. Under their plan, even if the operation was in care and maintenance, they would still have to demonstrate to us and meet the requirements of their progressive rehabilitation as per their rehab management plan. But, in terms of your question around—if there is

a problem with the tailings dam, our first port of call as the regulator would be to officially require, through a notice, through a direction, the company to rectify that dam. If that company went into administration for whatever reason, then that would be where the rehab bond would be used as a measure of last resort.

**Ms CATE FAEHRMANN:** I just wanted to pick up on that line of questioning, if I can, and use the example of the Sullivan and Day property at the Broula King goldmine, which I'm sure you're aware of. They were pretty scathing at the NSW Resources Regulator role in all of this. What is the regulator's role in terms of what has happened on that property? Just to make sure we're on the same page.

**PETER DAY:** Certainly, I can talk to that. The regulator first identified issues with the tailing dams in relation to Broula King during inspections back in 2019, where leachate was observed emanating from the tailing dam wall. A notice was issued to Broula King at that stage, in July 2019, to appoint a suitably qualified independent expert to complete an assessment of that dam wall to address the chemical and geotechnical issues and—

**Ms CATE FAEHRMANN:** Can I take a step back, Mr Day. You're just mentioning 2019. We had quite an extensive time line by the owners of that property, dating back to 2004 or something. But they did say that Broula King mine site was allowed to go into care and maintenance in 2014. That's one of the issues. The very big issue is how it was able to go into care and maintenance when they had tried to raise issues about the clay lining that was being used, that wasn't the right one, and so many issues before it. The company was able to go into care and maintenance. Do you want to talk to that to begin with?

**PETER DAY:** Certainly. That's part of the process I was just talking about before and as Georgina outlined with the reforms to the rehabilitation framework that we implemented in 2021. The progressive rehabilitation stops those companies from going into care and maintenance, as they have in the past, to avoid some of those actions. Currently, under the current framework, they have to apply for approval to us. If that situation happened now, they would have to have approval, and they would still have to progressively rehabilitate. They wouldn't be able just to go into care and maintenance. That was under previous structures there in terms of that site. Under the current rehab arrangements now, the improvement is that they would need to have approval to do that and also still fulfil their rehab obligations.

**Ms CATE FAEHRMANN:** You're saying "under the current arrangements now". What's your response to what the Sullivan and Days are experiencing right now—Ms Sullivan and Mr Day? What is the Resources Regulator doing about the situation now, though? Is there anything?

**PETER DAY:** Yes. We've issued a notice on that company to rectify that tailings dam wall, based on that technical report that we commissioned. That would inform what had to happen to rectify the issue at the actual tailings wall itself. We issued a notice on the company in November 2021. That was to implement the recommendations of the report. Those recommendations now must be complete by the end of this year—31 December 2023. We're actively monitoring those compliance requirements with the company. The company has to rectify the issue as per the technical report by 31 December this year, which will then address some of the chemical issues that are coming out of that dam.

**Ms CATE FAEHRMANN:** I think the situation that they alerted us to was that, in the EIS, there was a particular clay lining, kaolin clay lining, that was critical to that tailings dam not leaking and polluting their property and dams and what have you. The company ended up not using that. The Sullivans and Days say that they notified the Resources Regulator about the fact that a different material was being used and the Resources Regulator did nothing. Why do you think that happened? Has there been any response since then just to rectify that or some kind of retrospective action about the fact the Resources Regulator didn't take action? Their evidence was extremely compelling. I think what we're just needing to be assured of is that the Resources Regulator is aware of this issue and what else it's doing. You've mentioned one thing. What about all of the historical decisions or lack of decisions that the Resources Regulator didn't make?

**PETER DAY:** I really can't comment on those ones. But what I can comment on is where we are now. We've had a notice on that company now for 12 months to undertake works. What that'll require the company to do is to construct a longwall-stable landform over the embankment of that tailing storage facility. That'll support the final approved land use and effectively encapsulate the acid-forming material within the actual embankment itself. We've taken action in terms of issuing the notice. That's been in place for approximately a year. It's required to be completed fully by the end of December this year. If it's not completed, then we'll be taking further action.

**Ms CATE FAEHRMANN:** I'm just thinking in terms of going into care and maintenance, which happened in 2014. I just wanted to see whether there's any changes to that, because this happened in 2014, after this extraordinary history of noncompliance and the landholders tearing their hair out—is it the Resources

Regulator that says a company can go into care and maintenance?—how that happens. What's changed since 2014 to make sure this doesn't happen again?

**PETER DAY:** What has happened is the improvements we've made to the rehabilitation framework that have come into effect in 2021 require the companies to do two things. One is they must apply and get approval to go into care and maintenance. Also the move away from end-of-life rehabilitation to progressive rehabilitation requires those companies and us then to monitor the compliance. They can't stop rehabilitating, even if they go into care and maintenance now. That wasn't the case before.

**Ms CATE FAEHRMANN:** One of the changes you said was that they apply to go into care and maintenance?

**PETER DAY:** They have to apply.

**Ms CATE FAEHRMANN:** Was that not the case?

**PETER DAY:** There wasn't a requirement beforehand in terms of the old framework. Also the entire rehab framework prior to the current reforms were based very much on end-of-life rehabilitation of the mine site, as opposed to progressive rehabilitation, which requires the companies to start rehabilitating, the minute they start creating any disturbance in that land. That's the big change that allows us to better monitor compliance going forward and to assess progress with that, that the companies must submit a plan going forward in terms of what they intend to do rehabilitation-wise. Then we can monitor that and enforce compliance.

**GEORGINA BEATTIE:** Ms Faehrmann, I could just add to that. In addition to the rehabilitation reforms that Mr Day has outlined, we've also introduced a suspension-of-operations policy. That was introduced in 2022.

**Ms CATE FAEHRMANN:** Thank you.

**GEORGINA BEATTIE:** If I can just finish. That allows—

**Ms CATE FAEHRMANN:** I've just got one minute left. I just need to really get one more question out. I'm sorry, but the time is just ridiculous. But I do appreciate it, Ms Beattie, that you did jump in. I'm sorry to do that to you.

**GEORGINA BEATTIE:** That's all right.

**Ms CATE FAEHRMANN:** I notice, in Ms Sullivan and Mr Day's submission, that the Resources Regulator has issued Broula King with directives over the past five years—July 2019, 2021, 2021. There's all these directives. It says that Broula King continues to be granted extension after extension as to the required works to the tailings dam wall as originally required. So in other words, extension after extension. Why are they continuing to be granted extensions? I was just asking what the regulator was doing about Broula King and you said that they'd been issued with a direction but in their submission they've been issued with many, haven't they? And they kept being granted extensions. Is there a reason that the regulator isn't tougher on Broula King?

**PETER DAY:** Some of the notices were for different things. As I said before, one of the notices was for the company to obtain and get an independent expert report on what had to happen to the tailings dam and that would then form the basis of our notice to the company. That was one notice. Where we are at the moment is that they've had one notice in place for over 12 months to implement the recommendations from that report. That's the notice that we will be acting upon—the one that is due at the end of December.

**Ms CATE FAEHRMANN:** They told us that nothing's happened, that they're incredibly frustrated, that they've had an incredible number of years—15 or something—with this pollution and that they can't sell their property yet the company is still getting away with this. When does the Resources Regulator step in beyond just issuing notices and actually make them do something?

**PETER DAY:** The notice has a time frame and if that time frame isn't complied with then we'll look at further action in accordance with their own compliance and enforcement policy. The time frame is 31 December this year.

**Ms CATE FAEHRMANN:** Why have they been given extension after extension?

**PETER DAY:** As I said before, one notice was for the report. There was an application for an extension last year, which then allowed until the end of this year so there wouldn't be any further extensions given after that. The company wanted clarification on the recommendations. They needed additional time on that.

**Ms CATE FAEHRMANN:** Are you worried about the behaviour of Broula King? Are you worried about their actions on that property as the regulator. Does it concern you?

**PETER DAY:** The onus is on the company to comply with the notice as we've issued. If they don't comply with the notice by the due date—

**Ms CATE FAEHRMANN:** Have you visited the property, Mr Day?

**PETER DAY:** I haven't first hand. I should clarify that I'm no relation to the Days; they're different Days. I haven't visited that property but I've got confidence in our office, as they've issued the notice. We'll act on that notice if it's not complied with.

**GEORGINA BEATTIE:** We are very aware of that site and we are monitoring closely the outcomes of that direction.

**Ms CATE FAEHRMANN:** Meanwhile Ms Sullivan and Mr Day have what they have said is a "worthless property". Their mental health is just—you could see how much this experience has impacted that. They were tearing their hair out with the Committee saying, "We just cannot believe that this has been allowed to take place on our property for so many years and nobody has done anything to rein this company in." Ms Beattie, where does that sit within government?

**GEORGINA BEATTIE:** Well, we have to follow due process under the requirements of the various titles. The regulator is taking action. If the action is not delivered by the due date, then further action will be taken by the Resources Regulator. I think, again, it is important to note that this would not occur under today's regulatory framework. This is an older mine site. There have been significant improvements to the framework over time and, as I mentioned earlier, we're always adjusting and improving the way we regulate. A mine operating or commencing operation today would not be in this situation. When we talk about care and maintenance—and this mine that you mentioned went into care and maintenance—now that wouldn't be allowed to happen. At the moment, we introduced a new policy—

**Ms CATE FAEHRMANN:** It was 2014, wasn't it? It's not that long ago.

**GEORGINA BEATTIE:** It was 2014, I think you said—I don't have those details—but we did introduce a new policy a couple of years ago which requires that rehabilitation, environmental monitoring and maintenance must continue when mines are in care and maintenance. That was, again, an uplift in the regulatory requirements. We also now require that mines can only go into care and maintenance for a maximum of three years. That's just another example of how we're continually ratcheting up the requirements.

**PETER DAY:** I just wanted to clarify the date. The date for the new rehab mining conditions came into effect in July 2021, not 2014. The 2014 one is the old framework. The new requirements are only pretty recent. The impact of those new requirements is that there's more onus on the companies to not avoid their requirements and obligations under progressive rehabilitation.

**The CHAIR:** Thank you very much for appearing again today. As previously, the secretariat will be in contact with you with any questions on notice.

**(The witnesses withdrew.)**

**Mr CLAY PRESHAW**, Executive Director, Energy, Resources and Industry Assessments, NSW Department of Planning and Environment, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Thank you for taking the time to give evidence today. Would you like to start with a short opening statement?

**CLAY PRESHAW:** I would, yes. I'd like to explain a little bit about my role in assessments. I lead up a group of environmental planners that undertakes the assessment of major energy, resources and industry projects across New South Wales, all of which come through the State Significant Development process, or in some cases, the State Significant Infrastructure process. All projects that come before us in the State Significant Development or State Significant Infrastructure processes, including mining projects, must undergo an extremely comprehensive environmental assessment under the planning legislation before a determination is made by the consent authority, which in the case of mining projects is usually the Independent Planning Commission. This assessment considers all of the potential impacts to the surrounding environment and the community, which are thoroughly investigated throughout a detailed and generally very long statutory process. It's a wide-ranging and comprehensive assessment process that covers off all the potential impacts.

Importantly this assessment also takes into consideration advice from all the relevant experts within the various agencies of government, which includes the Resources Regulator, the Environment Protection Authority, NSW Health, Department of Planning and Environment, Water, and a long list of other agencies. That's an important point to make because the assessment process in New South Wales is an integrated, whole-of-government approach. When I say we take advice from other agencies within government, it's important to note that we seek advice at multiple points throughout the long, and sometimes arduous, process of assessing the projects.

To be a little bit more specific about that, that means we actually go out to all the relevant agencies of government at least four times through the assessment process, and often more. That includes seeking advice from agencies on the secretary's environmental assessment requirements, which is the scoping stage; the environmental impact statement, which is the exhibition stage; the submissions report or the response to submission; then again at the draft for conditions of consent if we're recommending for an approval; and often multiple other times where there are requests for additional information. That's the basic role of the Department of Planning and Environment in assessing major energy and resource projects.

I would like to quickly make a couple of brief comments about our assessment of mining projects. The first thing I'd say is that in the mining context there is no easy project. There is no perfect project. There is never a project where land use conflicts don't exist, for example, and that is ultimately the trickiest and most challenging part of what we do in my area. The second and the final thing I'll say is that despite the difficulties and the technical complexities with mining projects we, as a department, are very confident in our process. I would say, in my opinion, New South Wales Government has one of the most comprehensive and strictest regimes around environmental impact assessment. A lot of that is actually built into the statute and a lot of that relies, again, on leveraging the expertise across government agencies and ensuring we are collaborative in our approach to assessing all of the various issues that come up on projects. That's all I'll say in terms of opening comments. Thank you.

**Ms CATE FAEHRMANN:** I might just start with the time frame for assessment for community participation and what have you on these two particular projects, McPhillamys and Bowdens, Mr Preshaw. I understand—and I think it was McPhillamys but correct me if I'm wrong—one of them was recommended to go to the IPC on 22 December. Do you recommend them for approval to the IPC? Is that your role?

**CLAY PRESHAW:** So our role is to make a recommendation to the consent authority, which in the case of both Bowdens and McPhillamys was the Independent Planning Commission. So it is important for us to prepare an assessment report and make a recommendation at the conclusion of that report.

**Ms CATE FAEHRMANN:** Just in relation to that timing, so the twenty-second, was there any kind of extenuating circumstances, directions, time frames that required or meant that you put that in on 22 December? I'm just thinking for those two projects, very controversial going into a caretaker Government period, why there wasn't a delay? Were there directions behind that?

**CLAY PRESHAW:** There were no external directions. It was just a conclusion of a very long process in the case of both of those projects. What I would say is that as our assessment of these types of projects comes to an end, usually after many, many years—in this case, these projects were known about in the community for really a decade or more—we become quite aware of the tension between doing an extremely comprehensive process but also giving the community some certainty that it is drawing to a close. So I would say that in relation

to both of those projects, the problem we probably had was that these projects were drawn out for a long, long time as we tried to assess all of their various issues. But in terms of the actual timing that you're asking about, that was just the point at which we finally came to a conclusion on our assessments.

**Ms CATE FAEHRMANN:** Yes, because I think for both of them July 2022 was when Minister Roberts referred the Bowdens Silver project to a hearing at the IPC. That is correct, isn't it? And then so doing removed the merit rights of appeal. I'm just trying to get that time line right. What was the length of that process before you made that recommendation on 22 December, two days before Christmas? How long roughly does it take the department to form a view to recommend approval to the IPC?

**CLAY PRESHAW:** I might have to take on notice the specific dates of when we referred the two projects to the IPC, but I would say as a general comment that on both projects it was a process that took multiple years and that is not unusual for mining projects where there are lots of complex technical issues that need to be addressed. So the actual referral to the IPC is just the final point at which we make a recommendation.

**Ms CATE FAEHRMANN:** So at this point if there are suggestions that the secretary's environmental assessment requirements aren't being complied with, what's the course of action?

**CLAY PRESHAW:** So maybe as background, the secretaries environmental assessment requirements are essentially the scoping requirements that we put on a proponent when they're preparing their environmental impact statement. Before an EIS goes onto exhibition, we do what is called a completeness check to ensure that all of those requirements have been addressed in the EIS before it goes on exhibition. We would have done that for all the projects in the mining space. Sometimes throughout the assessment process, questions will be raised about the adequacy of information provided in the EIS. If there are any concerns on those matters, that is addressed through what we call a submissions report or the response to submissions. So there is an opportunity for the proponent to provide further information about that. In the case of both McPhillamys and Bowdens projects there was further information provided after the response to submissions again to ensure that we had all of those original requirements addressed sufficiently in order to make a recommendation to the consent authority, being the IPC in that case.

**Ms CATE FAEHRMANN:** Thank you, that is useful. For example with Bowdens, I understand that one of the SEARs requirements issued was particularly in relation to water. There is a lot of concern about the impact on water from both of these projects if they go ahead. But there were two issues, the quantity of water and the quality of water very specifically. I understand that the requirement regarding water quality really hasn't been met. DPE had an independent reviewer, Earth Systems, at the time that was saying that there was a lack of a water quality model, and that basically water quality modelling hadn't been undertaken. Your own independent reviewer and a lot of people have made this point throughout the process over the past few years. Are you aware of that?

**CLAY PRESHAW:** I'm not aware of the specific technical question you're asking, but what I would say is in relation to mining—

**Ms CATE FAEHRMANN:** Mr Preshaw, I don't want to make it technical. Making sure the issue of water quality was addressed was a key requirement under the SEARs issued. There is evidence that water quality in fact wasn't addressed; it's a key omission. But the department still, regardless of the fact that one of the key requirements wasn't met, put forward Bowdens recommending that it be approved. Do you accept that allegation? Do you accept that fact?

**CLAY PRESHAW:** I would not accept that water quality was not sufficiently assessed as part of that project. To return to what I was saying before, in terms of meeting the secretary's environmental assessment requirements, it's not unusual in the case of groundwater and surface water issues for further information to be required after the EIS is exhibited because these matters are highly technical. It's not a binary question of "Has water quality been addressed or not?" It often becomes a question of "How well has water quality been addressed?" And it's not unusual, as I say, to require the proponents in these types of projects to provide further information to give us greater comfort in terms of our assessment of those issues.

**Ms CATE FAEHRMANN:** Is that what has happened? Have the water quality risks been addressed in your view? Do you have that information in front of you?

**CLAY PRESHAW:** In my view, the water quality issues were thoroughly assessed and were a major component of our assessment, and we relied on a number of experts—as you mentioned, independent experts but also the expertise within government, within DPE Water and EPA—where relevant. So my answer to that question is, yes, I believe the issues around water quality have been thoroughly and comprehensively assessed.

**Ms CATE FAEHRMANN:** I am told that, in fact, it hasn't been, that there has been no site water quality model undertaken and that the independent reviewer for the project, which is Earth Systems, also expressed that

concern at the time. I'm just trying to get to the bottom of why I have thousands of pages, it seems, of submissions and expert evidence, and people very concerned about this, and where that information goes if you're saying that everything's okay when it comes to water quality. It doesn't seem to be. I suppose the question which I started at the beginning is: Where can the community go now if people identify issues? You've put forward this recommendation for approval, but they're suggesting that the recommendation wasn't based on all of the requirements. What happens with that?

**CLAY PRESHAW:** Again, I would say that it's our view that those issues were thoroughly and comprehensively assessed. But in terms of if the community has concerns about those issues, there are a couple of avenues that I could mention to you that are available. Firstly, we're always happy to take questions from the community. We respond to a lot of correspondence on projects that have already been approved, and that's certainly the case with Bowdens and McPhillamys. But also, for any major mining project like this, there is always a requirement—and there is in these instances—for a water management plan to be prepared, which is one of the key management plans on which a mining operation needs to undertake their activities after an approval is given.

So if there are technical issues around how water monitoring, for example, is going to be undertaken, that's an issue that can be addressed through that management plan process. Again, I have to say that in terms of the actual assessment of the issues around water quality, I'm very confident that there was an adequate and robust assessment of that in accordance with the relevant guidelines, which in this case is the ANZECC guidelines and the Aquifer Interference Policy. And, again, we sought advice from experts and the relevant agencies on those matters.

**The CHAIR:** To the Government.

**The Hon. EMILY SUVAAL:** Thank you, Mr Preshaw, for appearing today. I'm just remembering to speak into my microphone, because you're online. Looking at the whole-of-government submission that was made, it talks about the State significant development process and outlines this integrated whole-of-government approach, which is coordinated, of course, by the Department of Planning and Environment. I wondered if you could step out for us, in very broad and generic terms, what that process involves—as someone that, obviously, hasn't been part of that process before?

**CLAY PRESHAW:** Sure. One way that I sometimes explain the process in New South Wales is just to call it a one-stop shop in terms of the planning process, where you come to the Department of Planning with an application, there are a range of laws and policies that will apply to a project—a mining project, in particular—and the Department of Planning has the role of coordinating all of the advice about those various issues across government. It is quite an arduous process. As I described earlier, each stage of your development application, we will be sending that stage out to all of the agencies for comments around how the project would relate to the regulations and the laws around their particular areas.

As a contrast to the one-stop integrated assessment processes, there are other jurisdictions that do it in a very different way, where you get a planning approval which is totally focused on the planning law itself and no other issues, and then you will go through a set of other, what are often called, permitting processes—so you'll go to different agencies and get permits for a range of other issues that relate to their matters. That's quite a common process in many states in the US, for example, or in some of the provinces of Canada. That process is often a quicker process through the planning system but then is a slower process as you work through the other regulatory agencies. So while our process is, I guess, considered to be very slow, when you get a development consent it is intended to cover the majority of the other agencies' regulatory roles. Having said that, there are still some requirements to go get other approvals after you get a development consent. I'm not sure if that answers the question, but that's probably a generic response to what you're asking.

**The Hon. EMILY SUVAAL:** It's helpful, thank you. In your opening statement you talked about the comprehensive style of the assessment that is undertaken. That considers all of the different impacts. We heard previous evidence from the IPC about some of those impacts. Could you talk us through that process and how rigorous that is?

**CLAY PRESHAW:** Sure. So, as I mentioned in my earlier statement, we go to the relevant agencies at least four times during any given project, and typically it's more often than that. At the SEARs stage, even when a project is being scoped out, we will meet and send letters to all of the agencies about how a project should be designed and the types of issues that need to be assessed in order for us to undertake the assessment. So that's the first stage. We often have what's called a planning focus meeting, where we get all the agencies together in a meeting and we talk about potential problems and issues with a project and what we're going to require from the proponent in order to undertake a thorough environmental assessment. Then once the EIS comes in—which is, as you probably know, a very long and complex document—we will refer that to all of the agencies and ask for their

advice on the parts that are relevant to them. They, typically, will provide quite long and detailed advice back to us, which we refer to the proponent to respond to.

So in the case of water quality, which was mentioned earlier, we will be receiving advice from DPE Water, from EPA, and we will be asking them to comment on whatever issues or potential impacts that they can identify, or, in the case as was referred to before, are there some technical details around the way the assessment is undertaken, the methodology, the modelling et cetera, and that will then be referred back to the proponent to respond to, which is the response to submissions or the submissions report. Again, we will get that report, which is often just as long as the original EIS, and we'll refer that out to the agencies. They look at whether the comments that they provided previously have been assessed and addressed adequately and whether there are any other residual issues—which there sometimes are when you get these really technical documents.

And then, I guess, there are sometimes other opportunities between there and when we get to preparing conditions. But at the point at which we are looking to recommend an approval of a project, we draw up the recommended conditions and we refer those to the agencies to see that if the project was to be approved, are there sufficient conditions and requirements in place to ensure that that development can be undertaken properly and adequately. So there is this long back and forth between all of the agencies and we really rely on the expertise within those agencies to ensure that we have assessed the project in this integrated way, so that if an approval is granted we're confident that we've assessed everything altogether, as opposed to how I mentioned in some jurisdictions where you might just get a planning approval that hasn't actually assessed a lot of the other issues yet.

**The Hon. EMILY SUVAAL:** It sounds like a very factual and evidence-driven but also very rigorous process of back and forth and really getting the best expertise, as you described it, within the agencies. How does the approach that is taken in New South Wales compare with other jurisdictions? You described the process in the US and Canada. How does the degree of rigour that we put these applications through compare with other places?

**CLAY PRESHAW:** I'll answer the question, I guess, in general, based on my experience. I haven't actually worked in many other jurisdictions. I mean, I worked in the Pacific for one year, in a small island nation, which is probably not a great comparison. But, through my studies, I'm quite aware of how it works in other jurisdictions within Australia and overseas. I would say that, in my opinion—and this is probably based on my experience and what I hear from the industry—New South Wales has one of if not the most stringent and comprehensive processes out there in terms of environmental impact assessment. I would say that, for every issue that is relevant in terms of impacts to the community and the environment, we leave no stone unturned. We really do delve into all of the issues that could potentially, in any scenario, crop up with a project.

As I said, obviously, I have mentioned how much we rely on expertise within government, but we are also willing to spend considerable resources, through the process, engaging independent experts at substantial expense to the department, and in the case of Bowdens and McPhillamys we engaged multiple independent experts. So it is not just our own expertise and it is not just the expertise of agencies; it is actually some of the world's best experts, in many cases, that we're seeking advice from to really be confident about the process and the potential impacts of a project. I would say that the, sort of, final step—and I know you have spoken to the Independent Planning Commission. But the fact that the majority of these mining projects actually then get totally independently assessed by another agency—being the Independent Planning Commission—adds that final check and balance and that final piece of rigour. Many jurisdictions don't actually have that specific step as well, and the way that the Independent Planning Commission has been set up as a totally independent, open and transparent body, I think, is quite unique. There are other bodies that do similar roles, but I think the IPC probably has one of the most independent functions that I've seen in a planning system.

**The Hon. GREG DONNELLY:** Thank you for making yourself available today. I'd like to ask a follow up question about the search for particularly qualified professionals, perhaps in various aspects of science, to provide advice back to you. You talked about leaving no stone unturned. I'd like to know a bit more about the effort and time taken to find such a person. Could you give us an explanation on that?

**CLAY PRESHAW:** Sure. We've been undertaking assessments of mining projects for many years now, and we are aware of, in most areas of environmental impact, who the best experts are who are available in the field. So we draw from previous projects in looking for experts. Sometimes there might be a specific issue that we haven't had to get an expert on before, so we'll have to essentially go to the market looking for someone who we think is the right expert for that. I would say that, in instances like that and, really, in most instances where we're getting independent experts, we will seek advice from agencies who have expertise in a particular area, because they will know who are the right people and who are the leading experts in a particular area.



I would say that we do have a very strict conflict of interest policy as well. We need to ensure that whoever we are seeking to engage as an independent expert on a project doesn't have a conflict with that particular project or with that particular industry. Sometimes that actually is very difficult, because often the best experts, in terms of their knowledge and understanding of an issue, have gained that knowledge and understanding by working in the industry and often working for a proponent or a related proponent. In some instances, that will rule out an expert who would otherwise be the best or one of the best people to choose. We do rely on agencies, in terms of getting that list of potential candidates available for independent experts, and then we make sure, through our conflict of interest policy, that there are no issues in that regard.

**The Hon. SUSAN CARTER:** Thank you for being here today. I was very interested in the answers that you've been giving to my colleagues, especially on the iterative nature of the process that you undertake. Could you clarify the factors that you're looking at when you are assessing projects? Are they primarily the physical environment, or do you also look at the social environment in which the project is going to take place or the impact on the lived environment of what that project is likely to be?

**CLAY PRESHAW:** Sure. Look, I'm going to sound like a traditional town planner right now, but what I'd like to say is that we do an assessment—

**The Hon. GREG DONNELLY:** What is wrong with town planners?

**CLAY PRESHAW:** I'm proud to say that as well. We do what is called a triple bottom-line assessment. It is considering and balancing up social, environmental and economic factors. There are lots of laws, policies and the like that we have to consider, but, at the end of the day, what I like to tell my teams is, "That is what we're doing. We're trying to balance up the environmental impacts of a project, the social impacts of the project and, in the case of mining projects, the economic benefits of a project." So that is, ultimately, the role that we have in assessments, and when you ask, "Are we looking at one or the other?" we are looking at everything and we are thoroughly investigating each and every environmental impact, social impact and are really digging into the economic side of things as well. But the trickiest part is actually putting all of that together and then trying to balance up whether or not a project should go ahead.

**The Hon. SUSAN CARTER:** As I understand, from what you were explaining to my colleague, it's an iterative process in the sense that you receive information, you might even form preliminary views, but then you expose those for broader consultation, take that information back in and then reconsider. Is that a fair description of the process of assessment?

**CLAY PRESHAW:** I think iterative is actually a very good word. It is not one that I've thought about in terms of the assessment process, but I think it's quite an accurate way to think about it. One thing I would say in terms of that iterative nature, the back and forth and further information that is provided throughout the process, and about mining projects in particular—this could probably apply to most energy projects too—most projects that are ultimately recommended for approval are not the same as what the proponent originally asked for. That is a result of the iterative process. Project design changes are almost always a result of this process of going back and forth, discovering what the potential impacts are and requiring the proponent to respond to that through mitigation, project design or management measures.

I probably can't think of a single mining project in New South Wales, in my 15 years of experience, that has gone through exactly as originally proposed to a determination in its favour. In many instances, the projects will be half the size, for example, of what was originally proposed or will involve massive changes to what was initially asked for. To go back to your question around iteration, I think that is one of the great benefits of the process of going back and forth, and it is one of the reasons that these projects take so long to assess.

**The Hon. SUSAN CARTER:** I know I'm possibly asking how long is a piece of string, but what would be the length of the average assessment process for a mining project?

**CLAY PRESHAW:** I could take that on notice, but as a general thing—

**The Hon. SUSAN CARTER:** A guesstimate is fine.

**CLAY PRESHAW:** We have lots of facts and figures that I could refer to if I needed to. Typically a mining project, from the point that a request is made for SEARs, which is the scoping stage, to the point at which the IPC makes a determination is three years or more. In some instances these projects will be in the system for five years or more. The industry probably don't want to hear that, but often that is just a result of this back and forth of us making sure that we're comfortable with a project before it goes to a determination.

**The Hon. SUSAN CARTER:** We've heard evidence in relation to standards—for example, lead in the atmosphere, noise levels—that have been described as trigger points where thresholds can't be met, and then processes mining companies will have in place to ensure they don't reach those triggers. You've talked to us about

how well New South Wales does compared to the world in terms of assessment processes. In your view, is that just the processes that we have or does it also include the way in which we set these limits? What would our acceptable limits for environmental metal, for example, be compared to those in other States and those in other countries?

**CLAY PRESHAW:** I'll answer the question generally and then maybe get to the specific around air quality and the like. In terms of the way that we set up our approvals, I like to say there's a fairly standard approach to the conditions. The first step is that there'll be operating conditions: the things that must be done in terms of operating a project. We don't say everything; we're not trying to tell a proponent exactly how to do things. They've described to us in their documents what they are going to do. But there are some bare minimum requirements that are in operating conditions. The second thing is—and you've referenced this—what I would call performance measures or criteria, which is usually a technical issue that there's a limit on how they can operate, whether that's noise limits, air quality limits or water limits et cetera. They must meet those performance measures; otherwise they will have a compliance issue, which may lead to stopping operations, for example.

The third step is a set of management plans, which are very rigorous and actually give you all the details around how those operating conditions and those performance measures are going to be met. We have to agree in consultation with agencies that those management plans are fit for purpose. Then the fourth step—and this is really part of the management plans—is that there's a rigorous monitoring regime that is required under the conditions to ensure that the companies are meeting all of those things that I described earlier.

I guess the fifth and the final step is a two-pronged thing. They are required to report, on a regular basis, how all of those things are being met. To ensure there is a final check and balance, there's an independent environmental audit condition as well. At least every three years, depending on the project—but typically three years or less—there will be an independent auditor that comes in and checks all the reports and all the monitoring of management plans and ensures that things have been going as they were intended to go. That is a very rigorous regime of approvals.

To go to your question around the actual limits, which is really around those performance measures or those limits, in New South Wales we have a policy, or in some cases legislation, for just about every single issue. When I work through our assessment reports—whether it is air quality, noise, water, heritage, Aboriginal cultural heritage, you name it—there will be a very clear policy that tells you what the limits should be for a particular type of project. I would say that it is not always the case in some other jurisdictions that you have such clear policy settings. There are very clear policy settings on just about every area of impact. Where there isn't a policy setting, we need to establish very clear performance measures on that particular issue for that specific project.

**The Hon. SUSAN CARTER:** My last question, if I may: The independent environmental audit that takes place at least every three years: Is that a sort of post-approval iterative process whereby if there are problems and if the management plans aren't performing the way in which they were expected to, they are reshaped by that? What's the consequence of that audit?

**CLAY PRESHAW:** The consequence of the audit depends obviously on the findings of the audit. But at the worst case it could lead to significant compliance action, which could lead to stopping the operation or legal action et cetera. What I would say is that it's a minimum of every three years, but it also is as directed. If we feel or we hear about concerns around the operation of a project, we can order an independent environmental audit to be undertaken under the conditions. To be honest, we don't really need that condition; we could just do that anyway. In many instances, short of going to a full independent environmental audit we can engage our compliance branch, who will then work with the relevant agencies, and they can take action directly without even requiring that independent environmental audit. It is really just that final check and balance to ensure that it's not just a self-monitoring, self-reporting system. It is an independently assessed check on how all these projects are operating. You can imagine that we have a lot of approvals out there, so we have a steady extreme of environmental audits coming into the system at any given moment. Even though three years might sound a lot, there are a lot of these audits coming through. Sometimes they're more regular, even, than three years.

**The Hon. SUSAN CARTER:** Thank you very much. I think my time has expired.

**The CHAIR:** Thanks very much for your time today to give evidence. The secretariat will be in touch with you if there are any questions on notice. Thank you.

**The Hon. GREG DONNELLY:** Thank you for the good work.

**The CHAIR:** We'll now pause the hearing for a lunch break. We'll be resuming at 1.45 pm.

**(The witness withdrew.)**

**(Luncheon adjournment)**

**Mr MITCH COLTON**, Vice-President, Business Orange, before the Committee via videoconference, sworn and examined

**Mrs ALISON BROINOWSKI**, President, Business Mudgee, before the Committee via videoconference, affirmed and examined

**The Hon. SUSAN CARTER:** I welcome back everybody to the afternoon session. I'm temporarily standing in as Chair. I welcome Ms Broinowski. Thank you for making the time to give evidence. I indicate that we're waiting on another witness; I hope not to be disruptive if he arrives while you're speaking. Would you like to make a short opening statement today?

**ALISON BROINOWSKI:** Thank you. Over the past 20 years the thought leaders of Mudgee, which include Mid-Western Regional Council, Mudgee Region Tourism and Business Mudgee, have worked and collaborated strategically and tirelessly to ensure that diversity of industry and business will underpin our local economy into the future. Utilising our natural beauty, strong agriculture and viticulture sectors, central location and ease of accessibility, Mudgee now sits firmly on the map as an award-winning tourism destination. The recent admission to the Tourism Hall of Fame is a testament to the success of this strategy.

With over 30 per cent of all moneys spent in our LGA coming from visitors, this was a total of \$243 million during the 2022-23 financial year. This accounts for a significant impact to our local economy, employing directly more than 1,200 in 2022 and indirectly at least as many again in industries such as health care, retail, professional services, education and agriculture. The arts community thrives because of visitors, and Mudgee is a destination for retreats, wellness workshops and corporate gatherings. With visitor accommodation capacity doubling over the past four years, Mudgee and its local businesses are heavily invested in tourism. Weddings and the associated wedding industry alone contributes to the business fabric of our region. With as many as a dozen weddings on any weekend locally, the risk to this industry and the supporting beauty, catering, florist and fashion businesses is of concern should the Lue project commence.

The driving tourism events are all health and wellness based, with the four busiest weekends on our calendar being two major NRL games, a cycling event and a food and wine event. High-end glamping accommodation offerings and farm stays have seen significant investment and have high popularity among visitors to our region. The continued development of the Glen Willow sporting precinct has seen investment of over \$30 million to date and continues with a professional training accommodation facility to further enhance our offering in this space. The groundbreaking Country Universities Centre project has seen investment of over \$2 million and is due to open in early 2024. This will encourage tertiary students to remain in our region both during and after their time of study.

Currently, Mudgee's unemployment rate is way below the State average of 3.4 per cent, at a low 1.7 per cent. Coalmining, currently a major employer, will be replaced by solar and wind projects in the future as Mudgee sits in the heart of the REZ. A predicted additional 7,000 jobs at the height of construction means the small number of employment opportunities associated with silver and lead mining is negligible to our economy. Mudgee is at risk of losing all this should there be any perception of contamination of water or air by heavy metals. Already there has been negative visitor sentiment identified with discussion around the Lue project. Mudgee region's image is based on clean air, pristine rolling hills with grapes, cherries, olives, along with cattle and sheep, mixing an idyllic regional lifestyle with accessibility.

This is also the basis of vast numbers of "tree changers", during and post-COVID, where the opportunity to work and live remotely has seen professionals in many industries move their families to Mudgee for the lifestyle it offers. There is already concern in this demographic for the health of their families, with the perceived risks of metal contamination of water and air. There are no benefits to the economy of Mudgee with the risk—perceived or actual—of contamination of air and water by metals from any project within our region. Thank you.

**The Hon. SUSAN CARTER:** Thank you very much. I note that Mr Colton has joined us, I believe.

**MITCH COLTON:** Yes, I have.

**The Hon. SUSAN CARTER:** Great. Do you have a short opening statement you'd like to make?

**MITCH COLTON:** No, I do not. But I would say that my organisation mirrors very closely Business Mudgee and, likewise, a lot of Orange's economy is based around mining and tourism.

**The Hon. SUSAN CARTER:** Thank you. I might begin with a few questions. My name is Susan Carter. I'm the Deputy Chair of the Committee. I have a general question to you both. Certainly, I'm conscious of the statements that have been made by Mrs Broinowski about the perceived health risks of the mines. Other than not

proceeding with the mine, do you believe there are other ways of managing those perceptions for residents and visitors?

**ALISON BROINOWSKI:** I don't believe there can be.

**MITCH COLTON:** In Orange we're dealing with, I guess, the other side of it, in that we have an incumbent mine and we're dealing with the fallout of that now. Like anything, I think a lot of good information published regularly, and honesty and maybe some third-party integrity, would go a long way towards helping, but it still doesn't fix the problem.

**The Hon. SUSAN CARTER:** So in your view, Mr Colton, what's the problem that faces Orange?

**MITCH COLTON:** Probably to the point Alison made around tourism. Orange has got its mark, similar to Mudgee, of being a food and wine destination, a wedding destination and an events and lifestyle destination for Sydney. If we lose that beautiful, country, nice, weekend getaway and it turns into bad polluted water and it's dirty and dusty because of the mines, that impacts the perception of the region, and then that does tourism in.

**The Hon. SUSAN CARTER:** Have you noticed any correlation between the Cadia mine and falling tourism numbers?

**MITCH COLTON:** No, we have not, at this time.

**The Hon. SUSAN CARTER:** But you're concerned that it might happen in the future?

**MITCH COLTON:** Yes, it's on our radar. It's not necessarily a concern yet, but we are watching the situation very closely.

**The Hon. SUSAN CARTER:** Do either of you have anything to say about the views of local businesses in the area with respect to mining—the benefits of investment, detriment of perceptions?

**MITCH COLTON:** The overall feeling for Orange is that whilst sometimes we have conflicts with mining it's usually around accommodation requirements and shutdowns and tourism events. Overall, the impact to businesses in the Orange community far outweighs any detriment, currently.

**The Hon. SUSAN CARTER:** So the current view is that it's a net benefit to the economy of Orange?

**MITCH COLTON:** Yes. We've had the mine now—Cadia celebrated its 25 years of active operation, and so it's sort of become part of the norm for Orange. Every business in Orange has had the mine around for the last 20-odd years.

**The Hon. SUSAN CARTER:** Okay. Thank you.

**ALISON BROINOWSKI:** I think it's important to clarify which type of mining. I mean, Mudgee has about 2,500 direct jobs from coalmining. Those coalmines are based at least 35 kilometres from the CBD of Mudgee, in an area where nobody lives. There is, obviously, some slight negative sentiment around coalmining, but as a town we have embraced that because we realise that there is a lot of positive investment and a lot of other businesses which support mining. What we're discussing here is a totally different type of mining.

**The Hon. SUSAN CARTER:** What are the concerns about the new type of mining? What distinguishes that from the existing coalmines?

**ALISON BROINOWSKI:** Well, the new type of mining that is proposed with our region, that mainly being the Bowden silver mine at Lue, there are concerns around lead dust with that, which is not an issue associated with a coalmine.

**The Hon. SUSAN CARTER:** So it's the lead dust and the air quality that are the major issues for Mudgee?

**ALISON BROINOWSKI:** They are, and also the impact of any heavy metals in the water, because that will be a problem. The major water feed into our towns and villages is through the Cudgegong River and Lawsons Creek, which can be impacted by heavy metals, tailings, dams et cetera, which is of major concern.

**The Hon. SUSAN CARTER:** Mr Colton, do you have the same water concerns in Orange or have you lived happily with Cadia?

**MITCH COLTON:** We're starting to see it now, certainly towards Blayney and then the southern part of the Orange immediate shire or council area, or GSA, for exactly the same reason—Gosling Creek and Spring Creek flow through the Cadia area, which ultimately ends up in the Orange water table. We haven't seen, to my knowledge, anything in Orange's water source, but it's more eastern-north, whereas certainly there has been testing around Springside and Spring Terrace and Forest Reefs that's started to have some—

**The Hon. SUSAN CARTER:** And are they issues that have been raised with the EPA?

**MITCH COLTON:** Yes, there's currently an ongoing investigation.

**The Hon. SUSAN CARTER:** So the EPA is addressing those issues?

**MITCH COLTON:** Yes.

**Ms CATE FAEHRMANN:** Just a few questions from me. It's Cate Faehrmann here. I understand that there are 19 or so mines in the pipeline for the Central West and Far West. I'm not saying that every mine shouldn't be approved, and I don't know what type of mines they are. This is what the Minerals Council said yesterday, I understand, in an interview. Does that make you both think that potentially there should be—I know this has been the subject of a number of submissions, including from people from the Mudgee region. Is it worth considering or do you wish that there were things such as agricultural and tourism protection areas that there are certain parts of Mudgee or whatever that the area is protected from mining for the tourism benefits that they bring or the agricultural qualities? Has that come up in the workings or deliberations or discussions or meetings of Business Mudgee or Business Orange? Is that something worth considering?

**ALISON BROINOWSKI:** Not that I'm aware of. I think it's also really important to know the difference between those mines. I mean, we talk about coalmines. They're dirty and dusty, but they don't kill people. It depends on what we're mining and the processes around that type of mine. So I think it's very hard to say a blanket "We need to protect things from mining", because mining can coexist quite well with agriculture and tourism, but it's important to distinguish the types of mining.

**MITCH COLTON:** My only addition—we haven't had any specific conversations around it. But should not the normal mining—Minerals Council mining approvals process take into account all of those things, as it stands today?

**Ms CATE FAEHRMANN:** Can I get a sense as well in terms of the general sentiment or support around the Mudgee region for the Lue mine, what the general sentiment is, or is it fairly mixed?

**ALISON BROINOWSKI:** The general sentiment is slightly mixed. The agriculture, tourism, the main business sectors are opposed to it for all the reasons that I outlined. There was initially some support from the—let's talk about the large contractors, earthmovers et cetera. However, with the expansion of the renewable energy zone, all those contractors are taken up and will have so much opportunity for work that they're not going to need the Lue jobs, and they will be insignificant numbers in comparison to the other projects.

**The Hon. EMILY SUVAAL:** Thanks to you both for appearing today and for the time you've given. I might start with you, Mrs Broinowski. My apologies if I've mispronounced your name.

**ALISON BROINOWSKI:** You've done well.

**The Hon. EMILY SUVAAL:** Sorry. In your opening statement you talked about the coalmining that currently existed in the area and mentioned that that would be replaced with solar and wind projects. I know you may not have been listening all day, but we have heard evidence this morning just about the transient nature of those jobs with relation to solar and wind projects and, in particular, renewable energy projects. It's fair to say that there is contractor work—there are construction costs for the set-up, but the ongoing maintenance into the long term, there will be minimal jobs in those areas. I just wonder how it is that you think that, given there are 2,500 direct jobs from local mining, coalmining will be replaced by those solar and wind projects when in fact it is the case that those jobs have very few ongoing.

**ALISON BROINOWSKI:** Thank you for the question. Part of the long-term strategy of Mudgee has been to enhance different areas of industry and business. For example, we worked really hard to grow that tourism sector so that in the future we can perhaps enhance that even further and offer some of those jobs when we're looking at 2040 or beyond when the mines should have an end of their life. There will be other opportunities for employment. As a council, Business Mudgee, we have been working really hard together, and we meet on a biannual basis specifically for that purpose to look at what other opportunities we can make—manufacturing, tertiary education—and what other things we can do that can fill those job vacancies, because you're right, there won't be enough, but there is a long pipeline of construction jobs in the process of that REZ. We have currently 14 projects within our LGA that have been earmarked and another 14 to 16 in adjoining LGAs. So it is long-term projects.

**The Hon. EMILY SUVAAL:** In terms of how much those sorts of local jobs can put back into the economy—you mentioned the tourism jobs and things like that—how would you rate the rate of pay with those jobs as opposed to, say, coalmining jobs or critical mineral mining jobs?

**ALISON BROINOWSKI:** I can only—I mean, I don't know what people get actually paid if they work in the mine or if they work in accommodation or if they work for Country Universities Centre or whatever. That's not my area of expertise. I would assume that they would be slightly smaller pay cheques, simply because people are paid well in the mines because it's dirty, awful work.

**The Hon. EMILY SUVAAL:** I don't know that I agree with that assertion, as someone that lives in the Hunter Valley and knows many people that work in coalmining industries. I think that's rather a misrepresentation of their work. I will move to my next question—and there is quite a significant rate of pay with most people in the Hunter and the mining industry.

**ALISON BROINOWSKI:** I think when you're looking at the people working face to face and what you—anyway.

**The Hon. EMILY SUVAAL:** In terms of local businesses in the area in Mudgee, I'm aware lots of local businesses in the community might sponsor things like the local show, football and sporting teams, projects in school. How important are those to the local areas?

**ALISON BROINOWSKI:** They are very important.

**The Hon. EMILY SUVAAL:** Why would you say that is?

**ALISON BROINOWSKI:** Because, like any small organisation or not-for-profit, those organisations rely on the financial support of donors and sponsors.

**The Hon. EMILY SUVAAL:** In terms of the coexistence, I think, Mr Colton, you mentioned that mining can coexist quite well with the tourism areas. Obviously, you're in an area with Cadia, where that mine was approved some 25—is it 25 years ago? Is that correct?

**MITCH COLTON:** It has been operating 25. I think it got approved close to 30 years ago.

**The Hon. EMILY SUVAAL:** Yes. We've heard evidence earlier today of how the planning conditions and the environment has sort of changed over time. Are you aware of the current rigour with which projects are assessed in comparison to, say, Cadia?

**MITCH COLTON:** Not directly, no, but I can assume.

**The Hon. EMILY SUVAAL:** And have either of you participated within that process of going through and making submissions and all of that sort of thing?

**MITCH COLTON:** I haven't directly, no.

**ALISON BROINOWSKI:** I've made a submission on a personal note but not through Business Mudgee.

**The Hon. GREG DONNELLY:** Thank you both for making yourselves available. We had this morning—I withdraw that. At an earlier hearing, we had representatives from the New South Wales Government, covering some different departments—I won't go through them all but government departments—and we've had further witnesses today from New South Wales government departments. These are the departments which actually aren't run by politicians; these are departments that exist within the State of New South Wales, which obviously fall under the remit of a Minister, but they are departments. We've had individuals come along from these departments—normally quite senior ones—and particularly this morning have given evidence that, if I can summarise it this way, the process of considering a mine proposal and then the steps through its consideration, leading finally to a decision about whether to approve it or not, is quite a rigorous process. In other words, it's quite thorough. It takes a period of time and it's a lot different today than it was 10 years ago, to say nothing about 20 years ago.

I'm wondering if we take the argument of, "No, we don't want the proposal of a mine to proceed", how do we put that back against the detailed consideration by people who are in quite senior positions, tasked with the job to look at the whole proposal, who come to a different conclusion that they believe that the mine, under certain conditions, can operate free of the concerns that the community has? How do we reconcile those two?

**ALISON BROINOWSKI:** I think that's extremely difficult to reconcile those two. But I think that we need to look at the humanitarian side of it. There can't always be things black and white. If there's an area of grey, I think we have to err on the side of caution.

**The Hon. GREG DONNELLY:** I guess an argument that could get put back is that very rarely is something strictly black or white; you could always find an element of grey. I suppose the question is how much grey is enough to cause the issue of saying no, compared to a small amount of grey, to use your term?

**ALISON BROINOWSKI:** I think that is almost impossible to answer, I'm sorry. I can't answer that. At the end of the day, do you want to take that risk, even if it's miniscule? We know that any amount of lead is unsafe for humans. Do we want to take that risk? Are there alternative locations where we can source these types of minerals that are not going to impact on that human health risk for people who have chosen to live in a particular area, sometimes for many, many generations? Now their children and grandchildren are at a massive health risk.

**The Hon. GREG DONNELLY:** The proposition, if I understand it—and just to be clear—is that if there is any risk at all, as small as it might be, to lead dust exposure, no mine. Is that the proposition?

**ALISON BROINOWSKI:** Agreed, absolutely.

**The Hon. GREG DONNELLY:** I turn then to the question of Orange and the Cadia mine that operates there. Thank you, Mr Colton, for appearing. It's been very helpful. Are you aware that the community at Orange at the moment, given that this mine has been operating for a period of time—has their attitude towards the mine changed over time? Sorry, forgive me: I don't know how long you've actually resided in Orange for. You might be a—

**MITCH COLTON:** I'm 33 and I've been there since I was two. My mum is a third- and fourth-generation Orangeite. So yes, I'm a local.

**The Hon. GREG DONNELLY:** You're a local, we'll give you that. I'm just interested in your insights because you've therefore been there and, basically, seen it start.

**MITCH COLTON:** I remember as a child when they started to build it there was a lot of "not in my backyard" et cetera. However, realistically overall, and then certainly from a Business Orange point of view, the overall impact of the mine to Orange over the last 25 years has been positive. Look, there have been some issues around tailings dams and things of that nature—operational issues on the immediate local environment around the mine. But at the end of the day, to your question of how is the overall feeling towards Orange, I think it's become an accepted part of the status quo. Certainly the talk of the proposed mine near Blayney-Kings Plains is quite contentious, but the Cadia mine has become a very incumbent, normal part of the Orange community.

**The Hon. GREG DONNELLY:** That's pretty helpful. Thank you very much.

**MITCH COLTON:** That's alright, mate. No worries.

**The Hon. SUSAN CARTER:** Sadly our time has expired. Thank you both for being here today and taking the time to give evidence. It's appreciated.

**(The witnesses withdrew.)**

**Ms PHYLLIS MILLER, OAM**, Country Mayors Association, and Mayor, Forbes Shire Council, sworn and examined

**Mr STEVE LOANE, OAM**, Country Mayors Association, and General Manager, Forbes Shire Council, sworn and examined

**The CHAIR:** I welcome our next witnesses, from the Country Mayors Association. Would you like to make a short opening statement?

**PHYLLIS MILLER:** Thank you. Firstly, I thank you for allowing us to come and address you today. Our view from the Country Mayors Association is that we need a balanced view of the benefits and the drawbacks of the mining industry. I think it's fair to say that the mining industry is extremely important to rural and regional communities and their economies. I want to put on the record that council is not the consenting authority of mines; that's way above our pay rate. Let's get that clear when you hear those statements.

Some of the other important areas supported by the mining industry include that mining is a large employer across New South Wales and contributes to the fabric of life in rural communities. Women are increasingly represented in the mining industry, along with Indigenous employees and programs to support capacity-building for those people. There are excellent training and skills development options available for workers: traineeships and apprenticeships in places to enhance skills and capabilities that create pathways to employment.

Mining increases the demand for goods and services in the community and boosts local businesses, suppliers and entrepreneurs. Mining creates jobs and income for local people and stimulates and diversifies our local economy by attracting other businesses and industries to our communities. The current regulatory framework for the mining industry is inadequate, ineffectual and certainly un-resourced, and has been for some time. All of the above points are extremely important to the rural and regional communities. I'll stop there.

**The CHAIR:** Thank you very much. We'll go to questions from Committee members, starting with the Government this time.

**The Hon. EMILY SUVAAL:** Thank you both for appearing today from Forbes. It's lovely to have you both here. My first question is around what, if any, work you might have done to quantify the economic benefits of mining for your community in Forbes?

**PHYLLIS MILLER:** I'm going to leave a document with you and, don't worry, we have looked at lots of statistics. We just know in our local community—and I'm speaking broadly across the State so—

**The Hon. EMILY SUVAAL:** A country mayor's perspective?

**PHYLLIS MILLER:** Of country mayors. I'm trying not to localise myself, but it's very difficult not to go back to what benefits it is for us. But, for instance, we found out there are 25,000 direct jobs, that's in the coal. That's supporting regional communities. I know this is not about coal, but the western region has 3,000, southern region has 3,000, Central West has 5,600 jobs and is an enormous employer for the Central West in the State. We do look at statistics to back up what we're thinking. Across the membership of country mayors, there's a whole array of people that have local government areas with mines in. I'm not one of those but I'm very reliant on the two that I have: one in Parkes shire and of course one in Bland shire. The mining industry, we may not have one in our shire, but my goodness they're very important to the economic wealth of our town.

**The Hon. EMILY SUVAAL:** Did you have anything further to add, Mr Loane?

**STEVE LOANE:** Yes, sure. I'm delighted to be here today to give our views. We're about to go into changed climatic conditions due to El Niño. Those of us who live in the bush have lived through some pretty horrific droughts. We've also had some floods. But when there's a drought on, sometimes mining's the only game in town and we're very, very mindful of it because when you've got no stock and no crops to trade—we at Forbes run the local saleyard there and \$350 million worth of livestock a year changes hands there—and when there's no stock to go through the yards, it's a pretty dry old argument. I can tell you that the mines that surround us—Cadia was mentioned; it is over an hour away from us but we've got Northparkes mine and we've got Evolution mine just in Forbes area alone—their employees choose to live in Forbes because Forbes is a beautiful place. But we've got 180, I think, employees directly from those mines themselves—and they're cashed up, yes.

There are good salaries there at those places and I am—we are—firmly of the belief that mining and agriculture can co-exist. To further Mayor Miller's attestation just now about the regulatory situation, we should be able to take great comfort in the EPA and the Department of Planning. One of the things that really irks us is that the development application fees that are paid to the State Government don't flow to us. We have to represent



our communities and we don't get a cent. I've asked every planning Minister, or the last six of them, I think, to consider some form of a flow-on effect. I mean, I know Shenhua was a coalmine, but that DA fee was \$300 million. You don't see a cent of that. The average for it is for every \$1 billion worth of capex, the DA works out to be \$1.35 million. What I'm suggesting there is that should be more investment in the regulatory side of things. I don't mean to overregulate and to drive it to the point of unsustainability for coalmines, but these companies are long-time corporate citizens—20 years, 30 years, sometimes even longer—and the community expects council to hold them to account.

We don't have the in-house expertise. We're not subject matter experts at mining, but what we are subject matter experts of is our community. Mayor Miller is probably one of the most passionate mayors you'll ever meet and knows her community inside out and back to front and never gets it wrong when it comes to a judgement call on that, but the community comes to us because there might be some water affectation, there's some dust issues, there's social issues when your town is all of a sudden full of utes, with people with hi-vis clothes on that change the whole dynamic and the fabric of the area. I'll leave my remarks at that, but we believe that mining can co-exist. It just needs better regulation and some dollars need to flow to us so that we can actually employ the right sort of people to help us to oversee the submissions.

**The Hon. EMILY SUVAAL:** We heard evidence this morning about the amount that some of these local mines contribute back into local councils by way of rates. Acknowledging that, if you don't have a mine in your LGA you may not be receiving those rates, but what order of magnitude is that? How important is that for some of our regional councils?

**PHYLLIS MILLER:** I think it's very important, I know, to Blayney council. That's where Cadia is. That's one that I personally know. It's in our JO. Those rates are terribly important. But outside of that the mines contribute to us in Forbes to a lot of community projects. They have supported us with a whole range. They've got community funding programs. We're short of money on a project at the moment. I'm negotiating with them on where they can come in with the shortfall with Evolution. They're very community minded. Those community committees that you have with the mining industry, they are fantastic. If you get the right people on them, if every mine has their community committee working properly—

**The Hon. EMILY SUVAAL:** So you're talking about the consultative committees?

**PHYLLIS MILLER:** Yes, the consultative committees. If you get the right people on that, and that is working well, you will get a really good, decent fair argument for environment versus people. I think that's what we need. Like, we're all environmentalists in Forbes in our shire. We care very much and so do all of the mayors across New South Wales. It's very important. It's getting the balance right and that balance can come if we're regulated properly.

**The Hon. EMILY SUVAAL:** Which goes to my next question—Mr Loane, you mentioned about the investment in the regulatory side of things. We did hear evidence this morning about that sort of regulatory side of things. I know we've got more evidence to hear this afternoon, but where would that investment go, or what improvements would you suggest in terms of—but we also heard evidence to suggest that the system we have here in New South Wales is one of the best in the world—what changes need to be made, I suppose I'm asking?

**STEVE LOANE:** I just think that they need to keep their eye on the ball. It seems like there's a lot of interest in it up-front at the approvals part of it when the mines are first starting to develop and get involved. We have had examples of the flying squad, as they call it, that have gone in and read the riot act to certain operators, especially in the northern part of New South Wales. But I just think that there needs to be much more scrutiny from those regulators on what happens. The voluntary planning agreement situation from a community enhancement situation is also broken. The word "voluntary" is a joke because it means it has to be voluntary from both parties, the mine and the council, to enter into it on behalf of their community; and the agreement sometimes isn't an agreement. The guidelines are very loose, and this is not about councils trying to gouge a situation because we want to make sure that the mining operators are sustainable going forward. But we no longer want to be given gazebos and barbecues and those dinky little things.

There needs to be proper consideration not only for infrastructure but also for programs that are actually going to be beneficial to the community for proper enhancement. So regulatory on one side, but also a proper—Mayor Miller talked about the CCCs, the community consultative committees. They're one part of it, but also a dissemination of a proper flow-on of interested capital that comes into the local government area that could be supporting things like child care, community bus services, people who have difficulty getting to and from medical appointments. Those sort of things seem to go by the wayside and all of that impact is directly related to mining and there's also the indirect impact as well. We need to make sure that we tighten up that voluntary planning agreement situation.

**PHYLLIS MILLER:** Yes. The big thing about it—you know, just on that, with the royalties to the regions, which I know that that's where we're supposed to be the most fantastic in the world, it doesn't take into consideration councils like ourselves. Across country mayors, there are a lot of councils like us that are living next door to mines, but not in our shire—like Orange, like us. I think that we need to be more practical about royalties for the regions and I think there should be an opportunity. There are lots of environmental projects that we want to take on. We've just done a bird hide and lots of things. They come from all over the world to go to our bird hide in Forbes. That all costs money. We're fortunate that evolution contributed to that Evolution mine. That is a really good environmental thing that we're doing there. I think there should be some kind of payback from those royalties back into the environment.

**The Hon. SUSAN CARTER:** Thank you both for being here today. I'm interested to think about that whole process of approval you were talking about. If it was a DA you would get the DA fees, but also if it was a DA you would be involved in enforcement if the DA conditions weren't met. Is that true?

**PHYLLIS MILLER:** We would, but that's past our pay rate.

**The Hon. SUSAN CARTER:** I'm wondering then, if somebody complains to council because they perceive that there's a problem with a condition of approval and a mine not being met, what does council do or how are those complaints managed? How is the enforcement piece handled?

**STEVE LOANE:** Council reacts as a conduit with the department of planning so that we actually can ask the correct questions and couch them in the right way for the complainant, so that we can get them the answers.

**The Hon. SUSAN CARTER:** That's a process that works, that you get good answers, you get prompt attention?

**STEVE LOANE:** Largely. I don't have a particular problem with the department of planning and their attention to our questions, but we're fairly forceful in the way we ask our questions.

**The Hon. SUSAN CARTER:** We're obviously looking at framing recommendations at the end of the report. Certainly, I think there is an issue around enforcement, most particularly with average citizens knowing who to go to, how to get answers. I am wondering the extent to which council could be part of that piece, connecting the people who live in the area with the problem, to the people who can solve that problem.

**PHYLLIS MILLER:** We need to be part of it when they are doing the development application. When the Government is doing that assessment, we need to be part of that. We do know our communities, we know our environment. I think that is where there is a real missing link that we can be completely left out of it.

**The Hon. SUSAN CARTER:** At what part of the process do you think you would most add value to that consideration?

**PHYLLIS MILLER:** Right from the start.

**STEVE LOANE:** What seems to have been forgotten by a lot of parties and agencies is that when State-significant development was first introduced, it dropped off the old section 94, which is now 7.11 and 7.12, programs. The old formula of 1 per cent of capex used to flow to councils so that we could actually employ the right consultants. We don't get a cent of that money. But we get an EIS stacked that high, 4,000 pages, dropped on our desk and we are given six weeks to review and we've got to go out and employ a very expensive consultant to come and help us to uncover some of the devil in the detail, so to speak. That is why, what Mayor Miller is saying, we need to be involved at the table but funded with a share of the action that goes to the State Government so that we can actually represent our communities appropriately.

**PHYLLIS MILLER:** Otherwise it's cost shifting again

**The Hon. SUSAN CARTER:** As I understand what you are saying, you are part of the process in the sense that you're consulted, but you don't always have the resources to participate in the way in which you would like to?

**STEVE LOANE:** That's correct.

**The Hon. SUSAN CARTER:** The other part of the resourcing that I think you were saying is that often one of the conditions of approval will be contributions back to the community, but you don't think there is enough real negotiation with the local councils as to what form that would take?

**PHYLLIS MILLER:** None, none.

**The Hon. SUSAN CARTER:** How can that be changed?

**PHYLLIS MILLER:** Have some communication with us. That simple.

**STEVE LOANE:** But it should be mandated. What we will always push for is for any provision of a voluntary planning agreement or any agreement becomes a condition of consent. In a lot of cases that does happen. But we have proponents come and sit before us and they tell us that they will give us two-and-six, and that's about it.

**The Hon. SUSAN CARTER:** It is presented as take it or leave it?

**STEVE LOANE:** Pretty much, yes. It's a heavy-handed approach

**The Hon. SUSAN CARTER:** I'm interested in exploring very quickly if we can, the issue where you are talking about councils adjacent to mines. As I understand that, and correct me if I'm wrong, you're perhaps getting some of the burden of trucks on roads, but not the benefits of any of the contributions?

**PHYLLIS MILLER:** Yes, we get all of that, and it's up to us. We go to the mine, and we're fortunate that we have a good relationship with the mine because we have got so many people living in Forbes and we have got a terrible road that they've got to go on, it was flooded for ages. We don't get any of that development contribution back to the local community. When that's being done, it's normally only in the shire. The rules at the moment need to really expand, that it goes to the affected areas. As the fellow from Orange said, they are affected, we are affected, and yet we don't get anything, only at the goodwill of the mine and our relationship.

**The Hon. SUSAN CARTER:** If I could summarise, and perhaps you could tell me if I'm summarising appropriately what you are saying today, that provided you get the right balance with the community, mining can be a great benefit to rural communities.

**PHYLLIS MILLER:** Absolutely.

**The Hon. SUSAN CARTER:** That councils need to be part of the process of approval, but resourced so that they contribute appropriately to that process of approval.

**STEVE LOANE:** You got it

**PHYLLIS MILLER:** Yes.

**The Hon. SUSAN CARTER:** And that when we're looking at contributions that might be part of development approval, we should look at the entire impact of the mine on all of the affected communities, not just the shire in which it forms a part.

**PHYLLIS MILLER:** Yes. That's really, really important. It's important to us to be the voice for our people who are environmentally worried about it too. We want to be able to give them some comfort in the work that we do to make sure that we are representing them to government and making sure that whatever the conditions of consent are, that we've taken into consideration their representation to us as a council. That's really important to us.

**The CHAIR:** Thanks so much for being here. As a former country deputy mayor, I'm glad that we have got local government represented as part of the inquiry. Councillor Miller, you described the regulatory framework for the mining industry as inadequate, ineffectual and under-resourced. You have already spoken to under-resourced in the responses to other members today. I wanted to ask if you could expand on the comment that it was ineffectual and if you have examples of that?

**PHYLLIS MILLER:** What's happening in Cadia really makes us think about what's gone wrong there and all of that. I honestly believe the EPA should have been on top of that, I really do. That's my opinion. I could be wrong. That's my expectation as a person sitting here and reading that day in and day out, out there in my community. I don't know, I believe and I have heard they are under-resourced and have been for years. I think that really needs some consideration. But, we will leave some paperwork with you, and we're not just here whinging or telling you great stories, we've kind of got some solutions. We think there should be independent people going to the mines. They should be doing inspections and that should be put up so the public can read where they have come out on those inspections. Those audits done by independent people should be up there for the public to see. And if there's a problem, we should see it, so we all know, and we should be assured that it's going to be fixed through the regulatory framework. At the moment, we have not got that assurity.

**The CHAIR:** I'm also interested in expanding on your comments about the resourcing. You have argued that local government deserves a share of the DA fees or the royalties to support the work you're doing. I'm interested in exploring some of the challenges that local government faces or needs that funding to address. As an example, earlier in this inquiry we heard from the GM at Orange City Council who talked about impacts of the mine on transport, on housing. What are some of those impacts that create costs for local Government?

**PHYLLIS MILLER:** The housing, that's certainly a problem. If you've got a mine anywhere near you, you haven't got any spare housing. We as a council decided to do a housing estate. We're trying to fill that void. But our road network. The people that have to go—all the heavy vehicles that we have going through our shire, all for the mines. The mining industry needs those roads fixed. We are slowly but surely getting our mine to fix this road so that it's good. We don't get anything towards—our road infrastructure is one of the big things that really concern us because it's terribly important that those roads are safe for those people to go to and from work. That is a real concern. But housing is a problem for us, up-front, and it's to do with the mining.

**The CHAIR:** Because I've been a councillor, I know that people ring you all the time with complaints about anything happening in the community. People trust their local council to respond to their complaints, rather than having an awareness of which department they're meant to go to with things. What's your experience of councils receiving commentary, complaints or concerns about mining projects and then being able to pass them on to the appropriate regulator?

**PHYLLIS MILLER:** Yes, we haven't had a problem, but I'll let the GM.

**STEVE LOANE:** The important thing is for us is to maintain a very good relationship with the hierarchy of the mining company so that someone in my position can pick up the phone and ring my counterpart, the general manager of one of the mines, and discuss the concerns of the community—so I can actually have, in the first instance, an off-the-record chat about whether or not the complaint has got any validity or whether or not it might be somebody who just doesn't like the mine or whatever it might be. But it gives us an opportunity, rather than having to go through regulatory channels, to have a direct relationship with them and talk about what the issues are.

**The CHAIR:** Is there any framework or are there any conditions that support those conversations to happen, or are you just relying on the goodwill of that individual?

**PHYLLIS MILLER:** We meet regularly.

**STEVE LOANE:** Every three months.

**PHYLLIS MILLER:** We've got our system and we meet regularly. In between that, we have it mandatory that every three months we meet and speak about all of the things they're doing and what we're doing, and they're very helpful. But in between that, if something comes up, the general manager—immediately we get onto it and sort it out. We've had no problem with going to any of the bureaucrats in the government. They've been excellent. I just think that there needs to be a change in the way that we're doing business, because mines and people and rural communities have to exist together. We need to coexist because we can't live without them.

**STEVE LOANE:** Can I also leave you with a thought? I know our time is limited. I talked about the drought, but in the last flood in Forbes especially, in November 2022—the biggest flood since 1952—both Northparkes Mines to our north and Evolution mine in the West Wyalong LGA were constantly ringing us on a day-to-day basis to offer help. They had staff, they had large pumps and they've got big equipment to help the community out, so we didn't feel abandoned by these big operations. That's the relationship we have, because I can tell you that at one o'clock in the morning, I'll get a phone call because they've discovered something that we might need to know about. If they're not ringing me, they're ringing the mayor, and so we've got that relationship happening. So mining is not all bad when it comes to the bush; it's just a matter of how you manage it.

**PHYLLIS MILLER:** And they contributed to our GIVIT program, and that put furniture back into people's homes—both of the mines. They were considerable donations, and they certainly helped us get people furniture and whitegoods back into their houses.

**The CHAIR:** Thank you both so much again for taking the time to give evidence today, and the secretariat will be in contact with you with any questions on notice.

**PHYLLIS MILLER:** I'll just leave these notes. That's got a bit of the stuff that we've said in there, so I'll leave that with you. There's a copy for every Committee member.

**The Hon. GREG DONNELLY:** Thank you for the great work by the Country Mayors Association as well. It's much appreciated.

**(The witnesses withdrew.)**

**Dr JEREMY McANULTY**, Executive Director, Health Protection NSW, NSW Health, affirmed and examined

**Dr THANJIRA JIRANANTAKAN**, Medical Adviser, Centre for Alcohol and Other Drugs, New South Wales Ministry of Health, affirmed and examined

**Professor ANDREW DAWSON**, Clinical Toxicologist and Pharmacologist, Director, National Poisons Register and Clinical Toxicology, Royal Prince Alfred Hospital, Senior Visiting Medical Officer, NSW Poisons Information Centre, Sydney Children's Hospital Network, before the Committee via videoconference, affirmed and examined

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

**JEREMY McANULTY:** I would. Thank you to the Committee for inviting NSW Health for an opportunity to present at this inquiry. There are many different substances in the environment to which people may be exposed, but most of these exposures are not at harmful levels. Where people may be exposed to potentially harmful substances, it's natural for them to be concerned about the impact on their health and the health of their family and of their community. For someone's physical health to be impacted by an environmental hazard, there must be an exposure pathway from that source to the individual—for example, through the air, gut or skin. The first principle in protecting people from exposures is eliminating or reducing the exposure pathway.

Under the Public Health Act, NSW Health has specific environmental health regulatory responsibilities, including in relation to the safety of public drinking water supplies, legionella control, public swimming pools and skin penetration businesses. Although NSW Health does not have legislative responsibility for other environmental hazards, it does work with other agencies on assessing these. For example, wood smoke is known to cause harm in the community, and NSW Health works with other agencies to assess and communicate these risks.

NSW Health does not have responsibility for mining approvals or regulation of mining, as these rest with other agencies. There can be significant limitations in determining what the true health impact on a community or individuals will be from an environmental hazard, especially when the hazard is ubiquitous in the environment, such as lead. Where there is a known risk in the community, such as exposure to lead in Broken Hill, NSW Health works with local agencies and other agencies to reduce that risk.

For many hazardous substances, there is scientific evidence from occupational exposures and animal exposure studies that the substances can cause harm, but these are usually at vastly higher levels than are present in the community. Health-based guidelines which are derived from occupational and animal studies are therefore conservative, often with large safety measures built in. NSW Health will continue to work collaboratively with our partner agencies and the community to protect public health.

**The CHAIR:** I'm interested in August 2022, when a significant pollution event was identified at the Cadia mine near Orange. We now know that Cadia has been charged with a criminal offence over that event. I understand at that time that GPs were instructed not to test asymptomatic individuals in the community. As a GP, I understand that there may not be value in individual GPs doing a screening exercise at that scale. But was that of interest to the public health unit? Was any work ever undertaken to investigate epidemiologically what was going on with heavy metals poisoning near Orange?

**JEREMY McANULTY:** Earlier this year, in 2023, we received advice from the EPA that there had been exposures in the community. So we formed an expert panel to advise on what the risk would be, working closely with the EPA to understand what the exposure pathway data may be, to the community from the mine and other sources. So we asked the EPA to develop and provide us with as much data as they could rapidly, as soon as possible, to inform that decision-making process. The expert panel, which has met, I think, three times now, included a range of experts, from toxicology, respiratory, air quality, water quality, Department of Primary Industries, food, pathology, health risk assessment and now neurology, to advise NSW Health on what those risks might be, based on the data. The committee is still meeting and still collecting and reviewing data, but the initial advice was that, while no widespread community testing was currently recommended, in the absence—but, if people had exposure concerns or symptoms or if the clinician, the doctor felt that there was a need to test, then they should use their clinical judgement. There was no advice saying there shouldn't be any testing. But, based on the available data, that was the advice given.

**The CHAIR:** If a blood test result shows an elevated level of a heavy metal, is that notifiable? Does NSW Health become aware of those results?

**JEREMY McANULTY:** Blood lead levels are notifiable. Other toxic substances aren't. However, we did provide advice to GPs that, if they had any concerns about whether they should test or interpreting results

from any heavy metal or other toxicological test results, we have an email address and a telephone number for the local public health unit to contact. Advice could be given, and we could then channel those queries into expert toxicologists to provide advice directly to the GP.

**The CHAIR:** I'm interested at a public health level rather than an individual level. Has there been any epidemiological analysis of the test results coming out of communities around Cadia?

**JEREMY McANULTY:** We received some de-identified advice results from a number of people through the EPA referral I mentioned earlier. I might ask either Andrew or Thanjira to comment on those, but we also wanting to dig deep into what exposures people might've had. So we've talked with community representatives about doing what we call a deep dive into understanding of those people who feel they may have been exposed or may have symptoms, to work very closely with an expert environmentalist, with an expert medical toxicologist and their GP to understand exactly what their concerns might be, exactly what exposures they may have had, where they're living and working and elsewhere, and how to interpret any results they may have, and if they need additional testing or advice. That advice would then be provided back to the person in written format and also reviewed, de-identified, by our expert panel. So we're getting a picture of exactly what's going on and can then provide further advice to the community.

**The CHAIR:** I'm interested in following up. So only lead is notifiable, and not other heavy metals. I'm sure you'd be aware that the community around Cadia's been doing an extraordinary level of citizen science, sending off tests to be done privately et cetera. Obviously, their results haven't been assessed rigorously with biostatistics et cetera. It's a fairly small sample. But, from my perspective, it's a fairly alarming sample, that they have that small number of cases. Is there any follow-up collection of similar data happening by NSW Health to assess how widespread those levels of other metals might be?

**JEREMY McANULTY:** I might ask one of the toxicologists to comment on the first statement. But the second statement is that a point of the deep dive investigation is to try and, for the people most concerned, understand what their exposure pathways may be, as well as making sure we've got a good understanding of the test results so we can then do further work as needed, based on that careful, considered analysis by some experts, reviewed by our expert panel. Could I ask perhaps Andrew or Thanjira to comment on the results that have been seen already.

**ANDREW DAWSON:** Obviously, the results we saw, as Jeremy said, were de-identified. So we don't have any other medical history on those patients, on the members of the community—in particular, occupational history, other medications and things that may actually alter those results. But I guess the important thing is that, whilst there are a small number of abnormal results—I'm getting a terrible echo. Let me just see if I can fix this.

**THANJIRA JIRANANTAKAN:** I may add into that, then. The initial number of test results we received—that's through EPA, and that's non-identified. I can check the exact number, but it's about 10-something, which is a very small number of samples, and those results have mildly elevated, some of the heavy metal level, and that mildly elevated levels of the health-based reference don't have immediate health impact. But we understand that community has done tremendous work and has a lot more data. We would really like to help on looking at the data in the level and also talk to the community about the exposure and understand more. We haven't received those results until now. If we receive that, we have the pathway that we already talk within the expert panel, that we would really like to look at the data and work with the community.

**The CHAIR:** Thank you. Are you aware of cases of silicosis associated with the Cadia mine?

**JEREMY McANULTY:** No. We're not the regulator for occupational health and safety, though. That may be SafeWork. But I'm not aware of any cases of silicosis associated with it.

**The CHAIR:** I'll have some questions on notice about that. I think Ms Faehrmann has a couple of questions for you.

**Ms CATE FAEHRMANN:** Thank you, Chair. Yes, just in relation to the situation about informing GPs, in terms of the decision-making within NSW Health. Was the Minister made aware of that decision to instruct GPs in the local area not to proactively test residents?

**JEREMY McANULTY:** There was not a recommendation not to proactively test residents. The advice was for clinicians to use their clinical judgement. But, in the absence of exposure or symptomatology, broad screening of the whole community wasn't recommended at this time.

**Ms CATE FAEHRMANN:** Who made that decision?

**JEREMY McANULTY:** That was based on the expert panel. The expert panel met, reviewed the available data. The expert panel has a range of experts in different clinical and other areas, and that was based on them.

**Ms CATE FAEHRMANN:** Does that brief go to the health Minister?

**JEREMY McANULTY:** I was on leave at the time. I can't tell you for sure that the Minister was briefed.

**Ms CATE FAEHRMANN:** The standard practice, Dr McAnulty, I assume, with a brief like that. What is the standard practice? That it does go to the—

**JEREMY McANULTY:** We would normally brief the Minister's office about that.

**Ms CATE FAEHRMANN:** "The Minister's office about that"?

**JEREMY McANULTY:** Yes.

**Ms CATE FAEHRMANN:** Does the Minister have to approve the decision? Or is it just they're briefed?

**JEREMY McANULTY:** No. The expert panel advises the Chief Health Officer. Then we would operationally progress that advice.

**Ms CATE FAEHRMANN:** Just to go back to the silicosis, any instances of silicosis at Cadia, I am informed by the community that they've been informed that there are more than one, there are multiple workers, reasonably young, at Cadia, with silicosis. Are you telling me, with all of the exposure about the Cadia mine and pollution and all of the work that NSW Health is undertaking in the area, that NSW Health hasn't been informed that there are silicosis cases at Cadia Mine?

**JEREMY McANULTY:** I'm not personally aware of reports of silicosis. We are not the regulator for workers; that's the SafeWork agency, who would receive any notifications and act on those. I can't confirm or deny whether there's been any cases in miners.

**The CHAIR:** The proposed silver and lead mine near Lue has, as a condition of consent, regular testing of children regarding lead contamination. Is it possible for harm to occur, particularly to very young children, before that is picked up through regular testing? My question is would regular testing actually prevent harm?

**JEREMY McANULTY:** Maybe I could start that. We would be keen that there be no exposure to the community from lead emissions, through regulation and other procedures that are put in place. As I mentioned earlier, stopping that exposure pathway is key so the community is not exposed. I'll defer to Thanjira about the lead impacts.

**THANJIRA JIRANANTAKAN:** It's important to note that exposure would happen when there is some source of excess metals or some exposure. I think we're at the stage that we have been working with EPA to look at the data about if the exceed exposure exists through the data and then it's true that if there is some monitoring information on the tests that can prevent, but that would need to have some exposure information as well. Can I add to the GP section, if I could, with the previous question? Otherwise, I can move on.

**The CHAIR:** Feel free to extend your answer.

**THANJIRA JIRANANTAKAN:** At that point, I think it is important to understand that it is at the very early stage that we get information. The decision to meet GPs, at that point, have the objective to share information with GPs in the area, like what information we have and the exposure information we have. I understand that heavy metals might not be something that GPs have seen in patients all the time. The other objective of that webinar is to give GPs some information about the concept of heavy metals, like where it can come from, how to test it and, if GPs receive the test results, how to interpret it in general. It is also important to understand, too, that heavy metal has different nature for each of them, so assessment of the result need to be individualised. This means the GP has a holistic approach: talk to the patients, history, physical examination and exposure. It will be the best to have all information with the test results. And then we also provide a pathway for GPs to consult and to interpret information. That is the objective of that webinar and that is what it delivers.

**The Hon. EMILY SUVAAL:** We have heard quite a bit of contradicting reports, and this has been widely canvassed through the media as well. At no point did NSW Health instruct GPs not to test?

**JEREMY McANULTY:** No.

**The Hon. EMILY SUVAAL:** In terms of your engagement with the Cadia community group around their blood tests, could you tell me about this deep dive that NSW Health has proposed for the Cadia community and explain to us how it will work?

**JEREMY McANULTY:** It's very much about trying to understand individual circumstances for those people who volunteer from the community because they're concerned either they have symptoms or because they've been exposed or any concerns. We've asked the community to identify such people and to come with us. We will then use external experts from my department who are knowledgeable about all the various exposure pathways that people might be exposed to chemicals and heavy metals from, like mines, other parts of the environment, supplementary medicines, shampoos and a whole range of things that might contain chemicals. We map those out and understand what is happening in terms of exposure.

At the same time, we have an expert toxicologist who understands what tests results have been done and, with permission, talk to the general practitioner and understand the range of tests that have been done and, if additional tests need to be done, what symptomatology might be among the people. And then we develop a tailored report that goes back to that volunteer or the individual to explain to them what has been found. The idea then, if we have five to 15 or that kind of number of volunteers most affected, is that we can then group those results and identify them and put those results to the expert panel to review the findings as a whole and then map what the next steps would be. We think that actually would be really useful for then providing further advice to general practitioners as well as the community.

**The Hon. EMILY SUVAAL:** You mentioned a couple of things there about the expert panel, which I'll come back to. It sounds like it's the case that if someone has an elevated level of a heavy metal—lead, for example—in their blood and it comes back as an abnormality, there may be multiple reasons for that. Regardless of a mine, it could be or a shampoo, I think you said; medication, as it was earlier; and occupational health. So there are multiple reasons as to why that might occur.

**JEREMY McANULTY:** Not necessarily for lead. I might ask Thanjira to expand on that.

**The Hon. EMILY SUVAAL:** But it will depend on the metal.

**JEREMY McANULTY:** Selenium, for example, can be in shampoo, I understand. So, yes, understanding all those potential pathways. It may be from a mine but exposure might be from other sources as well.

**The Hon. EMILY SUVAAL:** Did you want to add anything, Thanjira?

**THANJIRA JIRANANTAKAN:** Dr McAnulty mentioned shampoo because there is some hair testing that we know that the community has done as well. To see the test result positive for heavy metals, that does mean it's in the person's body at that time that the sample tests. It can come from many pathways. That's why we emphasise on the role of GPs and clinicians to gain that information. Also, it is very important to understand what we will do with the information if there is some elevated result. The mainstay of treatment for heavy metals is to stop exposure, which we are doing now already. If it's in the level that people need chelation, normally it's very high. We don't see more than 10 tests in that level.

**The Hon. EMILY SUVAAL:** You mentioned the expert panel. What does the expert panel do and why do we have an expert panel?

**JEREMY McANULTY:** We have a small team in-house. With public health problems, it's common for us in Health to pull together the best experts. In New South Wales we're blessed with some really fine experts in toxicology and clinical aspects. We draw from other States as well, where necessary, in terms of water quality. I mentioned earlier the type of people who are on the expert panel. This expert panel, similar to other expert panels for other issues we hold, advises the chief health officer on what the risk is in this particular concern and then what actions they would advise to address any risks they have identified. With this expert panel, the data has been coming in through its life. It's met three times. We expect further data to come in. The expert panel reassesses its previous advice as it goes because more data will come in and it might change everything. This deep dive I talked about may change our understanding of what the risks are. It is important that we have the best advice available based on the best available information.

**The Hon. EMILY SUVAAL:** Thank you for clarifying. We've also heard through this inquiry that members of the community have found lead sediment at the bottom of their water tanks. Could you please advise us what responsibility NSW Health has over personal water tanks and what people should do to look after their water tanks?

**JEREMY McANULTY:** NSW Health regulates public drinking water supplies—that is, town water supplies and Sydney Water and towns have utilities that run their water supplies. But we don't regulate individual private water tanks; that is up to the individual. We do provide advice through fact sheets on our website about how to maintain water tanks. Water tanks can become contaminated. They can have bird droppings. They can have dead animals in them. They can have dust coming from the environment getting into them. Over time they



can build up sludge. The advice is around making sure the water is clear, making sure that there's a regular—I think it's every two or three years—inspection of the amount of sludge that might be in there, and then removing the sludge if it's building up. So it's about regular maintaining. Drinking water tanks aren't as good as the town water supply, which is highly regulated. But people are living off the water supply. This is their source of water. So it's how to maintain that as safely as possible. Generally speaking, it's safe. The water comes from above the sludge level, so it tends to be very different quality to what's in the bottom of the sludge.

**The Hon. GREG DONNELLY:** Just to help me understand, the challenge of explaining to the community at large, and perhaps individual groups within the community, in a way that they can comprehend and understand what can be rather technical scientific details and considerations in enabling them to understand what the work that you're doing in the public health remit is actually showing and demonstrating—it struck me, as I was listening to you and reading the Government submission, that doing that must be a challenge. So I'd appreciate your general comments about that and the ways in which you find that to be done in the most effective way.

**JEREMY McANULTY:** It's a very good point and the expert panel does speak in very highly technical language, as you'd expect.

**The Hon. GREG DONNELLY:** Which is important to understand the issue.

**JEREMY McANULTY:** Exactly. So we try and then simplify that, with the expert panel's oversight, into simpler language that we then provide to general practitioners. There are also some drop-in—EPA had, I believe, three drop-in sessions or community meetings in Millthorpe and Blayney to provide a range of advice on the situation. I wasn't there so I can't tell you exactly what happened, but Health was there, represented by the local public health unit, with fact sheets and could talk to people about their concerns. We also have the public health unit, who's got a website and also a telephone contact, who's available to speak in plain English, hopefully, to members of the public. So we are keen. In the pandemic we learnt a lot about how to try and reach vulnerable communities who are often not English-speaking as their first language, so it is really important that we try and make the language attainable to those people in the community.

**ANDREW DAWSON:** Can I just add to that further?

**The Hon. GREG DONNELLY:** Please, yes.

**ANDREW DAWSON:** I was hoping this [audio malfunction]. It must be at your end. It's not my end. In clinical practice it's generally quite easy to explain in plain English to patients what's going on, but you first have to understand what their understanding of the situation is. Because often it's a mismatch in understanding what risk is and in particular equating exposure to poisoning when exposure is exposure. It doesn't always result in poisoning. We have a lot of experience in explaining to individuals. I think the big guide—part of the purpose of that is to really understand how the community has gained information and perception about this. I'm very sorry about the echo.

**The Hon. GREG DONNELLY:** Thank you very much. Appreciate that.

**The Hon. EMILY SUVAAL:** I might finish with one final question. We can hear you, Professor Dawson. The echo is not at this end. I just thought I'd clarify. In terms of this deep dive that's happening with Cadia with the community there, how can people get involved if they want to? Is there further testing that the community is doing? How can people reach out?

**JEREMY McANULTY:** We've communicated through the Cadia community network. I understand they've had a community meeting to identify volunteers, so it'd be through that process, essentially.

**The Hon. SUSAN CARTER:** Thank you all for being here today to explore this very important issue. A number of the questions I had intended to ask have been well covered by my colleagues, so thank you for the information. In the normal population, if such a thing exists, what would be the incidence of elevated lead or other metals in the population in blood tests? Are some metals more commonly found than others? Perhaps you could provide some general background.

**JEREMY McANULTY:** Could I defer to—

**ANDREW DAWSON:** Sure. It's not uncommon to have people arrive with elevated heavy metals. There are particular things such as mercury and arsenic, which are common in food. Generally these levels are all very, very low levels that don't require treatment and, indeed, sometimes, depending on the source of the metal, may not actually have any risk at all. I'd have to take the question on notice to give you an absolute instance of, if you just screen people, how often you would find various heavy metals. But, for example, if you screen people who smoke or vape, you'd find some heavy metals in most of those people. It's very important, when you're doing any sort of analysis like this or testing an individual, to have a really clear idea about what all their habits,

medication, all of the other things that are kind of going on, both as way of explaining why they may actually have a positive result but also sometimes be able to reassure them that, whilst that result is positive, you may not actually have any significant health effects depending on the source of the metal.

**The Hon. SUSAN CARTER:** That's very interesting. I'm presuming that we have a set of safe levels that are established in New South Wales or levels above which there's clinical concern?

**ANDREW DAWSON:** The notion of levels—we have a whole range of levels where we want people to be below. Most commonly what you see in practice—and, indeed, what we're seeing in Cadia—is some individuals who have levels slightly above that. Those levels themselves generally are not of any critical concern because it's got such a big safety factor—often up to a hundredfold put in—when making those thresholds. Where they're important it is signalling that someone's got an exposure that has to be explained—and, once we explain it, ideally go back and reduce that exposure. So we have very low thresholds where we will pick up positive results which actually don't have any immediate health risks at all to the individual or even chronic ones, but it is signalling that they're being exposed and we do want to reduce overall community exposure.

**The Hon. SUSAN CARTER:** Would any person who presented with an elevated level above safe threshold risks of any metal—is that always able to be addressed and reversed? Or are there some metals that, once the level has been reached, it can't be reversed?

**ANDREW DAWSON:** I think the short answer is yes. There are some metals where there would be effects that can't just be reversed and really the best metal to think about that is lead. That's an extreme example but it's important because, as you're probably aware, exposure to lead, particularly during pregnancy, so to the foetus, or to young children where they're in the developmental stage of developing their brains—the lead exposure will change or impede brain development. That's not going to be reversed by getting rid of the lead. You can't really get rid of the lead. That's why we have such low thresholds for lead, because there is an effect. Even though for that individual it might be hard to measure, at a population level, if you are looking at thousands of children, you would see that even with relatively low levels, those children who are exposed aren't going to be quite the same as children who are not exposed. But for most other metals, with the thresholds that we actually have, even when they're exceeding them, the individuals are not really at any health risk. But lead is a pretty distinctive example, I guess, because it's so ubiquitous and so common. We know that there's really no acceptable level, or really no level of lead that wouldn't have an effect on individuals. That's why the lead levels over the years have got lower and lower and lower—the thresholds of concern.

**The Hon. SUSAN CARTER:** I understand from previous testimony that the threshold levels we set in Australia would be conservative by world standards?

**ANDREW DAWSON:** This is for lead or for metals in general?

**The Hon. SUSAN CARTER:** For all metal exposure.

**ANDREW DAWSON:** For all the metal exposures we have in Australia, the levels are very conservative. They pretty well line up with all other developed countries. The short answer is yes. These levels are conservative.

**The Hon. SUSAN CARTER:** The primary means of lead exposure is airborne, so you breathe in, get it in—or is it ingestion? How do people get lead in their blood?

**ANDREW DAWSON:** It's most commonly because people are ingesting it either through water or through soil, or sometimes things like paint flakes and things like this. There are occupational exposures, but in terms of what we're talking about—the normal population, inadvertent exposures—it's generally always through ingestion. The source of those ingestions obviously can be lead in the air. We obviously got rid of lead in petrol, but it can also be lead in water systems and in water pipes. There can be lead associated with certainly enamelling of eating utensils. We do sometimes see it as contaminant often in traditional medicines. But it's generally always ingestion.

**JEREMY McANULTY:** Broken Hill is an example of where there's widespread contamination in the environment. Small babies and small children are most at risk when they're doing the crawling around and the hand-mouth activity, and ingesting lead from the environment via their hands.

**The Hon. SUSAN CARTER:** I think I noticed in your submission that there are ways to ameliorate that exposure, if you're aware of it?

**JEREMY McANULTY:** There's an all-of-government approach to Broken Hill, led by the EPA historically, to both screening of children to ensure that lead contamination of children or toxicity in children is

recognised early and additional intervention can take place, but also to control the lead exposures in the community itself.

**The Hon. SUSAN CARTER:** Is there a way of filtering tank water so that lead is filtered out?

**JEREMY McANULTY:** I don't know the answer to that. I'm sorry.

**The Hon. SUSAN CARTER:** No, I just thought you might.

**The Hon. EMILY SUVAAL:** With regard to what Professor Dawson said around lead and indeed your comments around Broken Hill—my understanding is that it can exist in many areas naturally. Is that the case?

**JEREMY McANULTY:** I'm not a geologist, but there are certain areas where there's lead runs, I suppose—whatever the right term is. Broken Hill is an example where for over 100 years there's been mining and there's been the creation of lead in the environment through dust and so on. That's been a big concern for many years for the EPA and NSW Health.

**The Hon. EMILY SUVAAL:** I suppose, things like old paint, old toys—I can remember the old dinky cars that my dad had, which probably had lead paint all over them, that I used to play with. Ceramics and pipes—all of that sort of thing—is that the case?

**JEREMY McANULTY:** Yes. Historically, Andrew mentioned lead in petrol, which was a major pollutant and health impact until that was phased out a couple of decades ago. Lead in paint also, with children ingesting crackling paint in their backyard around windows and things. There can be lead in piping and on roofs, particularly of older houses where there's flashing which is part of the roof—when it rains and that goes into your drinking water tank, that can contain lead contamination from that rooftop.

**The CHAIR:** Can I ask one last question? I want to try to clarify some of the discussion that we were having earlier about the data collection in that Orange region. You mentioned a couple of times the very small data set that you have at the moment. I imagine that data set is small because there hasn't, up until this point, been an effort to do widespread testing. But you also said in one of your answers—when you were talking, I think, about the expert working group—that that committee is still collecting data. I was hoping you could clarify for the Committee what data you're now collecting. What is that process?

**JEREMY McANULTY:** We're working with the EPA, and we've asked the EPA to urgently provide the expert panel with data they're collecting from the environment. We're concerned about that exposure pathway we talked about earlier—what has actually been coming from the environment and from the mine in terms of water or soil or air contamination—to help understand what the risks to individuals might be. We've got, I understand, most of that data in from the EPA now. It's been very useful. There's a further human health risk assessment that the EPA has required to be redone by the company to understand what those—so we need to see what the results of that are, which we expect in some weeks. We'll put all that information and any other new data, including the deep dive I mentioned earlier, to the expert panel to reconsider their advice on a regular basis.

**Ms CATE FAEHRMANN:** I'm wondering who sees that data. Does it stay with the expert panel? How transparent is that?

**JEREMY McANULTY:** I'd have to check with the EPA. It's EPA data that we're reviewing. I don't know how they then release that data more broadly. We receive it, the expert panel looks at it and then we provide a summary.

**THANJIRA JIRANANTAKAN:** I can add to that. I think the EPA have their own expert panel. We don't know who they are, but it comprises many people as well.

**The CHAIR:** I just wanted to ask one last clarification question. I'm really pleased all that work is happening. I imagine with the EPA collecting samples you're talking about environmental samples, so soil and dust samples et cetera. Given we know that there was this major pollution event that has now resulted in criminal charges, is there any proactive collection of clinical samples being undertaken?

**JEREMY McANULTY:** We're keen to review any data that the community has, and the offer is there to have those sent into us to review. We're also, as part of the deep dive, wanting to collect clinical data, which will then inform whether additional testing or other mechanisms need to be provided.

**The CHAIR:** I'm interested in that citizen science data. It obviously would benefit from having a much broader sample, and also from having a control group et cetera that would allow it to be analysed appropriately. Is the data that you're collecting through that deep dive process going to be sufficient to actually inform any kind of epidemiological analysis?

**JEREMY McANULTY:** It will be a first step, I think, is the way to address it, so that of those people who are believed to be most impacted, we can get a good profile of those people, and analyse it and interpret that. That'll be the gateway to any additional things that need to be done.

**THANJIRA JIRANANTAKAN:** I can add to that as well, if I may. Heavy metals also have a half life. That means when it comes into the body, then at some point—it depends on the type of heavy metal—it will be excreted out of the body. Things that happen in the past, we have always had in the back of mind that it might have impacts to people and community. But in terms of getting the clinical samples to test, if there's heavy metal in there, we can't tell things that happened in the past, like years back. It depends on the heavy metal. The information from the EPA of what's the current or recent environmental exposure will be really important. It's also important to understand that heavy metals, there are so many of them, so we have to specify what we test for. We don't have a battery of 100 tests. There's a gap in the science where we don't know much about the information, especially the impact of low level. Having the data itself is good, but we also need to understand too what we're going to do with the data and how we analyse it and how we utilise it. So that's the limitation of heavy metals that you need to have into the equation as well.

**The CHAIR:** We're out of time for today's session. Thank you so much to all three of you for your time and your really valuable evidence today. The secretariat will be touch if there are any questions on notice.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Mr TONY CHAPPEL**, Chief Executive Officer, NSW Environment Protection Authority, on former oath

**Mr STEPHEN BEAMAN**, Executive Director Regulatory Practice and Services, Environment Protection Authority, on former oath

**The CHAIR:** Thank you for making the time today to give evidence. Do you have another opening statement today?

**TONY CHAPPEL:** I have a brief one, if that's alright, Chair. Thanks for the invitation to appear again before the Committee to represent the NSW Environment Protection Authority, which I'll again refer to as the EPA. I acknowledge the traditional owners of land on which we meet here today, the Gadigal people of the Eora Nation, and thank them for their ongoing custodianship of country since deep time that continues through to today and is ongoing. I acknowledge their enduring connection to the land, sky and waters of this place and extend my respect to Elders past and present and to any Aboriginal and Torres Strait Islanders here today or watching on the live stream.

Since our last appearance, the EPA has made substantial progress on some relevant matters relating to the inquiry—in particular, in respect of the Cadia mine. On 29 September this year, Newcrest's Cadia Holdings Pty Ltd entered a plea of guilty in the Land and Environment Court in respect of an alleged breach of the Protection of the Environment Operations Act for exceeding emission standards of goldmine dust relating to the emission of solid particles from surface exhaust fans attached to ventilation rise eight in March 2022. A sentencing hearing has been set down for 28 March 2024. On 12 October this year, the EPA commenced legal proceedings in the Land and Environment Court for four additional offences for alleged air pollution by Cadia Holdings Pty Ltd. Those matters have now been set down for a directions hearing on 24 November.

The new prosecutions relate to four alleged breaches of the Protection of the Environment Operations Act, being two offences relating to an exceedance of the standard of concentration for solid particles as a result of operating mine surface exhaust fans attached to ventilation rise eight and two offences relating to air pollution incidents in October 2022 from the surface of Cadia's tailings storage facilities. This means the EPA is now prosecuting Cadia Holdings in the Land and Environment Court for five alleged offences associated with air pollution from its goldmine in Cadia. Three offences relate to emission of total solid particles from a ventilation rise on three occasions between November 2021 and May 2023 and two offences relate to air pollution from the broader mine, which the EPA alleges occurred as a result of Cadia's failure to deal with mine tailings in a proper and efficient manner in October to 2022.

I note again that a recurring theme from submissions from members of public is that fines for environmental offences are too low. While the EPA can issue on-the-spot fines under its legislation of up to \$15,000, where cases are taken to court, a judge or magistrate decides which penalty should be imposed. In these situations, the possible financial penalties are higher. Under the Protection of the Environment Operations Act, the maximum penalty that can be imposed by a court is \$5 million for a corporation and \$1 million or seven years' imprisonment in the case of an individual, or both. In terms of the specific charges and prosecutions now on foot, the maximum penalty available for each offence committed would be an amount of \$1 million. Of course, any changes to the penalty regime, including maximum penalty amounts, are a matter for government.

Additionally the EPA continues to meet regularly with the community. This week my colleague Mr Beaman, here on my left, and members of his team met with representatives from several community groups regarding water, soil and sludge testing. Steve also spoke in detail about the EPA's role in providing advice on mine approvals, particularly the recently approved Bowdens and Lue mines. As I noted in my last appearance, as New South Wales' primary environmental regulator, the EPA often provides advice to the Department of Planning and Environment on potential environment and human health impacts of proposed developments. Our advice is not binding on consent authorities in their decisions on the granting of development consent, nor on conditions imposed on a development consent.

As I mentioned previously, the EPA has established an independent expert panel in respect of providing advice to us on the Cadia mine, which met for a third time on Friday 20 October to discuss in detail a range of sampling data collected by the EPA from rainwater tanks and kitchen taps within the Cadia Valley, as well as additional water sampling results collected by Dr Ian Wright. Following review by the independent technical panel, we expect to publish this report next week. The EPA has put forward a proposal for sediment isotope testing to help identify the source of lead found in some water tank sediment samples and the panel provided suggestions to ensure this testing is robust. This included also analysing samples of soil, tailings dam and particles emitted from vent rise eight and collected for comparison. The panel also discussed the human health impact assessment and agreed that further review of the assessment was required, including consideration of additional data collected by the EPA.

Finally, the EPA has been working on installation of high-volume air monitors in the community around the Cadia mine. We expect the first two of those to be up and running in the next week. The EPA remains committed to addressing the complex issues at Cadia and working with the community and the company. I want to acknowledge the very strong commitment of my people at the EPA and thank them for their ongoing hard work. Thank you for the opportunity to make this statement. I'd be pleased to take any questions.

**The Hon. SUSAN CARTER:** Thank you for being here today. My first question really goes to response times and responsiveness of the EPA. If I'm a concerned person, how do I know to contact the EPA, how do I contact the EPA and what is the timeframe for a response from the EPA? And if you find there's an issue, do you just proceed with the prosecution or do you feedback the results of that to the person who initiated the complaint?

**TONY CHAPPEL:** You mean as a member of the public raising a potential pollution incident?

**The Hon. SUSAN CARTER:** Yes, as somebody who lives in a 10-kilometre radius of Cadia, for example.

**TONY CHAPPEL:** On all of our material, on our vehicles, on our website and so on you'll see the report pollution phone number—we call it Environment Line. It's 131 555. It's staffed 24 hours a day, seven days a week. Calls to that are triaged and actioned.

**The Hon. SUSAN CARTER:** Can you explain the triage—what would get more importance and what would be put at the bottom of the queue?

**TONY CHAPPEL:** I might ask my colleague Mr Beaman to talk in a bit more detail about our system.

**STEPHEN BEAMAN:** The calls come in. They come in to our operational coordination unit. That's staffed and manned by experienced operational staff. Particularly we've got two very experienced managers running that area.

**The Hon. SUSAN CARTER:** Nine to five? 24/7?

**STEPHEN BEAMAN:** Nine to five is when the operation does the triaging but you can call 24/7, so the system works 365 days a year, 24/7.

**The Hon. SUSAN CARTER:** There's a person? Or you record?

**STEPHEN BEAMAN:** There's a person every time. After hours we have an after-hours incident management system. That has operational staff that have been trained and authorised to take the calls. So it will come into a call centre and then get referred to an operations officer. We also have a duty supervisor on staff—a manager. We also have a duty director and a duty executive director. There's always a chain of command within the EPA that is available after hours. The officers get a call. We've done staff training and they've got aide-memoires. They've got guides to actually guide their decision-making when they're getting a call. The staff actually sleep with their phones during the week. It's usually under their pillow. The phone will ring or the phone will buzz and they get the message. They'll see what the incident is and then they'll take some action there. We've got that 24/7 system.

We also, just for completeness for the Committee, have the duty incident advisory service, which is the combat agencies in New South Wales. Police, Fire and Rescue, and Rural Fire Service have access to a specialist team, 24/7. That phone rings and it gets answered by a person and then we respond to any incident straightaway. During the daytime, the calls come in. They get assessed by the team by triage. Things that give indications that they're impacting human health, anything that's impacting the environment, a water pollution incident, anything that's asbestos, anything that's a major spill on major waterway, they will then refer that on to—

**The Hon. SUSAN CARTER:** I think that's great and obvious and necessary, but I'm Mrs Smith who's seen dust clouds. I don't know whether it's asbestos. I don't know whether it's lead. I don't know whether it's dust in the air. How do I get triaged?

**STEPHEN BEAMAN:** They go through that process. 131 555. They ring through, it gets triaged and sent to a manager. That all happens—

**The Hon. SUSAN CARTER:** The question I'm asking where do I sit in the triaging?

**STEPHEN BEAMAN:** So all the matters that come through in the day—so when I'm saying triaging, there are things we want to respond to within minutes and there things that we respond to within the day.

**The Hon. SUSAN CARTER:** Sure.

**STEPHEN BEAMAN:** So initially—

**The Hon. SUSAN CARTER:** So I, Mrs Smith, will get a call back within 24 hours telling me what's happening.

**STEPHEN BEAMAN:** We aim to do that, absolutely.

**The Hon. SUSAN CARTER:** How can you tell Mrs Smith what's happening until you've investigate it?

**STEPHEN BEAMAN:** We actually collect evidence off Mrs Smith. We might make a decision to call the licensee and find out if there's any aberration of operations. We might go out on site. We might ask the company for a report to be done that day or we might send a team out to have a look and investigate the concerns that are being raised to be assessed in the field. So it depends on what the actual incident is. So everything that comes in the day—I did hear today I think the resource regulator said within seven days. We go through all of our reports every day and aim to finish each day with every report in some form of action.

**The Hon. SUSAN CARTER:** And that's fed back to the person who's the complainant?

**STEPHEN BEAMAN:** We aim to do that all the time. Sometimes there might be a break in the system where we haven't done that. The objective of that is to actually go back to the complainant, tell them what the response is and close it out.

**The Hon. SUSAN CARTER:** How many times would a complainant be told, "Look, it's a dusty day. Don't worry about it."?

**STEPHEN BEAMAN:** I'm not sure we'd be saying, "Don't worry about it," but it depends on the particular circumstances. To give you a feel, last year—over the last 12 months—we had 7,816 reports come through, which is about 150 per week. We might have an incident. We could have extreme wind or weather events so there might be occasions where there's significant weather in, say, the Upper Hunter, where we know the air quality gets affected with the coal mines up there on significant windy days. That might be an occasion where we're saying there's particular wind or storm event that's occurring so it really depends on the nature of the day. The staff will check the weather reports to see what the situation is at the particular facility.

**The Hon. SUSAN CARTER:** We had evidence earlier today that councils get faster action than Mrs Smith and Mr Jones.

**STEPHEN BEAMAN:** No.

**The Hon. SUSAN CARTER:** Okay. That's just the perception that councils have?

**STEPHEN BEAMAN:** Yes.

**TONY CHAPPEL:** It really depends on the seriousness of the issue. As Steve mentioned, we aim to respond within minutes to a serious radiological or other toxic issue.

**The Hon. SUSAN CARTER:** No, I completely understand that. I suppose part of the issue that I think we're seeing in testimony given is that when initial reports are made people don't always know how serious it is. Understandably the person on the other end of the phone getting the complaint doesn't now how serious it is. "My water's dirty." It could be mud in the tank. It could be lead. Nobody knows at that point so I'm just wondering, in real terms, what's the time from somebody raising a concern to somebody in the EPA being able to say, "It's X. It's weather related. We don't need to worry to much." or "It's Y. We really need to take some action."?

**STEPHEN BEAMAN:** It's hard to say what it is exactly without any specifics. We know around particular facilities there might be an issue. We have a long history of data for all the facilities we regulate so it really depends on what the particular incident is for us to be able to answer that question. I think the other thing I'd point out is that the legislation has two very powerful tools around this type of issue. Sections 147 to 153 of the Protection of the Environment Operations Act places a positive obligation on licensees that if there's material harm to human health or the environment, they must notify us immediately. The penalty for corporations that don't do that is that up to \$2 million can be imposed by the courts. For an individual, it's \$500,000.

There's also an instrument we have in our legislation which is also very powerful called pollution incident response management plans, which we call PIRMPs, which is section 153A to F of the Protection of the Environment Operations Act. That sets the whole criteria about how to activate their pollution incident response plans. Those plans have to be tested every 12 months. Where there's an incident on site, they need to notify us immediately, and the fines for not notifying us immediately for a corporation is \$1 million for the courts and up to \$120,000 per day in addition, or \$250,000 for an individual.

There are very strong mechanisms for incident management inside the EPA. The community can report and the licensees must advertise, must have a sign somewhere, must have on their websites the EPA's number.

They need to have a complaint number, and they often use ours. There's an incident response system for the combat agencies and emergency services. Licensees have a very strong positive legal obligation to tell us about and notify us of any incidents. We have pollution incident management response plans that sit to be activated when there is an incident.

**The Hon. SUSAN CARTER:** Have you ever done any focus testing or gone out to the community to check whether they feel as confident about your processes as you do? Because listening to them here they sound very robust, 24-hour turnaround. That's fantastic. Some of the evidence we've got doesn't suggest that the community feels as secure in these processes. I just wonder if you have done any testing about that at all.

**TONY CHAPPEL:** We're undertaking a project this year to seek to uplift the capability of the system, and part of that will involve that kind of testing. I don't think we're under any illusion that the system is perfect or always works perfectly. There are capacity issues at different points in time as well that can make it more challenging for people, which we want to resolve.

**The Hon. SUSAN CARTER:** What was the driver with the decision to uplift the system, as you put it?

**TONY CHAPPEL:** There are a few drivers. There's a significant commitment the EPA has taken in the last 12 months to step more forward into what we internally talk about as stewardship, which in part involves standing in the shoes of the community. Part of that is how we engage and outwardly work with the community and they feed into us, and so it's part of that broader process. Do you want to add anything, Stephen?

**STEPHEN BEAMAN:** I think there's also an intersection for us, an opportunity to change our internal IT systems and then to get more modern telephony, so the call centre and to get that so it becomes a less manual process. When I say manual, it sort of comes out of—

**TONY CHAPPEL:** A bit more analog.

**STEPHEN BEAMAN:** A bit more analog and we can use a little bit more of an advanced IT system to streamline the workflow for the staff coming in. The other thing I just wanted to point out, which is what we do in terms of triage, is each day all the managers get together from their teams. So what has come into their inbox overnight might have been a complaint from the community. You've got the experienced staff looking at what that issue is and then supervising and providing their staff that mentoring and coaching to deal with that incident. But also the executive directors and the directors from the operations teams get together every Tuesday morning and every Friday morning and we look at the things that have come through during the week. That's the sort of double-check to make sure we're looking at trends and we're making sure that we're actually closing out the issues in the manner that we should.

**Ms CATE FAEHRMANN:** I just wanted to turn to the tank samples that you referred to in your opening statement, Mr Chappel. I understand that there has been lead, mercury, arsenic, chromium, a range of different metals found at elevated levels in some of those tanks. What has the community been told about, for example, elevated levels of mercury, elevated levels of lead in those tank samples?

**TONY CHAPPEL:** So we've sampled almost 100 tanks, water, sludge and water at the tap. A number of those did show levels of lead and cadmium and I think one property had antimony. I'm not aware that our sampling has detected mercury. But we've conducted mass analysis as well from the sediment samples, which is generally where these occur, and we've got a package of results that we will be releasing before the end of the month. But we've been sharing those results with the individuals as they're tested. I might just ask my colleague to talk a little bit.

**Ms CATE FAEHRMANN:** I am aware that it does include mercury. I have been informed by the community that they've been informed about mercury.

**STEPHEN BEAMAN:** Not in water, no.

**Ms CATE FAEHRMANN:** Are you talking sediment?

**STEPHEN BEAMAN:** Taps. We've got to be really clear here because there's a lot of data and it's probably—

**Ms CATE FAEHRMANN:** Sorry, but it's in the tanks. Let's start with that. So it's in the tanks, is that right Mr Beaman?

**STEPHEN BEAMAN:** Let me explain it first.

**Ms CATE FAEHRMANN:** Sure.



**STEPHEN BEAMAN:** So we've done tap because it's point of use. That's where people use their water. We've done tank and we've done sediment.

**Ms CATE FAEHRMANN:** Sediment is where?

**STEPHEN BEAMAN:** The sludge in the bottom of the tank.

**Ms CATE FAEHRMANN:** It's in the tank, thank you.

**STEPHEN BEAMAN:** So 96 per cent of the samples at the tap meet the Australian drinking water guidelines.

**Ms CATE FAEHRMANN:** Yes. I'm talking about the mercury in the sediment. I'll just go straight there because the time is so limited and it's so frustrating. We normally have Government members for longer. I've only got 45 minutes—not my decision—so, sorry, I have to rush you through. I am aware that there was mercury found in the sediment. Let's go straight there.

**STEPHEN BEAMAN:** There's mercury in soils. There's mercury in dust. There's mercury—

**Ms CATE FAEHRMANN:** This is in someone's rainwater tank, Mr Beaman.

**STEPHEN BEAMAN:** This is in the sediment.

**Ms CATE FAEHRMANN:** It's not in soil.

**The Hon. GREG DONNELLY:** Point of order: I do appreciate the issue of time, but the witness needs to be able to explain the matter carefully. It might not be what you want to hear but the witness is entitled to answer the question as he sees fit to provide the full explanation, and that is not happening at the moment.

**The CHAIR:** I'll go back to my multiple rulings yesterday. You're very welcome to interject perhaps after we've heard a sentence or so of the answer.

**Ms CATE FAEHRMANN:** All good. Thank you. I did that before. So I'm specifically asking, it's a question about the fact that there's mercury in the sediment in the tanks which people are drinking, extracting their drinking water from.

**STEPHEN BEAMAN:** Yes.

**Ms CATE FAEHRMANN:** What's the safe level of mercury in that sediment in their rainwater tanks?

**STEPHEN BEAMAN:** There are a range of heavy metals in the sediment and the particles in those tanks. We've given that data to the EPA expert panel. That data has also gone to the health expert panel. There was no concern expressed by both of those panels in range to the sediment concentrations. The sediment concentrations were typically what we see in the literature from sediment in tank samples from around Australia. The advice is from the enHealth guidelines in 2010, *Guidance on use of rainwater tanks* on page 24. The way that you minimise your exposure is you should inspect your tanks every two to three years to remove the sediment particles from the bottom of the tanks.

**Ms CATE FAEHRMANN:** Would you be able to table for the Committee that evidence you're saying in terms of the comparison of the tanks around the country, the locations, as much as you can?

**STEPHEN BEAMAN:** We're going to publish it next week.

**TONY CHAPPEL:** That will be in our report.

**Ms CATE FAEHRMANN:** In terms of that level of—

**STEPHEN BEAMAN:** We've gone to the scientific literature. We've got the journal papers and we've done that comparison, and that was reviewed and endorsed by the EPA expert panel last Friday.

**Ms CATE FAEHRMANN:** I assume the presence of elements in the tank, so that they're reaching the sediment level, means that they must be in the air then.

**STEPHEN BEAMAN:** They're on the particles that are inside the tank.

**Ms CATE FAEHRMANN:** Exactly. So if there's heavy metals that are in the sediment, that means that they're in the air.

**STEPHEN BEAMAN:** Possibly.

**Ms CATE FAEHRMANN:** Therefore, you can understand the communities concerns then that they're potentially breathing in the sediment at some level that's found in the bottom of the tanks.

**STEPHEN BEAMAN:** Yes. There are two things around that I can talk about. Again, we presented this to the expert panel. So for VR8 for the riser at the moment for the last couple of months every fortnight, they test for heavy metals type one and type two. That includes a whole range of heavy metals. Typically they're about two orders of magnitude below the regulatory limit.

**Ms CATE FAEHRMANN:** Is Cadia doing voluntary clean-up of particular residents' tanks? Is that voluntary or has the EPA issued an order to Cadia to clean residents' tanks?

**STEPHEN BEAMAN:** At this stage my understanding is that has been a voluntary, opt-in program by Cadia.

**Ms CATE FAEHRMANN:** What I have heard is that it's very random—some people have it; some people don't. Neighbours have it; neighbours don't. Do you think that is satisfactory? Maybe they should be issued with an order.

**STEPHEN BEAMAN:** I think it goes to this thing—this guidance has been around a long time. People do need to service their tanks. Whatever kind of arrangements they come up with to have those tanks serviced, that can be between the licensee and the community.

**Ms CATE FAEHRMANN:** So there's no risk. So that's it—the communities should just clean their tanks. Do they need to be careful when they clean the tanks with these heavy metal sediments? Are there any guidelines? Where do they clean it out to? Where do they put that sediment?

**STEPHEN BEAMAN:** The data I sent today in terms of the sediment concentrations is that you could actually just have that discharged back onto the soil in the paddock.

**Ms CATE FAEHRMANN:** I have other questions on this, but I need to turn the situation around the discrepancy with the load limits for Cadia's licence. Why is the EPA now saying 100 milligrams per cubic metre when a few months ago you were saying 50? What has changed?

**TONY CHAPPEL:** Nothing has changed. That part of the regulation is complex. Prior to taking legal action, we seek expert legal advice. The better view from our environmental counsel is that the group 5 category is what applies here. That's the basis for the prosecutions that are moving forward. There are two factors there that are relevant: One is the date the plant or activity commenced, and the second one is the date on which the application for the environment protection licence that applies to the relevant premises was made. So in this case, that licence was applied for in May 2000, which is what grounds the—

**Ms CATE FAEHRMANN:** Up until the last month, the EPA has been working with Cadia with this load limit of 50. The whole time Cadia has had 50 milligrams per cubic metre. Is that right? Now they're before the court and they've been found to be—there are criminal charges about polluting the community. For some reason they've suddenly got a higher load limit. That seems extraordinary.

**TONY CHAPPEL:** I won't talk in any detail about the court proceedings.

**Ms CATE FAEHRMANN:** Sure, but it's not the court proceedings.

**TONY CHAPPEL:** The licence allows the EPA to also set a limit lower than the clean air regulation.

**Ms CATE FAEHRMANN:** It does. That is what I was going to get to.

**TONY CHAPPEL:** The clean air regulation sets out these different groups. Frankly, whether it's 50 or 100, in the EPA's view there have been some very clear exceedances that we'll be seeking to demonstrate in court. But the other relevant matter here—just to share—is that we've asked the independent expert technical panel to give us advice on the appropriateness of any lower limit or other limit that might be considered for inclusion in the licence.

**Ms CATE FAEHRMANN:** We were shown around Cadia, right into the bowels of Cadia goldmine, 1,400 metres underground. When we were down there we were told that with the new arrangements, with the filtration, they would be able to meet, they are just meeting or it is kind of difficult to meet the 50 milligrams per cubic metre, but that definitely 100 they'll be able meet. Did Cadia have any comments or views about the 50 versus 100?

**TONY CHAPPEL:** Look, I understand from their correspondence that their original view coincided with ours.

**Ms CATE FAEHRMANN:** Fifty seems very difficult for them to meet, doesn't it?

**TONY CHAPPEL:** As we consider the appropriate licence setting, we'll be looking at what is reasonably achievable and, based on what you've just said, that may well be the case. Do you want to add anything?

**STEPHEN BEAMAN:** We've had Cadia do quarterly monitoring from VR8, from vent rise 8, and they're consistently below 50.

**Ms CATE FAEHRMANN:** So let's be clear, the Zephyr air quality independent audit had it as 20 as well—that Cadia responded to. We're starting off with 20.

**STEPHEN BEAMAN:** Zephyr got it wrong. It isn't an arbitrary number that we look at; it's from a statutory construction and from what works with the regulation.

**Ms CATE FAEHRMANN:** Yes, that's what I'm trying to get to the bottom of.

**STEPHEN BEAMAN:** As Mr Chappel just talked about, that's—

**Ms CATE FAEHRMANN:** So did you have it wrong for all that time, when it was 50? For the years and years and years that you had it as 50, was it wrong, or has it been adjusted for the circumstances of Cadia not quite being able to meet 50?

**TONY CHAPPEL:** No, the clean air regulation has groups of standards. I think group 6 is 50 in this case, for a point-source emission, and group 5 is 100. I think our initial view was that group 6 was the relevant standard.

**Ms CATE FAEHRMANN:** Because the current underground operation, as I understand, started in 2009, though, not 2000. Why are you basing it on 2000?

**TONY CHAPPEL:** Because that's the relevant licence that applies to the premises. This is what I'm talking about, the complexity in the regulation, which is something to look at being clarified. But it is a complex instrument to interpret in this particular regard.

**Ms CATE FAEHRMANN:** But you suggest you do have discretion to reduce.

**TONY CHAPPEL:** In addition—putting aside what the regulation says—the licence limit can also be adjusted to be lower than the regulation. The regulation is the maximum.

**STEPHEN BEAMAN:** Section 323 (5A) of the POEO Act allows us to take a more conservative limit against the regulation.

**The Hon. EMILY SUVAAL:** Thanks to you both for appearing again today. Could you detail for us what work, if any, is done during the consent process for approval for a mine to ensure monitoring and health standards are upheld?

**TONY CHAPPEL:** Monitoring during the consent process?

**The Hon. EMILY SUVAAL:** What involvement, if any, you have during that consent process with regard to monitoring health standards—all that sort of stuff.

**TONY CHAPPEL:** Do you want to take that and then I'll add something?

**STEPHEN BEAMAN:** Yes. I listened to some of the evidence today from the Department of Planning and the Independent Planning Commission. We get involved fairly early in the process. We provide the secretary's requirements about what are the things that we want to see in the planning and assessment process for any development, be it a sewage treatment plant or a mine. That sets out all the things the EPA would consider as part of its licensing process—so air, water, noise, land contamination. That sets the standards and the things we want the proponent to actually assess against. The proponent will go off and do their environmental impact assessment and that will get lodged with the Department of Planning. You heard that they then send those out to the relevant regulatory agencies as part of that consultation process. Our technical experts will look at those documents with our operations staff. We'll review those in a lot of detail and give very detailed feedback on what we think about the work that was done in those planning documents.

Part of that is looking at are they using the right standards, have they done the right modelling and what are the monitoring requirements that we will require. Often that requires—I think Mr Preshaw from Planning talked about how it can go over a couple of years. It can be quite a long process. They'll actually give our comments to the proponent, they'll redo the work and then we'll have another look at it to make sure that they've actually addressed all the issues that we've raised as part of our assessment of their planning proposal. If we think all their issues have been addressed, then we issue what we call our general terms of approval—so what would our licence conditions look like. Often they're uplifted into the development consent. Things like hours of operation, noise limits, water discharge and monitoring requirements will go into the planning approval.

The Department of Planning, typically, and the IPC, do rely on the EPA experts to give that advice about setting up that framework. There are often times when the proponent is almost there and we can often then say,

"As part of the process you might need to do a supplementary plan while you're doing the development." There might be additional things that we think are substantially done but they just need to get finalised. And the department of planning often then send us the draft of the determination—the planning approval—and then we get another look at that at the end to make sure all of our issues have been assessed. I think I would agree with Mr Preshaw's evidence that it's a very robust process in New South Wales. We actually get quite a few opportunities to give our technical advice and input into it. They're often very big and complex documents, so we look at it often. We look at the communities' comments as part of consultation to make sure that we're triangulating what the communities' concerns are and making sure we get those addressed as part of planning process. And then, really, it's for decision-makers in the department of planning and the IPC. Based on all the information they have in front of them, they have to weigh up the social, economic and environmental considerations.

**TONY CHAPPEL:** Just in terms of the question about monitoring, I think that a really key issue for community confidence is access to real-time environmental quality data. And around the Cadia project, we're putting a very substantial effort into that. We have about 35 what are called purple air monitors, which are very cost-effective monitors that give you a sense of environmental quality. But we're also installing what are called high-volume air-monitoring systems that are quite large units and are very sophisticated in terms of the particulate analysis that they allow us to undertake—the metal concentrations and so on. More broadly, we have some air-quality networks in New South Wales, but, around various mining precincts, we are now considering how to deploy substantial monitoring networks so that, before a project commences, through its operation and then afterwards, the community can see the data consistently and be confident there's no deleterious impact to their environmental quality.

**The Hon. EMILY SUVAAL:** That partially answers my next question about what work is done after that consent to monitor is provided. Is there any work that you can elaborate on? I presume that data is all publicly available, is it?

**TONY CHAPPEL:** Yes. It will be. I think a lot of it is not real-time data yet, but that's where we are keen to move over the next 18 months and, broadly, across the State. I think we're also conducting a review of all of the metalliferous mining projects that we currently license and how monitoring and licensing conditions can better align and, where necessary, be uplifted to deliver increased visibility and confidence for the community. Do you want to add to that?

**STEPHEN BEAMAN:** I think what we've probably seen in the last four or five years—I've been at the EPA for quite a while—we need to take advantage of this development of new technology and the drop in costs of environmental monitoring equipment. We've got one recently, which we announced the other week, where there was an unfortunate series of alleged—I have to be careful, before I call it—discharges at the Metropolitan Colliery down at Helensburgh. They have got real-time monitoring. We've imposed on them real-time monitoring of a whole range of parameters in the creek. The community can see it in real time. The EPA can see it in real time and have that confidence that our licensees are staying within the requirements of their licence. So I think we're seeing this use and advent of technology now really starting to take hold, and I think the community want to see that data. There's a real thirst. I think the fact that we went out to the community and said, "Would you like to have one of these purple air monitors?" They're about that big. I think we had 45 people opt in. There are 36 currently operating today. The data is online. They can look at it any time. I think we're seeing that latent community thirst for environmental data for their local community.

**The Hon. EMILY SUVAAL:** Fantastic. And you mentioned the change in the last four or five years. Has there been any more significant change over the last 10 or 20 years in terms of the work that you are doing or are able to do as a result of this monitoring and all that sort of stuff?

**STEPHEN BEAMAN:** The really big thing we've had over the last, I'd say, 10 years—probably a bit longer, actually—is we've been given a power in our regulations to actually develop and impose industry-funded monitoring programs. So industry in a community—it might be the Namoi or the Upper Hunter—pay into a fund, and the Government then operates the air-quality monitoring network on behalf of community. It's almost going to the polluter pays principle, where the Government's not paying and the community is not paying for it. The industry is paying for this monitoring. It's done independently and all that data is real time for the community, so they can have that information in front of them.

**TONY CHAPPEL:** It allows us to issue near real-time air quality alerts when air quality deteriorates because of fires or some other issue. It opens up lots of other opportunities to communicate with the community about how better to protect themselves.

**The Hon. EMILY SUVAAL:** It's funny that you mentioned the independent data, because we heard evidence earlier today which made the suggestion that the EPA would benefit from having a more independent structure or the ability to do independent audits, but it sounds like, in some ways, that's already there.

**STEPHEN BEAMAN:** Yes. Our audit program is completely independent. We have a specialist compliance audit team. They do audits independently. They're doing the work that Mr Chappel mentioned around looking at all their air emission requirements at the various metalliferous mines around New South Wales. That happens without any industry involvement. It's part of our broader compliance program where we're looking at environmental risks. We're looking at the trends in the data, where we're getting complaints from and what the emerging evidence is showing. We might have some new information about a particular contaminant. We'll design our audit programs around that independently.

**The Hon. GREG DONNELLY:** In answering one of the questions a bit earlier, you referred to capacity issues, from time to time. You may not be in a position to do so or be authorised to do so, but I'd be interested to know what, in general terms, they might be, and, perhaps, are they regularly cyclical or are they more irregular than that? Because, at the end of this inquiry, we're pulling the evidence together and we'll be making recommendations in our report back to government and to the Minister for consideration. In general terms, if the evidence bears it out, matters of capacity—pinch points—might help inform our thinking.

**TONY CHAPPEL:** Generally, after hours is when those constraints have been most evident. I think we're often relying on contractor services there that might not deliver the service in the way we'd prefer it to be delivered, so we're reviewing those arrangements. I'm happy to take the broader question on notice and give you a considered response.

**The Hon. GREG DONNELLY:** Thank you. That will be useful for us to know.

**The Hon. EMILY SUVAAL:** Can I follow up with a further question? You mentioned the volume of complaints that you've had in terms of the reporting numbers. It's 150 a week or something.

**STEPHEN BEAMAN:** It's 7,618, which is about 150 a week.

**The Hon. EMILY SUVAAL:** I'd be interested to know—and I'm happy for you to take it on notice if you don't know off the top of your head—have you seen any trends in that since the phone line was announced? Has there been increase over time? Is it relatively stable?

**STEPHEN BEAMAN:** I'd have to take that on notice. The phone line has been running for probably more than 30 years—the 131 555. We try to promote it any chance we can, because it's a good phone number.

**The Hon. EMILY SUVAAL:** Yes. That's where the question was going to—whether that level of awareness is out there or whether it has been.

**STEPHEN BEAMAN:** Particularly local councils promote it with their communities. A lot of those things happen locally, initially. In New South Wales there's a concept called the "appropriate regulatory authority" in the legislation. If it's licensed, the EPA is the environmental regulator. And if it's an activity done on behalf of the State, the EPA is the regulator. If it's a small activity and it's not done by the State or on behalf of the State, council is the regulator. Councils are very clear: If it's not one of their premises, they'll refer it off and get the community to talk to the EPA. It's a pretty widely used number. When you say the data, we're mining the data every week to look at trends about whether it's—and where there are particular times of the year. Western Sydney's one where odours are an issue because of the temperature inversions you get in Sydney; the cold air keeps the odours in. The teams are always looking at trends and data and looking for patterns.

**The Hon. EMILY SUVAAL:** I have one more question. Has the EPA ever had a team of environmental health specialists to support responses to community health concerns?

**TONY CHAPPEL:** I'm not sure.

**STEPHEN BEAMAN:** We haven't got a specific team of people, but we've actually got people in our teams and our technical teams and specialist areas who are chemists, ecotoxicologists and toxicologists. So we've got a range of staff within our team that bring that speciality to the table. For example, we've got a specialist sampling team that typically has people who have a toxicology or chemistry background, so we have access to that. The other is, we have an extremely close relationship with our public health experts in NSW Health and Jeremy and his team. So we're always liaising with them in terms of public health issues.

**TONY CHAPPEL:** I think, maybe just to complete that, if you think about what I might call "exposure science", which is the gap between the environmental presence of something and human health, for a long time people considered those to be quite separate and, increasingly, we realised that, really, they're all the same. That's a core capability that we don't currently have, and we are giving some consideration to how we might build that over time.

**The CHAIR:** Thank you very much for coming back to give evidence today. It's much appreciated. As usual, the secretariat will be in contact with you with any questions on notice. I will just acknowledge the interest from the gallery as well. That brings us to the end today's hearing.

**(The witnesses withdrew.)**

**(The Committee adjourned at 16:30.)**