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REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON STATE DEVELOPMENT

INQUIRY INTO THE NEW SOUTH WALES PLANNING FRAMEWORK

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At Sydney on Monday 30 March 2009

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The Committee met at 9.45 a.m.

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PRESENT

The Hon. A. Catanzariti (Chair)

The Hon. M. R. Mason-Cox
Reverend the Hon. F. J. Nile
The Hon. M. J. Pavey
The Hon. C. M. Robertson
The Hon. M. S. Veitch

CHAIR: Welcome to the second public hearing of the Standing Committee on State Development Inquiry into the New South Wales Planning Framework. In May the Committee will be holding five public hearings at a number of regional locations: Orange, Queanbeyan, Tamworth, Ballina and Albury. The details of those hearings will be progressively placed on the inquiry's website as they are finalised.

I would like to make a few comments about procedural matters. In accordance with Legislative Council's *Guidelines for the Broadcasting of Proceedings*, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. Copies of the guidelines are available on the table near the door.

SAM HADDAD, Director General, Department of Planning, sworn and examined:

MARCUS RAY, Director of Legal Services, Department of Planning, and

YOLANDe NORMA STONE, Director of Policy and Systems Innovation, Department of Planning, affirmed and examined:

CHAIR: If any of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate a response to those questions returned to the secretariat within 21 days of the date on which the questions are forwarded. I warn you that we have a fair few questions, which you may be required to reply to. Would any of you like to make in an opening statement?

Mr HADDAD: If I may. The Department of Planning is obviously pleased to participate in this significant inquiry. We will be pleased to continue to support the inquiry in its endeavours and provide any additional information to clarify any of the statements we are going to be making, or to provide further evidence. I also wish to point out that the department's submission is a whole-of-government submission—it has been prepared with input from all other relevant, applicable government agencies.

As stated in our submission, since the introduction of the Environmental Planning and Assessment Act 1979 the New South Wales planning system has undergone various amendments as a whole to provide the planning regime to cover State and local plan making including at the strategic level, development assessment and approval processes, funding for local infrastructure and planning reviews and appeals, including comprehensive public participatory provisions. Various amendments have been made over the years and those amendments were made in response to changing social, economic and environmental amenity conditions and associated community demand and expectations. We think that it is an appropriate evolution of any good legislative regime to evolve in that manner.

The more recent reforms to the development approval processes of part 3A and the 2008 planning reforms are attracting particular attention. These reforms were made to fundamentally address significant concerns, expressed by many, that our planning system is rigidly process orientated, complex and the level of assessment does not always reflect the level of significance, it is confusing in many areas and it is wasteful in its resources. That is what some of those reforms were trying to address. These deficiencies were confirmed through early consultation processes, pre- and post-discussion papers, and involvement during the formulation of the reforms. As I have said, we would be pleased to provide further evidence to support any of the statements I am making.

As an administrator of the planning system I want to draw the Committee's attention to the following. Firstly, there was an appropriate and focused level of stakeholder consultation during the formulation of the relevant planning reform legislation. This will continue through the implementation process. The department is expending significant resources in this regard and will continue to do so. We want to make sure that the implementation of those planning reforms are successful and we believe it is critical for us to put in the necessary resources to achieve that result.

Secondly, while I understand and appreciate ongoing criticism and concern about public consultation on major development projects, the current system provides, in my view, for one of the most, if not the most, comprehensive consultation provisions enshrined in law relative to any other jurisdiction in Australia and possibly internationally. This is particularly for the part 3A regime. Again, the Committee's attention is drawn to the fact that the New South Wales jurisdiction is the only one in Australia, with the exception of limited circumstances in Victoria, that provides merit appeal against the Minister's decision. We can provide the committee with a comparative factual assessment in that regard. I appreciate, however, that additional or different approaches to community consultation may need to be pursued.

Thirdly, extensive resources have been spent by the Department of Planning in strategic planning over the past three years. We have our metropolitan strategies, draft sub-regional plans and, whole of government, regional strategies. Concerns about the lack of strategic planning in the current system, I think, are a bit misguided, and we are happy to expand on that in due course. There have been, in additional to planning reform, a substantial range of policy and regulatory initiatives which have significantly contributed to a much more streamlined and outcome-based regime. Again, my colleagues will be happy to expand on that. So in our view

the implementation of the planning reforms and achievement of its outcomes will demonstrate the many benefits of the reforms and these are a high priority for the Government.

Our submission basically is that those reforms should be the priority and we should focus on implementing those reforms as a high priority and a hold-off any further reform initiatives to the legislative scheme that we have at present. Any additional reform would be, in a sense, time consuming. It would be resource intensive. Our submissions says that essentially we should be focusing on making sure that the planning reform that we have introduced recently works and works appropriately, and that they are given the opportunity to demonstrate the benefits of their introduction, essentially. There are other priorities in the planning system which I am more than happy to expand on in due course and try to share with you what are our planning priorities in that regard. For the sake of providing opportunity for discussions, I will stop here.

CHAIR: Do you have an update on the implementation of these reforms?

Mr HADDAD: Basically, we have focused initially on the introduction of two aspects of the reform, the planning assessment commission, and we have been spending a lot of time and effort on introducing residential codes, and we have been doing a lot of other regulatory and policy reforms. We have a program of targeting the completion of most of our reform, the introduction of most of our reform, by July of this year. We have been working with stakeholders and with a number of committees to make sure that this is happening in an orderly manner.

Ms STONE: The Minister will be firming up on the actual dates but our target is to have part 3 and part 4, which is the development assessment, completed by 1 July, along with the joint regional planning panels, and to have those key measures implemented by then. It means that we then have part 3, which is the plan-making process, which as part of the reforms is exposed as one of the reasons for delay to bring housing land to market, and therefore we put quite a lot of focus on that. So we will have a much more streamlined process to do spot rezonings and be able to update the system to meet market demand. That will be happening, and as well as that the important reforms with part 4 are removing stop the clock and setting more realistic timeframes, giving a lot more capacity building to councils with regard to them doing assessment, providing more information to proponents so they put in better and more relevant information so the process can work better. So that is our focus at the moment, the plan making and the DA process.

Mr HADDAD: In doing all this I just want to re-emphasis again we are trying very hard to progress an ongoing consultation process while we are implementing all those reforms. We have an implementation advisory committee. We have a planning directors committee, but I want to make sure that we do as much as possible in terms of consulting, in terms of involving people. It does not mean that we will agree with everything. Obviously there will be points of disagreement, but we are allocating a significant and substantial amount of resources within the department to be able to do that. This is where our priority is in terms of the implementation process to the best of our ability.

The Hon. CHRISTINE ROBERTSON: Who is on the implementation advisory committee? What sort of persons?

Mr HADDAD: I can give you, if you like, a list of everything, but we have representatives from all stakeholders, the Local Government and Shires Association, the General Managers Association, the Property Council, architects, certifiers, the Law Society. So it has representatives from a number of others—

The Hon. CHRISTINE ROBERTSON: Can you take that question on notice?

Mr HADDAD: Yes, I can give you this detail. It is quite representative. We also have, as importantly, a group of planning directors. I really value the participation of this group because they are the practitioners in the field. We meet monthly and probably will expand their activities beyond the planning reforms. It has been a good exercise to involve them. That is an outside implementation advisory committee.

CHAIR: Would you supply those details?

Mr HADDAD: Yes, we will give you the details.

CHAIR: A number of submissions received by the Committee mention lack of consultation under part 3A. Could you give us an overview of how part 3A engages the community and relevant stakeholders and thus ensures a transparent process?

Mr HADDAD: I am more than happy to do so, Mr Chairman. I must preface my answer by saying that the issue of public consultation and engagement is an ongoing challenge. It does not mean that we have adequate ones or extensive mechanisms that is the end of the situation. We will need to continue to find out whether it is a perception that people are saying that we are not consulting enough. Maybe we should do it differently. But I can tell you that in terms of the history of the planning department, we have never had more information on our website as we have through the introduction of part 3A. This is a fact. We have a very comprehensive website. You can plug in and you will see exactly where things are, whether that is the right way of doing it or not. We have legislative provisions that we have to follow in consulting people. We have obligations on us and on Ministers to be able to take into account input from different people. Certainly we have tailored the system in terms of the previous system to part 4 with a much more strengthened exposure to public input. That is basically it. Whether the practice is absolutely 100 per cent, or whether we should be doing things differently, or we need to communicate obviously better, again I will ask my colleagues to speak on some of this.

The Hon. MATTHEW MASON-COX: If I could come in there, Mr Haddad, has the department ever publish guidelines on how part 3A applications are processed to alleviate those sorts of community concerns?

The Hon. MELINDA PAVEY: Or prepared guidelines?

Mr HADDAD: We have prepared guidelines. Maybe we have not done well in making sure they are as available as much as we can. You are probably right that this is one reason that people did not have enough information. But we have now put on our website quite an extensive range of guidelines. We have accelerated the program of guidelines. If you go to the website now you will find quite a lot of guidelines.

The Hon. MATTHEW MASON-COX: Would you release to the Committee the internal guidelines for assessing part 3A applications?

Mr HADDAD: Yes.

The Hon. MATTHEW MASON-COX: That would be most appreciated.

Mr HADDAD: Yes, we will do that.

The Hon. MELINDA PAVEY: The Department of Planning has been through a major overhaul in terms of the State planning laws. In relation to resourcing, how many people do you have in the department now compared to 2004? Are you able to provide those details?

Mr HADDAD: I am happy to provide you with that. Obviously those numbers change over time. I am happy to provide you with a comparative with what we have. Resources are a challenge for us. It has always been a challenge. If I tell you, for example, that we have 350 people employed in the planning proper and we have supplemented that by people coming from the then Growth Centres Commission, 20 or so people. The challenges that we have are always to be able to use those resources to reprioritise outcomes and improve service delivery in certain areas. That is an ongoing challenge that we have. When I say planning reform implementation is a major challenge for us, it means that a lot of our resources will have to go into that. By doing this, obviously other areas of service delivery will have to readjust to this. I am more than happy to give you the details. We publish them in our annual report. I am happy to give you a more precise breakdown, if you like.

The Hon. MELINDA PAVEY: Thank you. In relation to the structures under the new legislation—the Office of the Coordinator-General, the Minister for Planning and the Planning Assessment Commission—could you give us a breakdown of staff working in each of those areas, as well as how they will work together in assessing major projects?

Mr HADDAD: I am unable to give you right now the staffing in the Office of the Coordinator-General. I am happy to explore whether I can because obviously they report separately. I am more than happy to give you the details of people working in the Planning Assessment Commission. We service the Planning

Assessment Commission. At the moment there are seven and a chair and six part-time commissioners, serviced by four people who are basically providing a secretariat service. That is at the moment. They will obviously have to adjust to the workload and they will have to interact with other mechanisms. That is the Planning Assessment Commission. They operate independently. My job is to make sure that they are serviced and that the secretariat is administered through public service guidelines under the department's guidelines. But they are separate and independent in that regard. That is the number of people they have there.

I am unable to give you what is happening in the Office of the Coordinator-General. The Office of the Coordinator-General will have a much higher level, whole-of-government focus on the delivery of certain outcomes. The Department of Planning operates essentially under the Environmental Planning and Assessment Act and we have to fulfil the development approval and regulatory obligations that we have under that Act and advise the Government accordingly. We would not be involved in broader issues in that regard.

The Hon. MELINDA PAVEY: The Committee has had evidence suggesting that stakeholders have asked that there be explicit provisions outlining matters to be considered by the Planning Assessment Commission. Have you developed guidelines or information about what goes to the Planning Assessment Commission?

Mr HADDAD: We have developed guidelines. There are certain criteria that have been announced. Maybe Marcus wants to go through them?

Mr RAY: Yes, the Minister delegated an approvals function to the Planning Assessment Commission back in November. They relate to projects that were in her electorate or projects that were the subject of a political donation under the new political donation laws, in essence. So they are the ones that go to the Planning Assessment Commission for approval. Then the Minister also indicated that she wanted to make the Planning Assessment Commission her principal advisory body on different projects. Of course, that is the other role of the commission. It can provide advice; it can review applications where it does not have the decision-making role and then do a report and advise the Minister for her decision. Quite a number of matters have been referred to the Planning Assessment Commission in that function. So it has two separate functions. There are clear delegations as to what goes to the commission to determine and a range of other matters can go to the commission on an as-needs basis.

The Hon. MELINDA PAVEY: There still seems to be confusion in the industry. For example, has the Department of Planning written to all developers who have made a political donation and told them that a decision on their development will now be made by the Planning Assessment Commission?

Mr RAY: There has been a whole range of information put out. I am not quite sure whether every single developer in the State has been written to by the department. There was a program of both workshops and circulars and information that was undertaken by the department around 1 October when the new laws were implemented. There was also considerable discussion at the Implementation Advisory Committee. On that committee are the Property Council, the Urban Task Force, and the Housing Industry Association. There was a lot of discussion about how the new rules operated. There were, in fact, specific questions raised by the Property Council about that how the delegation interacts with legal donation disclosures, and they were answered. The motivation for those questions was generally so that the Property Council, the Urban Task Force and the HIA could inform their members. So there was a direct approach through circulars and workshops and then there was an indirect approach that the department took with major stakeholder organisations.

The Hon. MELINDA PAVEY: As part of the process is the recommendations of the Planning and Assessment Commission to the Minister published?

Mr HADDAD: Yes, they are.

The Hon. MELINDA PAVEY: Before the Minister's decision?

Mr HADDAD: Usually they are published. The practice is for them to be published at the time the decision is made, that is the practice. That is the policy approach that has been adopted. When there is any assessment report from the panel, which is an advisory report to the Minister in terms of her, then she considers other factors and then she makes her decision public. She makes the department's advice to her public and she makes the advice of the Planning and Assessment Commission to her public at the same time. Now if the Planning Assessment Commission acts in a deterministic way, that is, determines things then they will make

their determination together with the department assessments reports public, because in the case where there are consent authority, the department's assessment goes directly to the Planning and Assessment Commission.

The Hon. MATTHEW MASON-COX: In November last year the Growth Centre Commission was disbanded and the staff were absorbed by your department. How many staff were absorbed at that time?

The Hon. MICHAEL VEITCH: Is that budget estimates?

The Hon. CHRISTINE ROBERTSON: What about the terms of reference?

The Hon. MATTHEW MASON-COX: At the time staff were assured that they would be continuing to work on Growth Centre Commission work rather than general planning work. Is that still the case or have they been seconded in any way to work in other areas of the department?

Mr HADDAD: It is definitely the case that they are still working almost exclusively on planning in the growth centres, the south-west and the north-west. Nevertheless if I may just explain, the decision of integrating the growth centre is not a departmental decision, it was a government decision that was made. The rationale for that was to be able to expand their areas of activities statewide. Their integration within the department is for the purpose of them continuing to work on the growth centre areas, as the prime land release areas for the State both the south-west and the north-west. But at the same time to, in a sense, use the model that they have been using which extends beyond the planning model or a semi-delivery model, in a sense, statewide. We have a number of land release activities statewide and it will be useful for them to extend their range of activities. Since their integration there have been, included in the new structure of the department, formed at the core of a division called land release strategies and land release. They will be fully responsible for driving the land release programs statewide.

The Hon. MATTHEW MASON-COX: Statewide?

Mr HADDAD: Statewide but with the focus in the north-west and the south-west. But we will be using their expertise also to do statewide activities. For example, I have asked to do a bit of a look in and audits of land release opportunities statewide. In many other areas of the State there are issues and there is a need for us to release land to make sure that housing is affordable. Because of that it will be useful for them to accelerate that program elsewhere. It is a matter of balancing priorities as well.

The Hon. MATTHEW MASON-COX: What is the former chief executive officer, Angus Gordon, doing at the department?

The Hon. MICHAEL VEITCH: Point of order: How does that relate to this committee's terms of reference? The terms of reference are very clear. I want the Hon. Matthew Mason-Cox to tell me how that question relates to one of the terms of reference of this committee?

The Hon. MATTHEW MASON-COX: I do not have to explain anything to the Hon. Michael Veitch. The reality is this committee has wide terms of reference. I am talking in relation to the ability of the department to deliver on planning.

CHAIR: The Hon. Matthew Mason-Cox will stick to the terms of reference as is. We are not here to ask a question about one person in particular. Would you confine your remarks to the terms of reference? Mr Haddad, would you disregard that question?

The Hon. MATTHEW MASON-COX: Will you describe the process and time involved in consideration of a typical part 3A application, such as Catherine Hill Bay?

Mr HADDAD: At the committee's request we charted the different processes for different types of applications. I tender a document that provides flow diagrams not only for a part 3A process but also for different types of development applications that we have. The time involved varies of course depending on the complexity of developments to adequately assess the different applications. They may vary from anything between three months to sometimes longer than that, up to a year in some cases, where there are independent hearing panels and where are other investigations are needed. I think the challenge that we have is to again make sure that we spend the time where there is value adding in us spending the time. This is the main focus of our

administrative reform in dealing with the part 3A process, which is essentially to spend the appropriate amount of time and resources when it matters.

There are a lot of projects where we can do better time wise and otherwise where we should not because they are complex issues and one would have to be going through a number of proper studies and have an independent hearing and assessment panel process and all the rest of it. Probably Catherine Hill Bay would be one of those cases where we have an investigation and an independent review mechanism. Then it will be inappropriate for us to sort of limit time all the time for those independent reviews. I still need to remind them that they have to be as efficient as possible but there is no point in having an independent process and then tell me "You have to give us whatever on Monday" or whatever.

The Hon. MATTHEW MASON-COX: How many hours of officers' time does it take to undertake a part 3A assessment for something like Catherine Hill Bay?

Mr HADDAD: I am more than happy to give you the breakdown on all this. Obviously Catherine Hill Bay took a long time but I cannot remember offhand now but I am happy to give you the timing if you like.

Ms STONE: That was a case where we were doing zoning as well as project assessment so there were two layers occurring simultaneously so it was more complicated than normal.

Reverend the Hon. FRED NILE: You referred to criticism of lack of consultation. Sometimes is that based on the view of some people that their policy has not been adopted? It is more a criticism of the decision rather than of consultation?

Mr HADDAD: As I was trying to say it is a challenge in terms of trying to communicate that we are taking into account the issues of concern and we are doing our best to address that. But at the end there is an outcome and that outcome obviously does not respond to the concerns of each organisation or each individual. Because of that I suppose sometimes we may need to do better in going back to those people and explaining why it is not the case. Sometimes it is very difficult, we are not given that opportunity and in other cases we sort of run out of resources to do it appropriately. One area of consultation that we are probably still struggling with is consultation at the strategic level. We find that when we put policies out or plans out we are not getting the level of engagements sufficiently and then, of course, people engage more at the specific development application stage when there is an actual proposal. We may need to do a bit better in this area but it is an area of ongoing thinking. It is a challenge.

However, having said that, the provisions in the legislation, if you are looking at either amending legislation or formulating new legislation we may need to think carefully. The Environmental Planning and Assessment Act has, by law, quite an extensive range of obligations of public consultation, and I am saying that relative to my knowledge of other jurisdictions in Australia and certainly internationally as well. I am not saying that that is a bad thing; I am saying this is a very good thing and this is something we should build on. I am just putting it for consideration, that is all.

Reverend the Hon. FRED NILE: Just to clarify something you said earlier, or Ms Stone did, regarding the Planning Assessment Commission, you said the Minister would make an announcement in July, is that correct?

Ms STONE: It was not so much about the PAC but it was generally about the processing for the various reforms and the staging of the reforms.

Reverend the Hon. FRED NILE: What announcement could we expect about the Planning Assessment Commission in July? I want to know what progress has been made in establishing the commission.

CHAIR: I think Reverend the Hon. Fred Nile is referring to the implementation.

Ms STONE: The commission is established and is working. There is a full range of projects.

Mr HADDAD: The commission has been established and is now working. What we are trying to explain is what are the next steps in the implementation of the legislation and by when. The next steps are implementing the new rezoning process, what we call part 3, which is a gateway process. The next step is implementing the joint regional planning panels—JRPPs—which they are not yet operational; and reform to

what we call part 4 legislation, which mainly deals with the duplication between government agencies, their requirements. These are the three main next steps in the implementation and we are trying to do all that by July.

People have asked us exactly what is the program in terms of what months and all that, and I think Yolande was referring to that, that shortly we will be letting people know more precisely what is happening next.

Ms STONE: The PAC has already done a number of hearings and reviews and provided advice to the Minister on quite a number of projects and has done one determination of a project.

The Hon. MELINDA PAVEY: Is the information on those determinations publicly available?

Ms STONE: It is on our website.

Reverend the Hon. FRED NILE: I notice in the document you just gave us major projects, under part 3A it has that the Planning Assessment Commission at stage three makes a determination of political donations or conflict of interest. I am just wondering how the Planning Assessment Commission would know that information. How do they gather that information?

Ms STONE: As part of the reforms last year the proponent has got an obligation to say whether they have made a political donation with their development application or with their part 3A application as well. So it comes in as part of the application.

Reverend the Hon. FRED NILE: I was thinking of someone who conceals the fact that there are donations. You are working on the basis of self-regulation.

Mr HADDAD: Marcus can answer better than me, but the simple answer is it is illegal to conceal it. There is an obligation and we have mandated this on our DA forms and we ask councils to do so, so there is an explicit statement as to whether they have made a political donation. We, in a sense, look at that very carefully, and the law says that if there is two years prior to 1 October when this law came then there is an obligation to refer the development application to the Planning and Assessment Commission for its determination. We do our assessment and we advise the PAC. It is up to the Planning and Assessment Commission to deal with this application the way they want to deal with it, whether they want hearings, whether they want whatever, they deal with it as if they are the Minister. They take on the role of the Minister. They obviously ask us questions if they want to—they can do whatever they want to do—but the obligation starts from a legally required statement by applicants to declare. That is what we call a declared political donation. If they do not do that I presume it is wrong—

Mr RAY: There are criminal penalties.

Reverend the Hon. FRED NILE: And you would be giving some directions to developers pointing this out to them?

Mr HADDAD: We have issued a number of circulars. We have issued circulars to councils.

Ms STONE: We have issued two circulars on it, and it is on the form, so when they fill the form out they have got to say yes or no.

Reverend the Hon. FRED NILE: Some companies are not very efficient, and there have been some reports of a large number of companies that are not disclosing donations in the normal system where they are supposed to disclose donations—some hundreds—as if they do not understand how it operates. I would not assume anything with developers if it is just a question on the form. I think there needs to be some education and even an explanation of what form donations could take: it may not just be cash—gifts, providing accommodation, office space, all those shadowy things as well would be covered.

Mr RAY: There are also obligations not only about disclosing when you are lodging a development application or a project application but also under the Election Funding Act, I think it is, there is a requirement for continuous disclosure from various people. It is not just disclosure at the form stage, there is also the ability to pick up from that other disclosure requirement from some different people.

Reverend the Hon. FRED NILE: There have been suggestions by some of the stakeholders that there should be a development of two Acts to replace the Environmental Planning and Assessment Act: one Act dealing with planning and one Act to deal with all development controls that apply to land. But I noticed in your submission in your recommendations you have said you are very busy putting into place all the reforms in the new legislation from 2008 and you have said here, "Major legislative changes in the medium to mid-term will divert resources from the much-needed focus" on what you are seeking to do. Then you say in the mid to longer term consideration could be given to a board of review to consider certain things. I take it from that that because the reforms were so major you are not enthusiastic about any major legislative changes in the immediate future?

Mr HADDAD: That is correct. Because of the legislative reforms, and if I may say, because of other priorities as well that we are focusing on, particularly in the context of an economic downturn; we have a very focused planning agenda to try to work on issues associated with, say, affordability, affordable housing, affordable employment plans and trying to get the housing market to be more affordable; trying to look at climate change and how we can address the issue of climate change, and that brings into question much more efforts in locating a mix of housing, transportation modes, what are existing and whatever, because it is climate-change-friendly because it is affordable.

So we have a number of planning priorities that we are dealing with in addition to dealing with the priorities of implementing the planning reform and making it work. Having said that, what the submission is trying to say is that obviously any legislative scheme cannot just be static forever. We have already amended the law a number of times over the years. I am not saying that a different planning regime cannot eventuate with time; the Government is not recommending an immediate writing of a new planning legislation given what I have said, the resources that you need. We need to make sure that what we have got is working and we have other priorities. That is basically the concept.

Just coming very briefly to the other issue: do we need two Acts, one to deal with the planning aspects and one to deal with the development control? My submission is, and it is my view, that this will be completely counter-productive in terms of trying to integrate and to streamline and to look at planning outcomes. One of the main difficulties that we have now is that we have strategies; we work very hard on strategies and we have spent a lot of time and resources, as I said, over the past three years working on those strategies. We need to do much better in translating those strategies in a much more efficient and streamlined process in dealing with development applications because the purpose of us doing strategies is to say where development could occur, under what conditions and where it could not.

That is basically why we are doing that. If we come to this point and again revisit, under a separate piece of legislation, the same issues, I think that is going to cause a lot of uncertainty for everybody. On the contrary, I think any legislative reform in the future, whether by way of a new Act or not, would have to bring together more the strategic aspects with the development context. We need to do better in streamlining the rezoning processes when we have set up the strategic context, and spend more time and effort. I am happy to provide more information in that regard because that is a fundamental future direction for the planning system.

The Hon. MICHAEL VEITCH: On the last public hearing day it was put to the Committee on a couple of occasions by some of the witnesses that in South Australia you can enter the identifier of a parcel of land on a website and up will come all of the respective planning controls that apply to that piece of land. Is it possible to do that in New South Wales?

Mr HADDAD: Not quite. We are not there yet; we cannot do that. To do that we need changes, not only administratively, but we need also changes to the structure of the legislation to be able to do it. I am not saying that it is not a good thing to do; I am saying that we need to think about it very carefully. I know that we have been thinking for some time about the concept of having more of a so-called place management approach to planning as distinct from what we are trying to do now, that is, a local environment plan which will standardise different types of land uses and whatever. I have been asking for a lot of work to be done in this area. We are monitoring what we should be doing. To date there is no compelling evidence to change the system. I have asked Marcus to give me examples of this. In New South Wales, for instance, we have two systems—we have the Warringah local environment plan, which is based on what you have said, and we have the Liverpool local environment plan under the new template.

One can say that the Liverpool local environment plan [LEP] is a much more complex issue. The Warringah one surely is complex, but I am comparing the two systems. I am not saying that this is a bad one—I am not saying that. I am saying that these are models and when I am under pressure to simplify the system I

have to be very careful on how to balance those two. Already the LEP standard template is a challenging one—it is a very challenging one—and I agree with people wanting us to do more work on it. I fully appreciate that. There is a level of frustration and I fully appreciate that. We definitely need to do it differently, but whether I jump straight away to another model is something that I need to think about carefully. There are benefits and there are disbenefits.

The Hon. MICHAEL VEITCH: It was also put to us that there would be benefit in planning along catchment areas. Do you have a view about that?

Mr HADDAD: I think the concept is more of a natural resources concept and it is good in terms of addressing natural resources. From a planning point of view, of course, we are looking at much broader issues. Natural resource is one issue, but fundamentally the difficulty that we have of introducing a statutory scheme is that in New South Wales under the current legislation, the current jurisdiction that we have, local councils have a defined boundary by law and the LEP or the planning scheme—the statutory scheme—applies to that. I may be able to use regional planning, but what we will be looking at is more of a strategic plan, so that when we look at our subregions in the Sydney metropolitan area—we have divided them into subregions—we have tried as much as possible to follow boundaries, which include a number of councils, but at the end of the day those subregional plans will have to come back to statutory instruments, and the statutory instrument is the local thing, that is the one that it is going to be judged on.

The Hon. MICHAEL VEITCH: Ms Stone, do you have a view about this?

Ms STONE: I think they are a bit like our regional strategies, but from a natural resource point of view. But some councils have two or three catchment management authorities [CMAs] and I think there are only 15 or 16 catchment management authorities, so until we can align our local government with CMAs maybe we should look at them as really a strategic approach in the same way as we have our regional strategies. I think also local councils have a much broader responsibility for social planning, economic planning, infrastructure across a whole range of things that the CMAs do not have an interest or responsibility for, so I think that it should be considered but not dictated to because councils have to do the balancing with all their other myriad responsibilities. I think it should be input, and very valuable input, but council ultimately has the breadth of responsibility that needs to be balanced.

The Hon. MICHAEL VEITCH: If I was a council preparing an LEP and I wanted to cite reference to a catchment area or a catchment area plan, is the information easily accessible for individual councils?

Ms STONE: I think it varies from CMA area to CMA area. The other thing is that the Department of Environment and Climate Change [DECC] and the Department of Water and Energy [DWE] have very valuable layers of information. The Department of Environment and Climate Change has been updating its biodiversity plans. The Department of Water and Energy has been updating its river management work. The CMAs are not the only source of information in this regard and certainly the other agencies have a wealth of information. For instance, DECC is now working with the councils to upgrade their flood management plans. So there is a lot of other information that councils have to consider when they are doing their own strategy within their local government area and then delivering that in an LEP.

Mr HADDAD: So maybe what we should be doing more often—and we are doing it already—when we are working on standard LEPs we want to make sure that any information, any data, that is relevant from a catchment management perspective is taken into account and is built into the local plan as much as possible. We do that to a varying extent. We still need to work much more on some of our standard definitions to reflect that, in my view, and that is something that is evolving.

Ms STONE: The other project we have is that we are working with the Department of Lands, which has a program to provide agencies with electronic information about all sorts of information that is useful for planning, so there is a project at the moment, e-planning project, that particularly will be feeding information into the complying development certificates, but it will be useful for all of the planning that we do, so we are moving in that electronic direction and working very closely with Lands, DECC and DWE, and Rural Fires.

The Hon. CHRISTINE ROBERTSON: What about the strategic planning processes and alignment of the CMAs?

Ms STONE: I am fairly sure that in our regional strategies we work very closely with the CMAs, in the North Coast, mid North Coast, Central—and certainly the south one was very closely worked with the CMA. They certainly were a stakeholder when we were doing our regional strategies.

The Hon. MICHAEL VEITCH: We were also told on the first hearing day that you could not do spot rezonings in New South Wales. Is that correct?

Mr HADDAD: That is incorrect. I am happy to provide the Committee with the number of circulars that I have issued over the past three years to clarify that, and direct letters to councils and all the rest of it.

The Hon. MELINDA PAVEY: There was an appeals process too.

Mr HADDAD: There is no question that we have been saying, I suppose, that spot rezonings are allowed. We have been nevertheless saying that each council needs to come up with its own judgment whether, for instance, a small spot rezoning which is fixing something, not delivering a particular land use outcome, is necessary in terms of resources and all the rest of it. But of late we have an LEP review panel. Again, contrary to what people are saying, I am happy to give you information about that panel. We have received a number of spot rezonings. We have a gateway process and from the information that I have more than 90 per cent of the decisions are made within 15 days. I am happy to make available all the statistics we have, particularly now in terms of the economic downturn. Again, we have been telling councils that it must be consistent with the strategy and opportunities for employment, but in an orderly manner. Of course, we are not going to entertain councils coming in with rezonings if they are not consistent with an orderly development scheme.

The Hon. MICHAEL VEITCH: Can you provide the process for conducting spot rezoning and for appealing?

CHAIR: And possibly a couple examples.

Mr RAY: We have the statistics here.

Mr HADDAD: We will make a submission to the Committee containing that information.

The Hon. MICHAEL VEITCH: I live west of the Great Dividing Range, so I have been receiving a fair bit of correspondence from councils about the impact of private certifiers or the inequity between private certifiers and councils. I have no doubt you have heard these concerns. Do you have a view about that?

Mr HADDAD: The current legislation and the foreshadowed legislation maintain the scheme of private certification. That is a government policy and it is there. We are trying to make the scheme work better. Obviously many councils and others have expressed concern, sometimes with and at other times without evidence, about issues with private certification. The first approach was for us to look at the Building Professionals Board and to strengthen it. We now have a new board. It is a very strong board—if I may use that word—and we have increased the penalties and the provisions for auditing and so on. Having said that, it is an issue on which we will continue to work with local government to ensure the system operates properly. It is there and we have various provisions in the reforms that address the deficiencies that have been drawn to our attention.

The Hon. CHRISTINE ROBERTSON: Through the upper House inquiry process we hear a lot about the COAG processes. Some of the departments are actually cherry picking the best pieces out of the New South Wales policies. Is it your impression that this is happening in the planning process in relation to COAG?

Mr HADDAD: As a general comment, the COAG process is very useful process because it has, in a sense, elevated all the planning issues and is dealing with them. It also provides an opportunity to increase consistency between State and Commonwealth initiatives. It provides opportunities for increased funding from the Commonwealth to the State under various schemes. I am not that personally close to the process, but the impression I have gained from various committees is that certain components of the planning system in New South Wales are very appropriate, particularly the assessment and development approval process and the part 3A obligations. That is the broad feeling I am getting. That does not mean that I am saying we should have a single piece of legislation. That is outside my area of interest. But it does help when they are as consistent as possible. Nationally, I think the COAG process is very useful in that regard.

The Hon. CHRISTINE ROBERTSON: We have heard that the Western Australian Planning Commission is an excellent model for involving all agencies in integrated planning and so on. Some people have suggested that we should have a State planning commission. How do our processes compare? Is there a necessity for us to introduce such a thing?

Mr HADDAD: We certainly do not have a planning commission doing the planning of the State. We have the Planning Assessment Commission, which is doing development approval processes, but not rezonings.

The Hon. MELINDA PAVEY: Is the Office of the Coordinator General doing it?

Mr HADDAD: I do not think it is doing the planning. To provide credible advice I will have to get back to you. The Western Australian commission is charged with making decisions about matters such as rezoning of land. It is much broader.

The Hon. CHRISTINE ROBERTSON: In an arbitrary fashion?

Mr HADDAD: No, through a properly instituted commission and following legislation. We had a planning commission in the 1970s. I do not want to comment on that other than by reference to the administration of the system. My view is that the more layering we do to the system the more complexities we introduce. We have to think very carefully about why we would need additional layers. Is that the purpose of doing it? As a community, people make submissions that we need an additional layer to check on the assessment in terms of decision-making. That is why it is there. My advice is that we must justify an additional separate layer. That is my view, but it is not necessarily correct.

The Hon. CHRISTINE ROBERTSON: I have another attack. We have been talking about redrafting the legislation and you refer to "medium to long term". What do you mean by that?

Mr HADDAD: I am having difficulty saying whether it is five years or 10 years or whatever. Over the next three or four years I expect to see the impact of the current reforms. How can we make it work? Is it answering some of the fundamentals of good planning? Any planning system cannot sit still forever. I am questioning whether we need to toss it and start again. My personal professional view is that that will not be necessary, but others will obviously disagree with me, and I respect that. I am putting the position as a practitioner that we should focus, particularly for the time being when the community generally is seeking more certainty, and the planning system should respond, including to the reality of economic and social difficulties.

The Hon. CHRISTINE ROBERTSON: Surely it would be a long-term process to redraft such an incredibly complex piece of legislation, particularly given that it involves several Acts?

Mr HADDAD: We have started thinking about the process of some of the amendments we have made since 1997. It has taken us all that time just to get to where we are. We are criticised for not having enough—

The Hon. CHRISTINE ROBERTSON: I am not meaning to criticise.

Mr HADDAD: I am simply putting it into the context that it took a long time just to do those amendments and we are being criticised. Drafting a completely new Act and doing it properly would be a very resource intensive. I am sorry, but I cannot give the number of years it would take. Obviously it will have to be done. Of course, there are different options. We could build on the existing Act and we could amend other Acts, but the Government might not like that. I am being asked whether we need to throw out the Act and draft a new one. It would be a very complex exercise to come up with a credible result with something really different.

When people compare our legislation with legislation from other States or wherever we need to respect the fact that the community in New South Wales is different from other communities. Planning legislation will have to reflect that. It will have to reflect the demand and the complexities or whatever. When people say it is complex they need to understand why it is complex. It is not easy to just jump from one scheme to another, because our community is different. This is something that is not usually commented on and it is not usually appreciated. You cannot just import a scheme and put it in place.

The Hon. CHRISTINE ROBERTSON: In relation to Sydney Airport I want to know where we are at with the recommendations on page 43 of your submission, which I know has been changed because it went to the whole of government. The New South Wales submission talked about four dot points in relation to the

airport changes. Mostly they talk about the airport being part of the local community when big developments are being considered. Do you know where that has progressed? Is it progressing and is there any way that it should progress?

Ms STONE: Currently there is a national review into aviation, as you know, and we are just about to get the white paper. That is the next step in the process and we will be responding to the white paper. We are waiting with great interest.

The Hon. MELINDA PAVEY: Can I ask about the planning and delivery of infrastructure and land use planning? Page 9 of your submission states that it "would be worth exploring the option of expressly including provisions in the Act regarding strategic planning for infrastructure to inform and be informed by land use strategies for the better integration of land use planning and delivery of infrastructure and services". Given the Government's decision to abandon the north-west and south-west rail line that was part of the Department of Planning's thoughts about there being a high-growth area out there and having rail lines to service it, how could you put provisions in the Act to ensure that the infrastructure is going to meet the growth needs of certain areas?

Mr HADDAD: There are different models or you can provide for that legislatively. The notion of making sure that if we are releasing land we have an appropriate infrastructure to support it, being transport, water or whatever, is a very critical one. We will continue to advise governments that that should be done, because it has not been done previously, for whatever reason—

The Hon. MELINDA PAVEY: So you advised Government to go with the north-west and south-west rail lines?

Mr HADDAD: The advice to Government is that we should continue an integrated model of land release and infrastructure because that is basic. That is why we need to be flexible sometimes and say that if we need to accommodate population growth it may well be that in some cases infill development may address an immediate need as distinct from other needs. That is the advice. Obviously if we go back 10 or 20 years when land was released for whatever reason without proper support, I cannot tell you that this is good planning. Good planning has to take into account, within reason, an integrated approach to infrastructure. I must also tell you that we do that in a much more disciplined way in the planning process now than we have ever done. One of the main reasons it is taking too long to rezone land—it is essentially one factor—is our questioning consistency of infrastructure. Who is going to pay for it, how is it going to be paid for, and all the rest of it? It is really a big challenge for us as a community to do it.

The Hon. MELINDA PAVEY: So your advice to Government was clearly that we needed those rail lines?

Mr HADDAD: I am not saying that. What I am saying is that our planning advice is we have to make sure that the release of land is integrated. I am not saying that we need the north-west or the south-west rail line. We are doing a full review of that, as you know. We have triggered a review in light of the Government decision, to investigate and make sure our program of land release can or cannot continue in light of Government decisions. We have triggered that independent review and the outcome of that review will be made public very soon.

The Hon. MELINDA PAVEY: How soon?

CHAIR: One more question. Mr Mason-Cox.

The Hon. MELINDA PAVEY: I have one more question.

CHAIR: Okay, you are taking the question.

The Hon. MELINDA PAVEY: The Department of Local Government is giving evidence next. Of great concern throughout regional New South Wales has been the delay in the template Local Environment Plans [LEP]. I have had lots of representations from the Cooma-Monaro area. I know that Warringah's LEP has been held up since 2000. Why is it taking so long to finalise these template LEPs, particularly in respect of Warringah for a section 65 certificate?

Mr RAY: Can I just say one thing about that? The Warringah LEP that the Director General showed you was actually in 2000, so we are talking about the subsequent LEP. It has not been going since 2000. I am not sure exactly what time it has been going for.

The Hon. MELINDA PAVEY: I know that Warringah has lodged its template LEP and there is concern it is taking a long time.

Mr HADDAD: I fully appreciate the point you are making. It is taking too long, much longer than what is expected. It is a very frustrating exercise. It is taking longer than what is expected in terms of the design of the program itself for a number of reasons: first, people want to devise a strategic outcome, so you are rethinking your whole area from a strategy point of view. That takes time. Second, the legal complexities involved are very extensive, so people are trying to get all the legalities precise. Third, the resources of councils, the departments and Parliamentary counsel needed to reach a point. I fully agree with you in terms of some of the program itself. It has been hard work to get it and it is very unfortunate that it is not being delivered in accordance with timetables that have been promised before and without due thought about what had to be done.

I am now looking at some sort of adjustment to the scheme, because you are right—councils are expressing concern about it. We will have to respond to that. For example, we have now learned enough through various legal mechanisms to be able to progress councils into, say, exhibition without going through Parliamentary Counsel. That will cut a lot of time. We are looking at a number of streamlining processes and hopefully we will be doing much better given that we have gone through all the difficult stuff we have been going through.

The Hon. MELINDA PAVEY: Can you take on notice to find out how many are outstanding?

Mr HADDAD: I am happy to do that, yes.

Reverend the Hon. FRED NILE: You said there is a timetable. Should there be some penalty for the councils if they do not meet the timetable?

The Hon. MELINDA PAVEY: Or the Department of Planning or Parliamentary Counsel?

Reverend the Hon. FRED NILE: How do you get the incentive to get it finalised?

Mr HADDAD: It can be done quicker but we will end up going backwards instead of ticking an outcome that stands and not having all these development applications that will come after that. It is a complex outcome given that we want to put in everything and try to meet expectations of different people. We will be looking administratively—within the department there is a team now looking specifically at how we can improve efficiency.

Reverend the Hon. FRED NILE: Where is the main delay occurring?

Mr HADDAD: It is occurring at different stages, really.

Reverend the Hon. FRED NILE: Not the councils?

The Hon. MELINDA PAVEY: Not generally.

The Hon. CHRISTINE ROBERTSON: Sometimes it is.

CHAIR: I thank you all for coming this morning. Along with any questions you took on notice today, would you agree to receive additional questions that members of the Committee may not have had the opportunity to ask? Could we have the answers within 21 days?

Mr HADDAD: Yes, sure.

(The witnesses withdrew)

EUGENIA MARIA McCAFFERY, President, Local Government Association of New South Wales, GPO Box 7003, Sydney,

SHAUN CRISTOPHER McBRIDE, Strategy Manager, Local Government and Shires Associations of New South Wales, GPO Box 7003, Sydney, and

JENNIFER DENNIS, Policy Officer, Planning, Local Government and Shires Associations of New South Wales, sworn and examined:

CHAIR: I should point out to you that if you consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take any questions on notice today, the Committee would appreciate it if the responses to those questions could be sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Would any one of you like to make an opening statement?

Ms McCAFFERY: I will make an opening statement on behalf of the three of us. Thank you very much for the opportunity to address the Standing Committee on State Development. I first tender the apologies of Councillor Bruce Miller, who is the president of the Shires Association. He is unable to attend today because he has some commitments outside of Sydney.

The Local Government and Shires Associations represent all of the 152 general purpose councils in New South Wales. We represent the special purpose county councils and also the regions of the New South Wales Aboriginal Land Council. Our role is to represent the views of these councils. We present the views to government. We promote local government in the community and we also provide specialist advice and services.

In the planning area we are responsible for a wide range of planning functions. We prepare local environmental plans and associated plans, we exercise the consent role at the moment for development applications. However, local government clearly has to operate within the legislative and policy framework set by the State Government. As we are not recognised in the Constitution, the State Government makes the rules and we administer them. Our capacity to administer planning responsibilities in an effective and efficient way is becoming more and more difficult. I have been Mayor of North Sydney for 13 years and, in that 13 years, everything is getting worse; nothing is getting better.

One of the main problems is the so-called reform programs being rolled out by various planning Ministers in that 13 years I have been mayor. I believe the reform programs have not simplified the planning and development system They have just resulted in an Act that is more and more complex and legalistic. The reforms really have had a lack of meaningful consultation with local government and our communities, both in setting the reform agenda and in developing the legislation and policies that underpin that reform. We have been calling for a long time—to the wind most of the time—for a genuine partnership with State government so we can ensure together that we meet the challenges posed by a growing and ageing population, an infrastructure crisis that most of us are facing both in our cities and in rural areas, and environmental challenges such as climate change.

We think the Government has preferred to direct its energies to more and more regulations to simply strengthen the control State government has over local planning and development decisions, and just reducing the role local government has in the planning process. The latest reforms substantially reduce the opportunities for local communities to be involved in the planning decisions that impact directly on their lives. I do not have to make any of you aware what they involve. Although it is easy for the State Government to gazette a new regulation or issue a new policy, it is us at local level who have to implement the changes. We believe many of them are made in haste, and the costs to council are growing, at a time when financial resources are being stretched to the limit.

A recent example of this is the housing code that was introduced in February this year. It was introduced on 27 February and we were told on 20 February—seven days prior—that new information requirements for section 149 certificates, or zoning certificates, were going to be introduced. So, we had just four working days to make all the changes to our business procedures, upgrade our software systems and train

staff. Clearly, many councils simply could not meet these deadlines and we had to resort to issuing certificates manually. Some councils would not be able to change their systems for another three months. However, this code is meant to make the development application process faster and more efficient. There should be a greater recognition on the part of the State Government of the challenges that are being faced in the local government sector. The current infrastructure funding crisis has been caused by an inadequate revenue base; councils have been impacted as a result of decades of rate pegging; there has been cost-shifting from other levels of government; and we have received demands from our communities to provide better and broader services and facilities every year.

The associations have long been calling for a genuine partnership between State and local government so that we can provide decent planning and development services to our communities. We believe that the aim of any planning and infrastructure decisions must be to achieve good economic and environmental sustainability, social justice across all sectors in the community, equitable access to housing and employment and—what we are really all here to provide—the best quality of life for our communities. Local government can play a leading role, with other spheres of government, in planning for local communities.

We are best placed to inform the planning process of the needs and expectations of our communities. We are democratically elected and, therefore, we are accountable to our local communities, and we are advocates—or we could be advocates—for our communities when dealing with other spheres of government. Local councils need to retain autonomy in the making of local planning decisions and they are best placed to represent those interests to their local communities. We believe there is a desperate need for a review of the planning system and legislation to bring it into the twenty-first century.

The review needs to strengthen the strategic planning practice, both at a State and a local level. We need to strengthen the capacity of local government to deliver on planning reform, and we need to strengthen the core objects of the planning system. Thank you for providing me with an opportunity make to make an opening statement. I am a humble politician and Shaun and Jennifer are the experts. If you ask me questions that I cannot answer I might defer them to either Shaun or Jennifer.

The Hon. MELINDA PAVEY: I do not think there is anything such as a humble politician.

CHAIR: Given the current economic climate and the obvious need for housing affordability, could you provide us with details on the role of local government in the delivery of affordable housing, taking into consideration the fact that councils approve most housing development applications. Could you also inform the Committee of the recent agreement that you signed with the State Government, whereby you will be receiving nearly $6 million for the New South Wales Electronic Housing Code pilot project?

Ms McCAFFERY: There are two roles that local government can play in the delivery of affordable housing. We can play a role in managing public housing in our communities, and North Sydney does that so I am familiar with our capacity to do that. We also have a lower North Shore housing service that manages those houses for us, and I think we do it effectively. On one level we are well placed to manage public housing, as long as we get adequate funding from both State and Federal governments to do that.

We also have a role to ensure that housing development is delivered effectively and efficiently. That goes back to what I was saying in my opening address: local government is desperate for proper planning reform. Over the past 15 years we think the problem has been that the planning process has become more complex and it is harder for us to process applications effectively and efficiently. That is why we are asking the State Parliament to produce a new piece of planning legislation.

Ms DENNIS: There were two parts to that question. I think the first part was about housing affordability and the capacity of local government. We need to put on the table that the capacity of local government is limited and its ability to address housing affordability issues directly is also limited because councils do not have the capacity or the resources, as they do in other jurisdictions or in other countries, to deal with that more proactively. Does your question relate more to the processes, for example, development assessment processes, or the ways in which local government can alleviate this problem?

CHAIR: Yes.

Ms DENNIS: If that is the direction of your question, obviously councils can assist in that process by improving performance standards, or whatever. Current planning controls or the planning reform agenda targets

development assessment, which is what we know and understand. That will provide only limited relief for eventual housing affordability, but it might assist. Let me deal next with the Electronic Housing Code to which you referred in the second part of your question. Local government has been proactive in trying to improve its electronic assessment processes. The funding to which you are referring, which has been approved by the Commonwealth Government to put the new code onto electronic format, is an initiative of our organisation and the State Government. We think it will assist in this area.

This pilot project provides us with an opportunity to improve our electronic format and our processes at a local government level to deliver information to applicants in a better and more sophisticated electronic format. Local government has taken a lead in that area. Currently, a number of councils are on electronic format. However, we all agree that it needs to be improved and that there should be additional funding. State and local governments agree that assessment processes would be improved if information were put onto electronic format and delivered to applicants in a timely manner. In that way deferrals and all those sorts of issues could be streamlined. We all agree that electronic format is the way to go.

The Hon. MELINDA PAVEY: Ms McCaffery, you referred earlier to the problems that had been experienced by councils as a result of the seven-day notice they were given of changes in February. Since the introduction of those changes have you had any feedback from councils and other areas relating to the general housing codes? Has there been any suggestion from councils that it is working?

Ms McCAFFERY: We are actually running a blog and we have invited all the councils to supply us with the information. We are doing an update at the end of each month. It is very early days but we know there is a significant problem, as I outlined in my opening statement. Many councils have not had the time to get that updated, so a lot of the certificates are still being delivered manually, which is taking up a lot of unnecessary time and delaying things for applicants. Jennifer will tell you she has just recently sold her house and has experienced the process personally.

The Hon. MELINDA PAVEY: In relation to the community strategic plans, in your submission you argue that there needs to be better alignment of land use planning at a regional and local level. With the new local government integrated planning and reporting system—the community strategic plans—can you expand on what you mean by "better alignment" and how you would actually like to see that?

Mr McBRIDE: With the integrated planning and reporting system or program that the Department of Local Government is developing and of which we are very supportive and working closely with them, from the outset, there has been some discomfort with the fact that land use planning has been separate to it, not integrated with it, so we have the financial, the asset, the management and the community planning all captured under integrated planning and reporting. The land use planning, the LEP, is sitting off to the side. Yes, in theory, one should inform the other and vice versa, but whereas they have managed to integrate the other planning functions of council, this is still sitting out there separately. So the specific solution to that, I do not have. That is the issue we were referring to.

The Hon. MELINDA PAVEY: In your submission you also advocate the introduction of a single planning document to apply to whatever land use control format is adopted. Such a document would potentially replace SEPPs, REPs, LEPs with a single document. You also advocate using a land parcel or locality model instead of zoning controls as the format for land use control. This concept has been raised with the Committee in its previous hearing and from that I have a series of questions. Is it the case that such a document would contain only the development controls that apply to the land?

Ms McCAFFERY: Yes.

Ms DENNIS: I presume you are on page 9 of our submission. These were just suggestions raised about alternative models that perhaps had not been thrashed out, let us say, with the last 2008 reform agenda program and the alternative models are: instead of what the new planning reform agenda has dropped the regional environmental plans [REP]s and pushed them into SEPPs, which has merit, but there is another way of trying to consolidate information or align it into one place. We are just saying that is an excellent idea and a strategy to try to reduce the overlays that currently exist. We are not suggesting we have got the solution for that.

Councils can give back good information on how to deal with those overlays that currently exist, which cause grief to the application and cause grief to councils in trying to interpret the different overlays. It is only a suggestion in our paper but it is a good suggestion and is perhaps something that needs to be further considered.

I think that is all we are saying. How to deliver a strategic model that does that as well as local controls, I agree is the issue and how you separate or pull them into one level framework is the problem obviously, but we are just suggesting that to try to compress that information into one place. We have in parts of the submission talked about e-planning as being a way to deliver that information to the applicant, even if you have still a different series of plans, if you know what I mean.

Ms McCAFFERY: But the whole movement over the last 10 years has been to try to simplify everything into one document. The LEP template is the classic example of that and that, I can tell you, is a total nightmare because it does not take proper account of local variations.

The Hon. MELINDA PAVEY: What sort of local variations, natural resources?

Ms McCAFFERY: No, it is because all of us have developed our own character. The reason people live in an area is because it has a particular character. North Sydney's history is very different to even a place like Hunters Hill, yet it is only 10 minutes drive away so it is very difficult to fit everything that is characteristic of North Sydney into Hunters Hill. Then if you take Hunters Hill compared to Dubbo or Orange or Cowra it is even more difficult. Every council is struggling with this template and it is extremely difficult. Most of the LEPs are at a sort of bus stop in the Planning Department and they cannot process them.

It is this sort of lack of cooperation between the State and local level. You cannot do all this reform and not resource it properly and that has been a large part of the problem. You cannot make everything fit into one document because New South Wales is a very diverse place, nor do we want everywhere to look the same as everywhere else. It is not possible.

The Hon. MATTHEW MASON-COX: The bus stop in the Department of Planning, why can they not process them. Is that a resource issue?

Ms McCAFFERY: It is a resource issue. If you talk to any staff off the record in there, there is just not the staff resource. They are getting cut like every other government department, yet they are getting more and more jobs.

The Hon. MATTHEW MASON-COX: What sort of delays are you typically seeing from Department of Planning?

Ms McCAFFERY: I know of councils in my own area that have had LEPs sitting in the department for 2½ years.

The Hon. MATTHEW MASON-COX: Can you provide some further information in relation to some of those delays across the council areas that you are aware of?

Ms McCAFFERY: Yes.

The Hon. MATTHEW MASON-COX: That would be most appreciated.

The Hon. MICHAEL VEITCH: And even how many councils and the period of time?

Ms McCAFFERY: Yes.

The Hon. MATTHEW MASON-COX: And which councils. Specifics would be great, just to help us understand and form our views.

Ms McCAFFERY: Yes.

The Hon. MATTHEW MASON-COX: In your submission you argue that the recent planning changes can lead to greater corruption risks or probity risks due to the expanded role of the planning panels and the introduction of planning arbitrators. Could you expand on why you believe these initiatives could increase the risk of corruption?

Ms McCAFFERY: They say Sydney is the biggest small town in the world and there are a limited number of professionals and when they are not working for council one week they are working for a developer

the next week and I think it is extremely difficult to get people who do not have a conflict of some kind. The point of a democracy is that people are accountable at the ballot box and these panels are unaccountable. I think the ultimate decision on these things should be with their elected body.

I am a great advocate of good advice. We have a number of panels in North Sydney; we have an urban design panel and then an randomised complete block design [RCBD]; we have a super duper urban design panel and they give detailed advice to the council and the Planning Department about complex applications, but ultimately the decision lies with the elected council and that is what our communities elect us to do.

The Hon. MATTHEW MASON-COX: But with these panels and arbitrators, are not their decision subject to a merit review?

Ms McCAFFERY: But all of them are appointed by a Minister?

The Hon. MATTHEW MASON-COX: So that is your concern, the appointment?

Ms McCAFFERY: My concern is that they are appointed by a Minister and I also think there is an accountability issue. Many of those planners will not be able to survive just on the income from the planning panel and that will become worse in a country town in a regional area

The Hon. MATTHEW MASON-COX: In terms of the regional strategies, I note in your submission that you point out that we have lots of regional strategies for metropolitan Sydney and the northern and southern coastal areas but we do not have an inland regional strategy, except perhaps the Sydney to Canberra corridor strategy, which is fairly specific. Do you have a view about the need for a regional strategy to take into account inland New South Wales development?

Ms McCAFFERY: Absolutely. It is vital to have a regional framework for local planning. I think again it is a resourcing issue. I know the regional plans and the Sydney Metropolitan Plan took up an enormous amount of resources. I think we desperately need it. What that reaffirms among our members on the other side of the sandstone curtain is that they are like priority nil, and I think that is a very important message to be delivering to those communities.

Reverend the Hon. FRED NILE: Following the question about corruption, do you have any complaints with the appointments of any of the panels, the Planning Assessment Commission or the joint regional planning panels?

Ms McCAFFERY: I do not think we have seen their performance yet. It is very early days.

Ms DENNIS: The PACs are appointed but the JRPPs are not appointed. We are not aware of the membership of that.

Reverend the Hon. FRED NILE: I was thinking more about your concern with the individuals who have been appointed?

Ms McCAFFERY: There is only the PAC that has been appointed.

Reverend the Hon. FRED NILE: Are you happy with that?

Ms McCAFFERY: I do not think we are happy with it. We do not have any choice.

Reverend the Hon. FRED NILE: I mean are you happy with the personnel; I know you are not happy with the commission?

Mr McBRIDE: No, we do not have any concerns with any of the individuals appointed.

Reverend the Hon. FRED NILE: Would ICAC not be the body to ensure there is no corruption with the membership of any of these panels? Would they not be under very intense community observation?

Ms McCAFFERY: The trouble with that is that those organisations will make a whole lot of decisions that communities have to live with. So, you are waiting until it happens until you act on it. I think we should be fixing it upfront, not waiting till you get a Wollongong—let us not mention Wollongong.

Reverend the Hon. FRED NILE: That is the point I was going to make. You have corruption in elected councils, as happened in Wollongong?

Ms McCAFFERY: Of course, but nothing is perfect in this world. My concern with Wollongong is that they had a corrupt council and it was not just elected councillors, it was employees as well, and now how does the State Government deal with that? It just removes the rights of that community to elect a council for 8 to 10 years. So, the community is doubly punished.

Reverend the Hon. FRED NILE: You are critical of some delays that occur with approvals, but in your submission you recommend the biodiversity certification of LEPs with a view to allowing strategic approval under exemption from Commonwealth environment protection et cetera. Could you explain that further? On the surface would that not be adding another complication to the whole process?

Ms McCAFFERY: I will defer to Ms Dennis.

Ms DENNIS: Can you refer me to the page you are on?

Reverend the Hon. FRED NILE: It relates to the Commonwealth Environment Protection and Biodiversity Conservation Act approval process.

Ms DENNIS: Yes. I think we are just outlining in that section of the report that there is an overlay and how to solve it is yet to be determined in that at the national level you have got all the requirements that sit there above what councils and the State legislation requires. So you just have got three levels of controls for that sort of thing. The biodiversity and that just needs to be looked at and sorted through. That is all. We are just bringing to your attention that there is an overlap, there is duplication there. And we brought to your attention I think that the way activities are assessed is different under the different legislation and that needs to be brought into some sort of sensible parallel requirements, let us say.

I think what our paper does try to bring out is the need for those sorts of decisions to be made at the strategic level. At the moment they all end up as a conflict at the DA level, which we all understand is the problem. We need to try to push that up. How to deal with natural resources, how to deal with climate change, how to deal with all that needs to be more addressed at a strategic level. Probably what is happening at the moment with the reform agenda focusing on development assessment is that the assumption is if you just make it faster and cleaner, it will sort out these problems. But there are some fundamental flaws in the system, which is that you go right down to the DA level, have a major argument about species and that is a bit late for the applicant and a bit late for council. So, we are just saying those decisions should be made at a higher level and the strategic planning model needs to be seriously reviewed.

Reverend the Hon. FRED NILE: In your solution and previously you have always been critical of the system of private certification. You state also that dealing with complaints and problems arising from sites under control of accredited certifiers continues to be a major issue for local government. Can you give some examples where you believe it is not working?

Ms McCAFFERY: I think you have an upper House inquiry, so you are probably very aware of the problem. The fundamental problem with private certifiers is that there is a fundamental conflict of interest because the person making supposedly, and what the community requires, an independent decision is being paid for by the person who is getting the decision. It is very difficult as a professional to separate yourself out away from the person who is paying you. What we have seen consistently across private certifiers is that they deliver to the applicants, their clients, what their client expects. So that corners are cut, processes are not properly carried out, sites are not properly supervised and the person who suffers is the consumer.

I was doing an interview, one of my debates with the former planning Minister, on Quentin Dempster's show and the woman who was doing my make-up at the ABC said, "Oh, what are you being interviewed about?" I said I was having an interview with Frank Sartor and she said, "Oh, well." She had bought a terrace in Surry Hills in a group of townhouses, and the private certifier had actually put on a third storey, it was an attic room in the townhouses, and that was not approved by the council. She was left, with the other owners of these

townhouses, with the problem. Leo Kelly, former mayor of Blacktown, will keep you entertained for hours about the problems out in Blacktown: apartment buildings built without fire escapes, without proper fire equipment—I mean, dangerous errors. I do not think that process has improved and no-one will listen to us.

The Hon. MICHAEL VEITCH: Those problems could also happen with council approvals as well?

Ms McCAFFERY: Yes, but the big difference is that council is a level of government and it is there forever. So, you have got somebody to address the problem. Private certifiers disappear off the planet and people are left with the baby.

The Hon. MICHAEL VEITCH: That is right, council is left with the burden?

Ms McCAFFERY: That is exactly right. Our communities carry the costs.

The Hon. MICHAEL VEITCH: I want to talk about housing affordability and section 94 contributions, which are also quite topical in this process. At our last hearing we received evidence from the New South Wales Business Chamber about the level of section 94 contributions that are held by councils and the period of time it takes for them to spend that money. I stand to be corrected but, off the top of my head, they spoke about some $800 million currently being held in reserve by councils across the State and that the average period to spend the money from time of receipt to time of spending is about eight years. I am interested in your views on the comments about section 94 contributions?

Ms McCAFFERY: Councils are required—and I think quite properly—to collect section 94 contributions. We advertise the plan. We say what we are going to spend it on, and that money is advertised. So we have to spend it on the thing that we collect it for. With North Sydney, for instance, we collected section 94 contributions and we can only spend the money we collect in those contributions on North Sydney pool. If you are going to spend $13 million on a project, it takes a while to collect the $13 million. So it is a total furphy from the development industry to say that councils have reserves. If we did not have reserves, we would not be properly managing money we have collected from individuals, with a commitment to our communities and to the applicants that we will spend it properly. If we did not do that, we would be fundamentally breaking the law and breaking a promise and commitment we made with our communities. Of course we have money in reserves—we should.

The Hon. MICHAEL VEITCH: For how many years has the section 94 contributions regime been in place?

Ms McCAFFERY: At least 15 years, maybe 20 years.

Ms DENNIS: Since the 1980s. 1982 I think.

The Hon. MICHAEL VEITCH: So it would not be possible for a council to have section 94 contributions in reserve for, say, 48 years?

Ms McCAFFERY: No. Because it did not exist.

The Hon. CHRISTINE ROBERTSON: I want to ask about the LEP templates. How does the template you are currently using produce plans that are exactly the same?

Ms McCAFFERY: There are standard definitions and standard zones.

The Hon. CHRISTINE ROBERTSON: Can you give an example of a standard definition?

Ms McCAFFERY: We actually support standard definitions, because I think it is good that when you go from North Sydney to Dubbo, a brothel means a brothel in Dubbo—it is the same thing. But the standard zones are the problem, because it is very difficult to properly reflect the variance in communities in these standard zones. That is what councils are struggling with, and my own council is struggling with this. You end up kind of shoehorning an area into a zone and it does not really fit in there. I think we are going to end up with a whole lot of development that our communities are going to be furious about.

Let me give you an example. In North Sydney we have a place called Cremorne Point. It has a very particular history. It has had a residential G zone. It is a funny place because it has great big mansions and then it has a whole lot of flat buildings built in the 1920s and 1930s. So it has a unique history—very different to everything around it. We have had to shoehorn that area into a residential C zone. I do not believe it is going to work. I think we are going to get a whole lot of development there that that community is going to be furious about.

The Hon. CHRISTINE ROBERTSON: Is it an issue, in your mind, that the definitions of the zones need more work—?

Ms McCAFFERY: I do not think we should have standard zones.

The Hon. CHRISTINE ROBERTSON: This morning we were shown an example of an LEP this thick, about three centimetres.

Ms McCAFFERY: We still end up with LEPs that thick.

The Hon. CHRISTINE ROBERTSON: Really?

Ms McCAFFERY: Yes.

Ms DENNIS: Yes, we do. I think oversimplification is the argument. The LEP template at the moment is extremely simplified. There is not an argument about having definitions of activities all the same. Council thinks that is sensible. And it is not even an argument that councils have that an R1 zone is the same everywhere. I think where the argument is, is the level of variation you can have with the template. At the moment the department is extremely rigorous about how it applies the template. That means the only zones you are allowed are the ones in the template.

The Hon. CHRISTINE ROBERTSON: It is the department's checking process that is objected to—?

Ms DENNIS: Yes. It is the implementation process. If the department said—

Ms McCAFFERY: You should be able to go to the department and say, "This is quite a unique zone. We can't fit it into any of the standard templates that allow—"

The Hon. CHRISTINE ROBERTSON: Are you saying that that process does not exist?

Ms DENNIS: The process exists but the department is taking a very rigorous line and there are a lot of arguments at the moment between councils and the department just on—

The Hon. CHRISTINE ROBERTSON: The negotiating process—?

Ms DENNIS: Yes. It is very difficult.

The Hon. CHRISTINE ROBERTSON: You say quite clearly that one local government area is totally different from another local government area. Almost all of us come from the country and we recognise this. But there is no way that any of those local government areas can be seen in isolation from their larger environment.

The Hon. MICHAEL VEITCH: As in region?

The Hon. CHRISTINE ROBERTSON: Obviously you are saying in the region things are going away. How can you look at your own local government area without registering the neighbouring communities of interest?

Ms McCAFFERY: I think that is why a regional strategy is important, and we absolutely support regional strategies. But it is important to also recognise local variations and to support in your planning instruments looking after that local variation.

The Hon. CHRISTINE ROBERTSON: What I am not hearing is that the LEP should be an integral component of the regional strategy.

Ms McCAFFERY: No. It is like a big jigsaw puzzle and all the pieces sort of fit together.

The Hon. CHRISTINE ROBERTSON: With regard to the seven days, there were months of consultation. Many of us were in Parliament at the time, and we had months of consultation.

Ms McCAFFERY: Yes, but they changed all the rules seven days before. It was honestly a moving—

The Hon. CHRISTINE ROBERTSON: The way the answer came at the end is what is troubling me, because—

Ms McCAFFERY: There was a new requirement seven days beforehand. That is the problem that the councils had. We were asking for months, "How are you going to implement this?" They kept saying, "We'll tell you, we'll tell you, we'll tell you." They told us seven days beforehand.

CHAIR: Thank you for your attendance this morning. Along with any questions that you took on notice today, would you agree to receive additional questions that members of the Committee may not have had the opportunity to ask you today, and would you have them back to us within the 21 days?

Ms McCAFFERY: Yes, it is a pleasure.

(The witnesses withdrew)

(Short adjournment)

SEAN AARON GADIEL, Chief executive, Urban Taskforce Australia, Level 12, 32 Martin Place, Sydney, 2000, sworn and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions upon notice today, the Committee would appreciate the response to those questions being sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Before we commence questions, do you have a brief opening statement you wish to make?

Mr GADIEL: I do, Mr Chairman.

CHAIR: Thank you.

Mr GADIEL: The Urban Task Force is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved with the development and planning of the urban environment to engage in constructive dialogue with both government and the community. We have to be frank about the planning system in New South Wales. The planning system is chaotic, random, dictatorial and irrational. It is extremely difficult for any business to buy land and invest in New South Wales with any certainty about the likelihood and timeliness of any planning approval.

In saying this, I mean no disrespect to the many hardworking public servants both in the Department of Planning and in local councils. Like developers and businesses, they too are the victims of a dysfunctional system. They are forced to work within the confines of poorly written law, apply vague, inconsistent and often incoherent policies, and they face a legal challenge from the NIMBY, not-in-my-backyard, brigade for the most minor of errors.

While the stated purpose of this review is about the Environmental Planning and Assessment Act, the Act itself is only part of the problem. We cannot ignore the wide array of documents that have been promulgated under the authority of the Act. There are 308 statutory environmental planning instruments that are currently in force, plus an unknown number of deemed instruments that have been left over from pre-1980 legislation. There are 232 different sets of guidelines to be used in the development assessment process. There are 38 pages of section 117 directions. There is an unknown number of State Government strategies and draft strategies.

On top of this, there is a countless multiplicity of development control plans, strategies and policies in force at a local government level. The Environmental Planning and Assessment Act confers incredible wide-ranging powers on regulators to effectively make new laws without any reference back to Parliament. It is one of the most unaccountable areas of government in existence. For example, nowhere else in New South Wales does a draft plan, which lacks any formal approval by an elected government, effectively deprive people of their use of their land or property. It is useful to illustrate how poorly New South Wales has been doing by citing construction statistics that pre-date the emergence of the current global financial crisis.

Unlike Queensland and Victoria, the value of New South Wales building work has been in freefall for four years straight to the end of the financial year 2008. Since the 2004 financial year, the real value of New South Wales building work has collapsed by 15 per cent—I emphasise that this does not include any figure since 1 July last year—while over the same period in Victoria, it increased by 8 per cent and in Queensland it shot up by 21 per cent. New South Wales residential development, housing, has been in particular trouble for seven years straight. In New South Wales, on average, work is started on 20,000 houses a year. However, in the 2008 financial year, work started on 16,000 houses—nearly half the number in Victoria, which had 31,000, and Queensland, which had 30,000.

At the end of the last financial year Victoria was only 800 houses below its seven-year average and Queensland was only 2,800 above its seven-year average. The number of houses under construction in New South Wales has fallen every year since the 2002 financial year, falling again in the last financial year by 0.5 per cent. In Victoria and Queensland, house construction increased in the last financial year by 5 per cent and 6 per cent respectively. The best thing that can be said about home construction figures is revealed by concentrating just on the higher density homes, such as townhouses and apartments. There has been four years of decline,

although in the most recent financial year there was an increase of 6 per cent. However, you should not draw too much from this.

While work started on 14,400 medium and high-density homes in New South Wales last financial year, this is still 36 per cent down on the 2003 figure of 22,500. Interestingly, despite the larger population base of New South Wales, Queensland had almost the same number of new apartments and townhouses that we did at 14,000 in the last financial year, and Victoria and Queensland had increases of 21 per cent and 9 per cent respectively in that year. The first victims of any other under supply in housing are those in the private rental market. In the last financial year we saw an 18 per cent increase in rents for three-bedroom homes and a 15 per cent increase for two-bedroom apartments.

Without a strong supply of new housing, rents will continue to skyrocket, and first home buyers will struggle even more to save a deposit for a home of their own. Without increased opportunities for retail development, retail landlords will continue to exercise disproportionate market power over both small business tenants and ultimately retail consumers. Without the opportunity to develop new business parks in western Sydney, Sydney will continue to be stigmatised by the dysfunctional commuter culture we currently have.

We are not just here to spell out problems: We come armed with solutions. Ultimately there needs to be new planning legislation in New South Wales. This legislation needs to start again from first principles. It should not, as the current legislation does, combine the worst elements of the United States and the United Kingdom planning systems, but should instead look to adopt successful elements from planning systems worldwide, including countries such as Germany and Switzerland.

This reform program will be a long-term one. It will take some time to develop and put in place, so it cannot be used as an excuse to delay current forms which are urgently required at this time of economic crisis. New legislation should be based around five key principles. Firstly, the planning system should support the development of New South Wales and by doing so provide employment opportunities, permit competition, support business productivity, raise living standards and improve the competitiveness of the state's economy.

Secondly, the planning system should promote ecologically sustainable development as per the 1992 intergovernmental agreement on the environment. This concept requires environmental protection, the integration of economic and financial decision-making, intergenerational equity and decision-making, the application of the precautionary principle and respect for biodiversity.

Thirdly, the planning system should promote liveable communities, meaning neighbourhoods should be permitted to be diverse in land use and in populations, with appropriate restrictions on the location of heavy industry. People should be free to choose their preferred method of transport, whether car, public transport or walking. Development control, other than the enforcement of building standards, should exclusively deal with the external appearance of the built form, in particular the relationship between buildings, buildings and the streetscape, and buildings and open space. Building standards should be about safety and structural integrity, based on objective information and assessment.

Fourthly, the planning system should manage development where public infrastructure requirements exceed the capacity of existing local infrastructure. It should do this where public funds are available by a clear mechanism to determine which projects will proceed in line with the available public funds and, when no public funds are available, through a mechanism where a private-sector proponent can voluntarily contribute to the cost of expanding public infrastructure to accommodate the requirements of the development.

Finally, the planning system should promote private investment in the development of New South Wales by enshrining a respect for property rights as a fundamental tenet of planning law. This means that landowners should enjoy, free from legislative intrusion, the right to use and develop their land subject only to the constraints objectively justified by the four other principles I have outlined today. I should point out that such a tenet is not radical. It exists in United States, German and Swiss laws, but not in United Kingdom or New South Wales law. All decisions made by public officials that deny a landowner the right to develop his or her land must be based on objective information. Where information is inadequate, and the precautionary principle is to be applied, rigorous risk assessment and decisions should be made subject to a just, quick and inexpensive merits appeal or review by an impartial third party.

Landowners should bear the costs of actions from which they individually derive private benefit and the wider community, through the Government, should bear the costs of actions involved in the supply of public

good benefits that are demanded by and benefit the whole community. Changes in zoning or development standards that may reduce the development potential of land must necessarily result in compensation to affected landowners for any reduction in the value of their land. The predictability of decision-making should be improved by dramatically reducing the number and breadth of strategies, policies and guidelines. The only such documents that should be considered are final policies, either approved by the State Government or expressly authorised by an environmental planning instrument in relation to a specific area.

Legislation, statutory instruments and policy should be designed so that the vast bulk of the development envisaged is capable of being approved without the need for subjective judgement by a consent authority. Innovative and non-standard development should not be prohibited merely because it is not envisaged at a time a plan is prepared. Such development should be capable of being approved without the need for changes to statutory plans. When this happens there is some room for subjective decision-making, although rights to a just, quick and inexpensive review or appeal should remain. The duplication and inconsistencies between different State Government agencies, the State and the Commonwealth should be removed. I thank the Standing Committee on State Development for holding this important inquiry and I appreciate the opportunity to appear before the Committee today.

CHAIR: Your submission promotes a planning scheme to permit compact mixed-use areas that support pedestrian-based liveable communities. Would you summarise how that could be achieved?

Mr GADIEL: Certainly. If you take Sydney as a starting point, the Metropolitan Strategy envisages for Sydney that 60 to 70 per cent of our future housing needs will be met from within the existing footprint of the city. It also says that 80 per cent of Sydney suburbs will remain untouched by the move to high density. The only way that these two conflicting goals can be resolved is by developing that 20 per cent, which is around corridors with good transport, and centres with typically good transport links and infrastructure in place. In those areas it is crucial that we have mixed-use centres. Unfortunately, too many planning approaches involve the micro planning of these important areas.

They involve public servants and bureaucrats making decisions that in that location we will have commercial, in that location we will have residents for artists, in that location we will have bulky-goods retail, and in that location we will high-density residential. All of these areas are within a centre zoned for high density. All of these areas have access to good public transport. Unfortunately, the public service is not infallible. In fact any government agency, no matter how many consultants' reports it commissions, is not going to be infallible. Sometimes it will—in fact often will—make bad calls. The area it may have selected for commercial development may not be viable for commercial development for a whole range of reasons, so if only commercial development is allowed there, commercial office space, then nothing will be built there. The area they have selected for residential development may not be appropriate or liable for a whole range of reasons including, perhaps, unreasonableness by existing landholders in that area.

Rather than trying to separate out these uses, there is an opportunity in urban centres and in corridors to create mixed-use zones where residential, commercial office space and retail development are all allowed within a reasonable distance of the transport infrastructure concerned at high densities. You can create a quite vibrant pedestrian-friendly community where there is a lot of street life because there are a lot of people living in the area and there are local services available. You can see some very successful developments around Sydney that have been based on those principles: the Forum development in Norton Street, Leichhardt, the new Rouse Hill town centre, the World Square development in the southern central business district area. They are all based around the principle that people can live in proximity to commercial office space and retail development and get a beneficial lifestyle from it.

CHAIR: In your view, which is the most appropriate jurisdiction to have carriage of land use, planning and development assessments and approvals near airports?

Mr GADIEL: In New South Wales, the New South Wales Government would be the appropriate jurisdiction to have that. The current regime is illogical and contributes to that whole patchwork of authority that we currently have around land-use planning in New South Wales. It is illogical to us as to why the State Government can be trusted to handle planning and environmental approvals for ports, which are crucial entry areas in and out New South Wales, but not for airports. Neither is more important than the other in the scheme of things—

The Hon. MATTHEW MASON-COX: But Sydney airport is subject to a 99-year lease to the airport operator and it is Commonwealth land. In that context it is very different to a port, is it not?

Mr GADIEL: I do not see how who owns the land should affect the urban planning. Private companies may own land, different government agencies may own land, local councils may own land, the Commonwealth may own land, the State may own land, but at the end of the day who owns that land is not as important as a comprehensive urban planning scheme. It actually creates serious distortions to have a piece of land subject to one regulatory regime and nearby land to others. Of course, in planning there are always external costs and benefits from development decisions. In some respects the planning for airport land has been freer than New South Wales. If I had a preference I would say that New South Wales planning laws should be equally free, but as a principle I would say there is not one reason why we cannot have one planning system for airport land and non-airport land.

The Hon. MATTHEW MASON-COX: It is worthwhile examining that because we are talking about critical infrastructure. It is a monopoly and a unique piece of infrastructure, if you will, in relation to airports and that is why it is subject to Commonwealth legislation dealing specifically with that instance. Is that not a special case?

Mr GADIEL: I do not think so. You have got other pieces of monopoly infrastructure. For instance, rail lines, some of which by the way are owned by a Commonwealth-backed freight line, which are still subject to State planning laws. You have got ports, which are unquestionably monopoly infrastructure, regulated at a State level and, ultimately, there is the threat of regulation through the national competition principles and processes if State regulation does not deal with things adequately. You also have airports and their monopoly elements, such as landing charges and slot management, which are subject to detailed regulation from the Federal Government—and they always should be—but that is quite separate from town planning laws. If, for instance, an airport owner is proposing to build, as they have in the past, a non-aeronautical retail development and there is an issue about that potentially being a safety risk, I think State planning authorities are perfectly equipped to assess and deal with that. I suspect they would not have come up with a different decision than the former Federal Government did when they knocked back such a development on the grounds that it would be a safety risk for aeroplanes and for the people present. I do not think the Department of Planning is so ill-equipped that it cannot make sensible judgements on these matters.

The Hon. MELINDA PAVEY: In your very comprehensive submission you make a total of 60 recommendations, and in your very open and frank summary at the beginning you are very unhappy with the system in New South Wales. I have two questions to follow on from that. Can you highlight the top 10 recommendations of your 60 that you would like to see implemented in New South Wales as a matter of urgency? As you are the CEO of Urban Taskforce Australia can you further expand on who is doing it well within Australia? I note that you mentioned Queensland, which incidentally is also under a Labor administration, in your opening address as an area that seems to be a little more streamlined.

Mr GADIEL: Sure, I am happy to address those points. I think the most important recommendation in what we have said is recommendation one. Recommendation one deals with the objects of the Act. I think there is a tendency, in dealing with the law legislation, to sort of gloss over the objects of the Act, saying, "Don't worry about the statement of principles. Let us worry about the substantive provisions." In some legislation that is okay because the objects of the Act are not harmful. In the Environmental Planning and Assessment Act they are seriously harmful. They are used as the touchstone every day in the planning system for public servants, the Land and Environment Court, panels. They are constantly referred to and cited.

The 1970s objectives in the Environmental Planning and Assessment Act were conceived in an era when the debate between central planning and control versus operation of the market had never been resolved, and they are clearly heavily influenced by that central planning view of the world. When you sit back and look at them line by line now, it is difficult to justify much of the approach that has been taken in those objectives, but because they are objectives of the Act hundreds of decisions are made on a weekly basis in reliance on those objectives as if they are set in stone, without any analysis—and there cannot be any analysis—as to why these objectives are valid and appropriate.

For instance, the idea that the planning system should be trying to deliver the orderly development and use of land—it sounds like a great idea but given when the bulk of your development is taking place on private land in infill and brown field areas and existing metropolitan footprints it is impossible for a planning system to purport to manage this in an orderly way. It cannot be managed in an orderly way. Private individuals will seek

to develop when it is profitable to do so. The planning system will not be able to dictate that to them. When it is profitable to do so could be next year, in three years, five years, 10 years time. Attempts to micro-manage that kind of development are impossible.

What I say also touches on recommendation three. It goes to the responsibilities of the Minister. If you read the responsibilities of the Minister, the Minister is given a charter to determine the shape, scope and distribution of both economic activity and populations in New South Wales. In the 1970s there was still inner glow from the Albury-Wodonga and Bathurst-Orange growth centres project of the Whitlam Government, and at the time it sounded great but with the benefit of hindsight we can say that that was a grossly failed experiment. But that was probably not yet fully evident at that time. Section 7 envisages the Minister making these decisions. So this is arcane.

On a daily basis we are blessed with strategies, sub-regional strategies, regional strategies, policies, plans, projections, estimates that still fulfil today this charter. Not one of these strategies, policies or plans ever gets it right. We had a 2005 metropolitan strategy that said 900,000 extra people had to be accommodated. Only a few years later—in fact, late last year—the State Government comes out and says, "No, immigration has gone up. It is now 1.4 million people." Immigration may well be going down again now from a decision of the Federal Government, so that number might change again. In fact, immigration will go up and down many, many times between now and 2030. So the idea that everything can be crystal balled has to be taken out of the planning system, and we need a more flexible system.

The other most important element, I think—and it flows again from this objective—is the idea that we must respect property rights in the planning system. In the early 1990s there was a movement to strengthen the environmental regulation of the forestry industry and the mining industry and I do not begrudge that. But there was also a countervailing debate that if you toughen up environmental regulation to that degree we will lose out on the concept of resource security. That debate between resource security, certainty for people who are wanting to invest, versus environmental regulation had to be had. We have not had that debate in the urban planning sense. I do not think there is enough recognition of the need to secure investment security for people who are willing to buy and invest in land in New South Wales.

The Hon. Melinda Pavey asked for other jurisdictions. I think a good example of that does occur in Queensland. It is a longstanding feature of the Queensland planning system. When they are down zoning, heritage listing or reducing the capacity of land to be developed, the Queensland planning system envisages that compensation will be payable to landholders who lose out. Effectively, they recognise that if you one day are allowed to build a shopping centre on your land and the next day you are only allowed to build convenience stores, part of your property has just been nationalised. In New South Wales this sort of thing happens regularly, with no compensation to the landowner. So there is a massive risk premium that has to be built into decision making and investment in New South Wales. Something has to be very profitable in order to go ahead with it in this State because of the huge risk factor we have to build in. Unfortunately there is not a culture amongst decision makers in the system, whether they be councils or others, that you respect property rights to this degree. That is an issue I think New South Wales needs to grapple with. So that in a big picture sense goes to the heart of what we are saying.

The Hon. MELINDA PAVEY: Could it be argued that the unemployment rate in New South Wales—one of the highest in the nation at 5.8 per cent—is a result of the strangling of private incentive and the private sector in New South Wales?

Mr GADIEL: Unquestionably, part of that is indeed the result of the state of the development and construction industry in New South Wales. I have to emphasise that in New South Wales there is a long-running problem that predates the global financial crisis. Things are bad everywhere because of the global financial crisis. I should acknowledge things are bad even in Queensland. They have had quite significant falls in development activity but they have come off a very high base—much higher than this State. Victoria has had some modest falls in construction activity, and it is also coming off a very high base. In New South Wales before the global financial crisis we thought we were at rock bottom. They were the lowest set of construction figures, approval figures, that we have had since World War II, yet they are plummeting even further in this global financial crisis.

The construction activity that is made possible by property development is the third largest source of employment in the Australia economy. It employs about 700,000 people directly. If you are looking at the economy-wide effects, for every $1 million spent in construction activity, it creates 27 jobs throughout the

broader economy. Investment has been flowing to Victoria and Queensland instead of New South Wales for many years now, and it has been flowing to other countries in the world, so much so that we are in the rather unique position of heading into a recession with an undersupply of housing. Normally when you go into a recession you anticipate having an oversupply of housing, the recession then mops up that oversupply and then once you run low again you start producing houses again, and that leads you into recovery. Here in New South Wales we have an undersupply of housing, which means that rents are continuing to skyrocket, even as people's jobs are at risk and their salaries frozen.

The Hon. MATTHEW MASON-COX: How would you address that, particularly in terms of new development land and the planning system itself? Is that really the heart of the problem, the delays in the planning system, and why has part 3A not fixed that?

Mr GADIEL: It would be remiss of me to say that the biggest problem right now is of course the access to finance. That is a problem that has emerged in the last six to 12 months, and it has not been a problem for the last four, six, seven or eight years. Access to finance will be the biggest problem in the next six to 12 months. But one thing we saw when finance started to be cut off during the global financial crisis, as it emerged last year in the credit crunch, New South Wales was hit hardest and first because the banks started pulling funding away from the jurisdiction that had the greatest degree of regulatory risk before anywhere else. When the credit squeeze eases, the money will flow back to those jurisdictions that have the lowest degree of regulatory risk first. Regulatory risk is very difficult for bankers, even equity financiers, capitalists, entrepreneurs, to properly scope. Unquestionably, the big problem is the planning system in the long term. There is no shortage of actual land in Sydney or in New South Wales. There is plenty of it. There is plenty of land that could be used for appropriate well-designed, high-density living in the inner and middle ring suburbs. There is plenty of land that could be used for suburban-style developments on the fringes of our cities. What prevents this land being used? First and foremost is the red tape and regulatory controls. If it was freed up we could have a lot more economic activity going on in New South Wales.

Our recipe, I have touched upon the overall philosophy of the legislation. In a practical sense, what does that mean? For starters, I would point out to you that our system combines the worst of the United Kingdom and the United States. The United Kingdom has a system where there is essentially no zoning, as we know it, and everything hangs on the development consent or planning permit. In the United Kingdom you can determine planning approvals based on their merits and whether or not it is exactly in line with a strategy or whatever is not that important because there is some degree of acceptance that strategies are not necessarily complete and perfect. In the United States the emphasis is on the zoning and the zoning is very firm and very rigid. The final approval of the planning permit is a formality. As long as it meets building standards, more often than not it just goes straight through as a formality.

We have managed to combine the rigidity of a US-style zoning system with the all-encompassing discretion of the UK planning permits and bring them together in a uniquely complex model—not just New South Wales, but most of Australia; Queensland less so. So that is one area that needs to be revisited. We would say a lot less rigidity around zoning. Is there a need for 36 zones in the standard instrument? In our urban centres should we have nine different zones? We think you could do it with seven or eight. Look at the city of Miami and how it has been worked out, and that has been praised by urban designers the world over. As to the planning permit, there should be a presumption in favour of a development consent being granted. Unless there are strong public interest reasons why it should not be, the starting point should be that we should be approving this development, except we will not in this case because there are public interest issues around building safety, or we will not in this case because it presents a bushfire hazard. Otherwise, unless there are strong public interest reasons why development should be refused, there should be a presumption in favour of granting development.

We must have proper, independent, quick, just and inexpensive merits review decisions. At the moment all the zoning decisions are completely beyond merits review. It is extremely problematic. If you look at the level of prescription in the zoning plans these days, even the most modern ones, it is enormous and often these very arbitrary rules have absolutely no basis in logical fact. To take a recent plan, the Liverpool local environment plan arbitrarily says you cannot have any retail premises in a neighbourhood centre of more than 700 square metres, from memory. Why 700? If someone comes along with a proposal for 800, why would that be not appropriate? There is no merits review from that rule. That was handed down from on high with no evidence or objective information to justify it. There is no ability to cater it to the particular situation. The best we have is SEPP [State environmental planning policy] 1. It is important that SEPP 1 be retained. SEPP 1 is rarely applied

properly by independent reviewers because the courts do not really understand how SEPP 1 can and should work, and we have endless litigation about whether SEPP 1 even applies in any given case.

Reverend the Hon. FRED NILE: On the point that construction is moving to others States, and not New South Wales, you put all the blame on the planning laws. Would there not be other factors, such as taxation, construction problems, union problems, wage levels? Have you done a survey of the companies you represent that specifically says that planning laws are the reason?

Mr GADIEL: We certainly talk to our companies all the time about this. If you just look at industrial relations in the construction industry, it is actually worse in Victoria than it is in New South Wales. If you were to look at taxes, unquestionably infrastructure charges have been a major disincentive to invest in New South Wales. They are a product of the planning system, so when I say the planning system I am including infrastructure charges. The other taxes and charges are relatively minor—certainly the differences between the States are relatively minor compared to the infrastructure charges and the holding costs. In relation to the holding costs, even in a successful development that works reasonably well and has been dealt with quickly, you can expect holding costs to account for about 15 per cent of the cost of the development. So out of the $30 billion build in a year across the State, that is about $4 billion.

The holding costs are the interest costs on the debt you have while you are waiting to get planning approval, the opportunity costs you have lost from your own money being tied up in the project. These are massive compared to difference in most taxes or other charges that you might be forced to pay. In the developer's mind the holding costs and the infrastructure charges dwarf anything else and dwarf any other relatively minor differences in charges from State to State. That is the feedback we get consistently from our members. One other thing to point out is that we have a massive undersupply in housing in New South Wales and in Sydney an undersupply of supermarkets. Both of them are products of the regulatory system. Particularly before the global financial crisis I could say this without a footnote, before the global financial crisis developers would have loved and jumped at the opportunity to develop new supermarkets in Sydney and new housing for Sydney and places like Newcastle too. They have been denied that opportunity because of regulatory controls.

Reverend the Hon. FRED NILE: You have already referred to recommendation one. My impression is that the Government has been trying to cut green tape. You recommend that ecologically sustainable development, which you say sits seventh on the list of object, should be at number two. Would that not increase further green objections to developments and increase green tape?

Mr GADIEL: In law, the order that they appear within the objectives is not normally important, unless there is a provision, as there is in the Fisheries Management Act, which says that some objectives take priority over other objectives. That does not currently exist in the Environmental Planning and Assessment Act. So at least in theory they are all balanced against each other. Changing the order slightly would not do it. The current structure does seem illogical. The current objectives have multiple and conflicting references to the environment. Clearly some pre-date the concept of ecologically sustainable development and some are clearly in the original text and ecologically sustainable development has been tacked on. I think the language can be simplified and rationalised. The over-repetition and reliance on different competing concepts can be simplified. We would never want to see a system of planning that ignored the principles of ecologically sustainable development. It has the support of the development industry. We do not argue for unsustainable development. Those principles are an important factor that need to be taken into account in development decision-making and they need not be a barrier to sensible, well-planned and environmentally sensitive development. We do not need to abandon environmental controls to do that. We just need rational, evidence-based controls rather than what we get at the moment, which are too often local councils pandering to people's political prejudices or other problems, which are quite at arm's length from legitimate environmental concerns.

Reverend the Hon. FRED NILE: Your recommendations seem to be the other side of the coin. You say that third parties should not have the right to seek a rehearing and reversal of a valid approval. On the one hand, you acknowledge it and, on the other, you do not allow third parties, which would be mainly in the environmental area. I am not criticising you; I am just pointing that out.

Mr GADIEL: I do not have a problem.

Reverend the Hon. FRED NILE: I am not being critical you.

Mr GADIEL: I am happy to comment because it is important to be clarified. If a development consent has been unlawfully issued we do not begrudge people who have standing from taking legal action to have that addressed in the courts. From time to time that can be done in relation to environmental matters. A recent case in point was challenged against the Minister for Planning against Stockland for the Sandon Point development. That was not a merits appeal. It was a challenge that the Minister had acted unlawfully. What deeply concerns us is when there are merits reviews initiated by third parties of planning decisions. So in this current round of planning reforms, one element that we did not agree with was this proposal that if development standards are to be departed from, I think from memory, by more than 25 per cent in an area that an objector, even once the council or a regional panel issues a legally valid development consent that complies with all of the law, will be able to have a third party review about the development consent.

That significantly reduces the bankability of a development approval. It will significantly increase the time and uncertainty involved in getting development approvals. The counter argument that we often hear is that it is a 25 per cent departure. For instance, it could that be height requirements are being exceeded by 25 per cent or floor space ratio being exceeded by 25 per cent. Surely, if you are departing that much that justifies this new additional overly. Our response is that it does not because height requirements, floor space ratio is in 95 per cent of zoning plans in our areas for growth was set 10, 15, 20 or 25 years ago and are grossly inappropriate.

There are many examples where those things can and are departed on for quite good reasons. For instance, a council might say to a developer when they put in their application to council "We would like to see larger apartments there. We are happy with the number of apartments but we do not think they are generous enough. We want to see more space." The developer says, "Look, I am willing to accommodate that but if I give you more space and I stick with those floor space ratios we will actually shrink the number of apartments." The council says "That's fine. We will depart from the development standard because we think it is in our community's interest." Now the council then issues a consent on that basis and it could trigger this third party review. Third party reviews are initiated by objectors and are inappropriate and unnecessary and just add another layer to the planning system. For urban development it is a new thing. We are yet to see it implemented but it is part of the planning reforms that are pending and passed through Parliament last year and due to be implemented this year.

The Hon. MICHAEL VEITCH: Page 66 of the submission of the Urban Taskforce refers to infrastructure charges. I draw your attention to comments on section 94 contributions and the timing of the payment of those contributions. You say that the "funding distortion can be removed if the payment charges that are payable only fall due when the developer actually receives the pay for the developed land from the end user." Will you talk about the timing of the infrastructure charges, and particularly your views on section 94 contributions?

Mr GADIEL: Certainly, and I congratulate you for getting to page 66, I appreciate that. It is a big issue. We did see some very positive moves by the State Government in December last year to deal with what has been a long running and vexed issue, infrastructure charges. We appreciated that the Government abolished the very problematic development servicing plan charge on water utilities and it lowered and restructured the State infrastructure charge. One of the things the State Government did in relation to the State infrastructure charge was change the timing so instead of the payment being due basically at the beginning of the development process, which can take a number of years, the developer will only now pay the infrastructure levy when they actually get cash from an end user and buyer of a finished serviced lot.

That was a very necessary change because developers simply did not have the capital or collateral to get finance at the beginning of a process to pay the government charges. The way the developer finances these things is they obviously put in place a certain amount of equity and the balance is debt finance. The debt finance is normally secured against the land which is going to be developed. It is hard enough to get enough money out of that debt finance arrangement just to pay for the construction costs of what you are trying to build. To try to pay also for government charges which are, and have been, massive is very problematic. So the Government was right to change the timing for its State infrastructure charge. What was not done was the timing was not changed for the section 94 charge, now that can be even more than the State infrastructure charge.

I think from memory the State infrastructure charge is around $17,000 a lot, and assuming 15 lots per hectare in the growth centres area of Sydney, and a section 94 charge could well be $50,000 or $60,000 a lot. The Government said it would like to get it down to $20,000. It is a process to do that but the current figures we have to work with are $50,000 or $60,000 per lot. So that is still an issue and we would like to see the timing brought in line with the new State infrastructure payment.

The Hon. CHRISTINE ROBERTSON: In light of what we have heard from many persons and from those who have made submissions in relation to public involvement and participation, it is interesting that you are suggesting removing its reference from the objects of the Act. Will you talk to the committee about why?

Mr GADIEL: We are extremely supportive of public involvement and participation in decisions about making plans for the future of our urban areas, without question. The objectives of the Act were written in the 1970s and at the time it was very novel to have the public directly involved in government decision making which was quite reasonable. At the time they said in 1979 "We are going to have plans and we are going to consult the community, give them a chance to comment on these plans before we gazette them." So quite rightly at that time they said an objective of the Act was to increase public participation. I think in this day and age we take that for granted; that the Government before finalising detailed statutory plans, not just urban planning, in natural resource management and land use, National Parks, wherever you go there will be some consultation process in advance. It is not as novel as it once was and if you look at most modern natural resources legislation, it is not regarded as so novel that you need to spell out in the objectives that it is an objective to consult the public.

The other thing is it talks about increasing public participation. Certainly what we do now is dramatically ahead of what was the norm in the 1970s when this Act was passed through Parliament. But, of course, there cannot be and there should not be a view that we will on an ever-continuing basis increase public participation. To be honest, last year the Government took steps to reduce public participation in the decision making process—a sensible decision I should add. The Government said if I am a Joe Blow and I want to extend the back of my house or even build a new house on an empty block of land, if I comply with the codes there should not be a need for me to go in, in advance, and have a formal consultation process with my neighbours, consider their comments and then make a decision to build. I should be able to build it and just notify my neighbours that I am building in accordance with the rules.

That actually led, in one respect, to a technical reduction in consultation, but that consultation was counter productive and meaningless because in the main people consulted but they still did what they were going to do anyhow, and they were entitled to do that. So public consultation is an important part of the legislative framework. We would like to see it retained and as an industry we are strongly supportive of it because we are part of the public but I do not think it needs to be phrased as one of the core principles of the legislation because all legislation should be founded on that premise.

The Hon. CHRISTINE ROBERTSON: In light of that, and considering the enormous amount of consultation in the past couple of years in relation to the current reform process, there was an adverse public reaction last year. Allegedly the public was very cross about the reform process despite the large amount of consultation.

Mr GADIEL: What is your point?

The Hon. CHRISTINE ROBERTSON: My point is that the perception from the public was that it had not been consulted. They said angrily they had not been consulted.

Mr GADIEL: That is a matter for the Government to explain to the community whether its consultation was adequate enough. Can I say that the Urban Taskforce was not entirely happy with what passed through in the legislation. I do not think we could make the legitimate criticism that we were not consulted, I think we were. I do not think others can make the criticism that they were not consulted. Often I observe in these debates when people say there has not been sufficient consultation what they really mean is that they do not agree with the decision that was taken. I think there was an incredible amount of consultation in those reforms. We take issue with some of what was passed through Parliament and disagree with it, and I know others take issue, but I think it is a cheap shot to just say lack of consultation when really the issue is you did not agree.

The Hon. MATTHEW MASON-COX: In relation to backdoor State infrastructure charges, could you provide the Committee with some details of examples of that?

Mr GADIEL: I do in the footnote.

The Hon. MATTHEW MASON-COX: Just some specific examples about how much?

Mr GADIEL: We do not know yet, and that is part of our criticism of these LEP provisions. These LEP provisions, for the benefit of the Committee, what we have seen since October 2007 is creeping provisions being inserted in the local environment plans where, effectively, something like a State infrastructure charge in a growth centre can be levied, but instead of using the proper statutory provisions under the Environmental Planning and Assessment Act they are being imposed through new kinds of clauses in LEPs. These are not transparent; the industry as a whole cannot see what is being charged. For individual development applicants there is a great deal of uncertainty what they are up for.

Effectively, this is sterilising the development potential of large parts of regional New South Wales and the reason this is happening is that no-one can predict the size of these charges. At the very least, in the growth centres of western Sydney you know what the charge is; you might want to reach a voluntary planning agreement and do it in a different way but you know that if you cannot reach a voluntary planning agreement at the end of the day that is what you are up for; you can make a decision to invest or not invest. In some of these areas now in regional New South Wales these clauses, particularly as they are becoming more well-known in the industry, people are saying, "I cannot predict that at all. I cannot even easily access what these charges have been in recent times, so I do not know what I can do to invest", and the people who are stuck with it at the moment are the people who already have their interest in the land, already took a position on it and started owning land with a view to developing it many years before these clauses started appearing.

But you would really have to think twice before a new person took a position on a piece of regional land to take up a land release development opportunity knowing that you will get this clause and knowing that you will have all this uncertainty about what your charges burden would be. So there is a lack of information about what these charges are. I have to be frank: we do not know what they are.

CHAIR: There may be other questions that the Committee would like to have asked you have but because of the time frame we have been unable to. If there are, could you take them and respond to us within 21 days?

Mr GADIEL: I would be more than happy to.

CHAIR: Thank you very much for your time.

(The witness withdrew)

EDWARD ARTHUR CASSIDY, Mayor, Ashfield Council, Liverpool Road, Ashfield, sworn and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate it if a response to those questions could be sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Before the Committee commences with questions, do you wish to make an opening statement?

Mr CASSIDY: First and foremost, I apologise but I am deaf in one ear so if I do not hear questions I may have to ask you to repeat them. I have been in local government just about all of my working life, starting back in 1967 as a health and building surveyor in a council that no longer exists—Blaxland Shire Council. Since 1968 I worked at Leichhardt Municipal Council first as a health and building surveyor, and retired there as Manager, Planning and Building, in 1998. I had a varied background prior to local government in the building industry as a carpenter and joiner and I think I have a very good understanding of both the building industry and also local government. I have seen some big changes in the time that I have been involved in councils in the inner city area.

CHAIR: You have indicated in your submission that you have concerns for centralised decision-making bodies because local government would have a lesser role, and then you mention that you would support a nationally recognised system for dealing with development applications. Could you explain how you think a national system could ensure that the local character would be retained?

Mr CASSIDY: I see a national system as similar to the building code of Australia, which has various elements identifying the peculiarities of an area. If there was a national system it should have provisions whereby the locality and the identity of the locality are protected in that system. I believe a national system would bring about uniformity in the planning and the building regulations.

CHAIR: Your submission mentions that you would support a nationally recognised system for dealing with development applications. Could you please expand on this recommendation? How do you think a national system would work and how would it interact with the different levels of government?

Mr CASSIDY: It would have to work to serve the community, that is the first thing, and how that is achieved would, I suppose, evolve from the way in which a national system was put in place. I know it is a very difficult question to answer in only a short number of words, but a national system would bring about uniformity and it would bring about a certainty for an area.

The Hon. MELINDA PAVEY: You would have heard the evidence from the previous witness from the Urban Taskforce and I sense a growing pressure in Sydney to enable growth to occur. I think he quoted a figure that 60 to 70 per cent of future growth is going to happen in areas, I imagine, such as Ashfield where there is already development. Can you share with me your concerns about your local community and keeping the character of Ashfield strong? I sense from your submission that you feel as a council that local concerns are not being listened to. Can you tell us some of those local concerns that you feel need to be heard better by government?

Mr CASSIDY: Our concerns relate around the age of the municipality. We are 138 years old this year and we have a high degree of heritage buildings, and when I say heritage buildings I do not mean buildings that were built by architects of note or anything like that; I mean buildings that reflect the early development of the Sydney inner-city area.

The Hon. MELINDA PAVEY: Particularly Federation type buildings?

Mr CASSIDY: Particularly the Federation buildings, particularly the interwar buildings, the bungalows. We feel that those buildings, that development, could be threatened by development that is not well regulated by the local council. We have areas in Ashfield, Summer Hill and Croydon that are equally as important to council as the heritage conservation area of Haberfield, which is well documented and well noted. Our community has a desire, and that is reflected very, very regularly in development applications that are lodged for two-storey developments let's say. Our community has a concern that that sort of development is going to take away the streetscapes and the character of the heritage areas that we have.

The Hon. MELINDA PAVEY: Do you believe that the current reforms are biased towards developers?

Mr CASSIDY: There is no doubt that reforms are necessary to account for long delays in a lot of instances in dealing with minor applications, so we do support reforms and we are not against reforms. But if they are reforms as we have in the complying development code introduced I think on 27 February, which enables a two-storey building that complies with all of the rules set down in the code to suddenly pop up like a mushroom beside neighbours who have no knowledge of that occurring until they see the bricks, timber and bulldozers coming in or whatever, that is of concern to us. I will cite a recent instance at 1 Yeo Avenue, Ashfield, which is a very beautiful street of single-storey houses—one or two two-storeys that are remote. An application was submitted for a second storey on a house, which was rejected by our council officers. The applicant went to the Land and Environment Court and the Land and Environment Court did not uphold the appeal, it dismissed the appeal. That decision recognised the character of the street and the impact that this particular building would have had on immediate neighbours. We have great concern for our heritage. I have said before I would stand in front of a bulldozer if they tried to knock down any of the beautiful homes that we have in Haberfield, Ashfield, Croydon and Summer Hill.

Reverend the Hon. FRED NILE: In your submission you have made the point that the principle that should guide any new planning legislation should be a fair and reasonable balance between the interest of the community and that of developers. You go on to say that the balance at present is certainly biased towards developers. Could you give us some reason for that belief?

Mr CASSIDY: Well, it appears that it is in favour of developers because there is an interpretation of the rules that are laid down in local environment plans [LEPs] and development control plans [DCPS] that if a developer wants to do a two-storey they may feel they can do the second storey addition because of those rules and, while we do set the rules for the LEP and the DCP, there are many instances where the LEPs that we would like are not agreed to by the planning department. That is the way in which we feel that the rules do favour developers at times. When they get out of the hands of the council, the elected people, and go into the bureaucratic sphere there is a possibility—and there has been a tendency—for the rules to favour developers, yes.

Reverend the Hon. FRED NILE: Are you suggesting that the panels would favour developers?

Mr CASSIDY: The panels that you are referring to, the regional and Planning Assessment Commission panels, could favour developers if the appointment of the independent people on those is not in consultation with councils, and again it could also be the reverse, it could favour the heritage or preservationist people too, so there has to be a balance.

The Hon. MICHAEL VEITCH: You make a very interesting comment in the submission regarding spot rezoning when you say that removal of the spot rezoning regime would free up State Government resources to focus on more significant plan-making proposals.

Mr CASSIDY: Yes.

The Hon. MICHAEL VEITCH: Can you talk through what the submission actually means about the removal of the spot rezoning regime?

Mr CASSIDY: If you remove that and encompass in LEPs a provision whereby councils can consider spot rezonings without having to go through the cumbersome task of amending an LEP and going to the State Government, going to the Department of Planning and getting the department to look at it. The council is the best organisation to determine whether or not a spot rezoning is necessary. The council will take into consideration whether it is reasonable and necessary, or whether it is unreasonable or unnecessary, similar to SEPP 1 provisions, so I believe that we could determine that much better than the current procedure. The current procedure is bureaucratic, it is red tape, and I think it is taking a lot away from the local elected people.

The Hon. CHRISTINE ROBERTSON: How would you stop spot rezoning from becoming the new planning tool? Someone could put in a spot rezoning this week and another bloke the next week on a different block?

Mr CASSIDY: The council would evaluate each one of those applications on the overall objectives of the LEP for the area, for the council, and in evaluating that if it was obvious that spot rezonings were going to change the nature of the area then obviously the council—that I represent at this time anyway—would not be proceeding and approving such a spot rezoning. If a spot rezoning for, say, automotive repairs in a residential area were left to the council, it would almost certainly result in, "No, we won't rezone it". If it goes to the State Government there may be reasons put to people in the Department of Planning as to why it should be there and perhaps it would take out of our control the interests of the community.

The Hon. MICHAEL VEITCH: You are the first witness who actually has hands-on dealings with section 94 contributions. We have heard from peak bodies representing different areas of industry. How does Ashfield Municipal Council deal with section 94 contributions and what would be the period of time that you would hold the money in reserve before expenditure?

Mr CASSIDY: First and foremost, we do not have a lot of income from section 94 contributions. Our area is essentially developed, if not overdeveloped, as a result of residential flat buildings that were constructed in the 1960s and 1970s, so we do not get a lot. If we do have a section 94 contribution coming to us it is to be spent on community services or roads or parks in the area where it is collected. We have a section 94 plan that outlines that and we have in the past forsaken monetary contribution in lieu of a tangible asset, such as parkland in lieu of section 94. I would point to a development in Haberfield, the old Army land there, where I think four blocks of land were given to the council for parkland in lieu of section 94, together with an embellished estate, that is, all roads, drainage and landscaping done.

The Hon. MICHAEL VEITCH: You talk about the possibility of a mandatory pre-DA lodgement process and you also say that the realities are that a significant proportion of DAs are poorly prepared. Do you think we could move towards an electronic process where you can actually have the DAs on line?

Mr CASSIDY: The electronic process is great provided everybody understands it. If you are going to ask your mum and dad to put in an electronic DA to paint their house in Haberfield, they would not know where to start, so electronic lodgement is great for those who understand it, for the professionals. As for getting the detail right at that point of time, I do not know whether that would actually happen because there are a lot of instances where even the most able professionals submit development applications that are deficient in basic detail. The pre-lodgement process we have outlined in our submission I think is great. We are doing that at present at Ashfield council. In the past we have had—and I know the Committee would be well aware—a very poor record on time factors for dealing with development applications. That has now, as a result of a major reform, been addressed and future figures for Ashfield council will be very impressive. That has resulted from the pre-lodgement process that we have. Our officers sit down with the applicant, go through the application and tick off what is okay and what is not, provided they say, "You would be wise if you would go away and address that issue. If you wish to insist on lodging the application, you may do so—we have no objection to that—but the probability is that it will come up against a hurdle of insufficient information and be redirected within 7 or 14 or 21 days", whatever the legislation is. It is a good proposal.

The Hon. MICHAEL VEITCH: Does that process require additional resources from within council or have you reallocated resources to the front end?

Mr CASSIDY: Our resources are allocated to it from existing staff who are being trained and are trained to be on call. We have a one-stop counter with a town planner there to address these issues on the spot. We also have heritage advisers—two heritage architects, Helen Wilson and Robert Moore—who give pre-lodgement advice on heritage issues, and that is very valuable.

The Hon. CHRISTINE ROBERTSON: Would that save time within your organisation in the long term?

Mr CASSIDY: Yes, definitely, as you will see from the figures we produce with our determination times.

The Hon. CHRISTINE ROBERTSON: This issue has come up elsewhere. People are saying that they prefer to have all their information in their local environment plan and not in several different plans. If local environment plans are the only planning tool we have across the State, where do the regional issues fit in and what about the neighbouring local government body?

Mr CASSIDY: Regional issues at present are dealt with simply by consultation with the neighbouring council. If you have a major development, as we are likely to have in Summer Hill on the boundary with Marrickville council, there is consultation. We are having consultations with the Marrickville people even now in relation to that proposal. The same applies for them. That is the regionalism. Ashfield council area is small; it is eight square kilometres. We obviously do not have dealings with the green areas or outer areas of Sydney.

The Hon. CHRISTINE ROBERTSON: How does that work with strategy? There has been a lot of information about the importance of strategy planning, particularly in larger areas. Most of us are from country New South Wales. If one local government body goes in a diverse direction it can have incredibly adverse effects on the neighbouring local government bodies if there is not an overall strategy.

Mr CASSIDY: You know what is going on when you are dealing with the inner city area of Sydney—the established areas. There is not a lot that can occur in Ashfield, Marrickville, Leichhardt, Canada Bay, Canterbury or Burwood that we would not know about and we would be involved in the strategies that would be pursued in those arenas.

The Hon. CHRISTINE ROBERTSON: So have a chat is powerful enough for that process?

Mr CASSIDY: Sorry?

The Hon. CHRISTINE ROBERTSON: A good relationship between you is powerful enough for that process, is it?

Mr CASSIDY: Yes, we have the Regional Organisation of Councils, and that works.

The Hon. CHRISTINE ROBERTSON: What sort of LEPs are knocked back at State level? You gave an example of things being knocked back at State level.

Mr CASSIDY: We have not had one knocked back, except a printing place on the boundary of Marrickville and Ashfield, which was taken out of our hands. We have not had any knocked back by the State Government itself. There have been several instances where it might have happened, but it did not. We have not had a problem.

The Hon. CHRISTINE ROBERTSON: Is that because you put up solid, sound cases?

Mr CASSIDY: It is because we have a very workable LEP that developers understand and our community understands. That is the reason we are able to address the issues that come before us and we are able to keep on top of the developments that are proposed and currently in progress.

CHAIR: The Committee might like to put other questions to you. If we do, would you be able to get the responses back within the 21 days mentioned earlier?

Mr CASSIDY: Yes, definitely.

CHAIR: Thank you very much for coming in this morning and for your evidence.

(Luncheon adjournment)

KENNETH BRUCE MORRISON, New South Wales Executive Director, Property Council of Australia, 11 Barrack Street, Sydney 2000, and

ANGUS NARDI, New South Wales Deputy Executive Director, Property Council of Australia, 11 Barrack Street, Sydney 2000, affirmed and examined:

CHAIR: Thank you for being here this afternoon. Before we begin, if at any stage you consider that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate the response to those questions being sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Would either or both of you like to make a brief opening statement?

Mr MORRISON: I will make a brief opening statement. Thank you very much for the opportunity to attend the hearing today. The Property Council of Australia has a very broad membership base. It operates right across the country and across all property asset classes, which include office, industrial, retail, tourism and residential markets. It also involves all stages of the industry—finance, construction, development, asset ownership, management and the professional services. Membership is quite broad.

The Property Council has been a leading voice in favour of planning reform and strong strategic planning of our major cities for many years. To give a few examples of that, we joined with business, environment, and union and social services groups to convince the Carr Government to develop a metro strategy for Sydney. We have been a leading member of the Development Assessment Forum, which comprises Commonwealth, State and Territory governments, local government, property groups and professional groups, to come up with leading practice principles for development assessment reform. In New South Wales we have been a leading member of the Coalition for Planning Reform, which is a 15-member alliance representing key customers of the State's planning system. This group was formed to encourage last year's reforms to be as bold as possible.

Over the last two years in New South Wales the main area of focus and debate has been development assessment reform when it comes to planning. There are quite good reasons for this. New South Wales is a long way behind other States. Our members, who operate across Australia, all highlight the New South Wales system as being the worst to deal with. It is a system that has become too slow, too complex and too frustrating, and it certainly lacks certainty. The Property Council's focus has been to advocate for a more simple, efficient and accountable system. We certainly do not advocate for a system with no rules, no environmental assessment or no community consultation, but we believe it is impossible to defend the delays, inefficiencies and uncertainties that characterise our current New South Wales system.

The Property Council's submission argues for action on three levels: firstly, priority should be given to implementation of the current reforms passed by Parliament last year; secondly, additional specific reforms should be introduced to target areas not addressed by last year's package. The global economic environment makes these issues a priority. We have also put these issues forward in the context of the New South Wales Jobs Summit. Thirdly, a fuller review of the State's planning system should be undertaken following the implementation of these other reforms. That needs to be far wider than just a review of the Environmental Planning and Assessment Act.

So, to go to the current planning reforms, the Property Council has been a strong supporter of the Government's recent reforms, and we believe the Government is making pretty good progress to implement those. I am a member of the Minister's planning reform implementation advisory committee, and we have members and staff who are meeting with the department on a weekly basis on different aspects of implementing that package. The particular highlights for us of that reform package are the Planning Assessment Commission, the joint regional planning panels, the complying code regime, the time limits for State agency decisions and the rationalisation of plan-making processes.

More needs to be done. A number of key areas are not addressed by the 2008 reforms. The global financial crisis makes pursuing these issues an immediate priority for government, we believe. We think a number of reforms can be embarked on right away. Firstly, a major reform to State agency approvals such as in the Roads and Traffic Authority, Department of Water and Energy, the Department of Education and Training

and Sydney Water. These need to become far more efficient and also far more integrated to reduce double handling. Others include allowing the private sector to initiate rezoning or otherwise allowing an appeal mechanism for rezonings; further reforms to better coordinate infrastructure servicing to support growth and limit cost shifting by moving these costs to individual projects; strengthening the role of the proposed new Department of Planning project managers—we have advocated giving them more power by putting them in the Premier's Department and expanding their responsibilities to include State agency referrals and infrastructure coordination; undertaking audits of existing undetermined applications within State Government, both within the Department of Planning and also referral agencies, to speed up those old applications that are in the system; and drive a review of development controls, especially digital channel plans, which add to the cost of development unnecessarily. As I said, these are all issues we put forward to the Premier's job summit last month.

Beyond these immediate priorities we support a more fundamental review of planning in New South Wales. We think it would be a mistake just to limit that review to a review of the Environment Planning and Assessment Act itself. A number of other issues, processes and structures need to be considered. Those include infrastructure planning all the way from the major changes we see on major transport projects to how we better deliver local infrastructure to service growth; the structure of the State Government and the ability of the State Government to undertake integrated land use and transport planning; the structure of local government and how we can create larger and more powerful councils that are better able to deliver their planning functions; other legislation that impacts planning issues and how these might be integrated better, and then cultural issues associated with facilitating urban growth and change. These are all quite big issues, and any review will take some time. That is why we are arguing that the immediate priority should be on getting the Government's existing package implemented and some additional targeted reforms to speed up some gaps in that original package. That is the opening statement. We are very happy to take questions.

CHAIR: You believe the latest reforms should be given time to be implemented effectively and reviewed. How long do you think is required before the level of success of the reforms can be measured and reviewed?

Mr MORRISON: A lot of these reforms are yet to commence. Some of the codes commenced last month. The regional planning panels will not commence until around July. The Planning Assessment Commission commenced in November, December. So some of these things will need to be given at least 12 months, but we believe there can be some additional reforms implemented as well as these, but it is probably beyond the capacity of the department and the Government to run a full-scale review of planning as well as making sure we get these pretty spiffy reforms right as well. So, let us get these reforms right. That will take at least another year beyond the middle of this year, and then let us look at a fuller scale review beyond that.

CHAIR: You recommend that the Department of Planning's local development performing monitoring report be maintained. Why are you in favour of that report?

Mr MORRISON: I think it sheds light on the performance of the system, in particular, when it comes to development assessment in any case. This report and the major project monitor are excellent reports that detail exactly what is happening for different categories of development, at different levels, and also council-by-council. They also shine the spotlight back at the performance of the Department of Planning in managing the part 3A projects. It is important for us to understand how successful the system is and how efficient it has been in managing projects. However, a gap exists as these reports miss the State agencies. Nothing out there monitors the performance of the different State agencies and how inefficient or efficient they are, which is a real gap. One of the things we have recommended is that there be a complementary report modelled on the local development monitor, or the major projects manager, that looks at those State agencies and establishes how efficient they are.

The Hon. MELINDA PAVEY: Does any other State jurisdiction monitor its agencies across Australia?

Mr MORRISON: Yes. I know that South Australia has a quarterly performance of its State agencies, which was tabled in Parliament. In 2007 the then head of the Department of Planning in New South Wales came over and talked about the panels that they have there. She was talking about this as being something that was quite powerful. You measure something, you identify a problem and it is then fixed. She related an incident in which there were particular problems in a particular agency. It took two quarters of negative reporting for the Premier to ensure that there was change in the agency. The problem was fixed because people identified the problem. At the moment, if the New South Wales Premier asked for a report on how efficient or otherwise the

different New South Wales State agencies were on assessing projects, no-one would be able to tell him, which is a problem in itself.

The Hon. MELINDA PAVEY: Could you expand in any detail on the local environmental plans and the development control plans? What sort of information should be available as part of that process?

Mr MORRISON: We established that there is a gap in the State agencies. How fast are the Department of Environment and Conservation, Sydney Water, or the Roads and Traffic Authority, et cetera? How fast are they and how efficient are they in managing their projects? How many projects exceed two, three, four or five months of processing times? That information is not available.

The Hon. MELINDA PAVEY: From your evidence so far it is obvious that you are pleased that the Government has started to address some fundamental concerns.

Mr MORRISON: Yes.

The Hon. MELINDA PAVEY: But you believe that there is a long way to go?

Mr MORRISON: Yes.

The Hon. MELINDA PAVEY: Do you think there should be an overall rewriting of the Act?

Mr MORRISON: A number of issues in the Act warrant review. However, look at the problems in New South Wales. We would say that the Environmental Planning and Assessment Act was not the worst problem in the efficiency of our planning system, in particular, if you regard planning as being more than just development assessment. As I mentioned in my opening comments, in the area of infrastructure planning and, in particular, transport planning in Sydney, over the past decade we have had lots of changes in direction, which has had major implications for the way in which Sydney grows.

It is unsustainable not to be able to have a much better planning process to identify the transport needs for Sydney and then commit to those projects, get them on the ground and do the planning around that. That is a major need. Another issue relates to the fact that the Environmental Planning and Assessment Act is only one piece of legislation that deals with development projects. Over time a number of standalone pieces of legislation have impacted on development. Quite often there is not a central point of assessment, which is a major issue and a major cause of inefficiencies.

The Hon. MATTHEW MASON-COX: Was it a matter of concern to you that the Growth Centres Commission was amalgamated with the Department of Planning when the Growth Centres Commission was a stronger advocate of those types of infrastructure links, in particular, in north-west and south-west Sydney where there has been a government rollback?

Mr MORRISON: A number of aspects relate to the Growth Centres Commission. We were big supporters of the Growth Centres Commission when it was established. It is fair to say that the Growth Centres Commission did not meet the targets that it set out to achieve, that is, the provision of lots. In 2009 we are supposed to be building houses in those growth centres, but obviously that is not the case. We remain concerned about the Government's ability to be able to bring both infrastructure and land-use planning issues together. The logic for or the reason we were given from the Government's perspective for bringing that agency into the Department of Planning was to enable the Department of Planning to take that role and a restructure has occurred in the Department of Planning.

We are not experts on the way in which the Government organisers itself, and we are happy to stand back and give this an opportunity to work, but clearly it has not worked well for a long time. We are suspicious about whether this will be an effective way of bringing this together. Governments in other States, for example, the Bligh Government, has a Minister who is in charge of planning infrastructure and who performs the functions of the coordinator general. The Minister and that agency have to pull a lot of levers in order to get major projects and planning done. For major industrial land, residential land and commercial centre projects that Minister organises for the infrastructure and land use to go hand in hand. We do not see that sort of unity of approach in New South Wales.

The Hon. MATTHEW MASON-COX: We have some reform of the levies for the growth centres?

Mr MORRISON: Yes.

The Hon. MATTHEW MASON-COX: In your view has enough regard been given to performance? What sorts of impediments remain in the system for that land to be developed?

Mr MORRISON: Those are welcome decisions from the Government and they are decisions that we strongly welcome. However, we do not believe it has gone far enough. When it comes to development levies, New South Wales was lagging in the pack. The sorts of levies that projects were expected to carry as part of the imbedded costs were far and away in excess of what we saw in any other State. The Government's decision has brought us closer to the pack but we are not yet up with the pack. For example, in Victoria there are levies of the order of $9,000 or $10,000 a dwelling, and ours are still much greater than those.

We believe that in quantum further reform must be done. We have something in the New South Wales environment called a voluntary planning agreement, which was introduced as a flexibility measure to enable the council or State Government, by agreement with the proponent, to deliver infrastructure in a more flexible way. We support that objective. When proponents are in a rezoning situation and they are outside an area such as the growth centres where a designated levy applies, there are negotiations essentially over a tax on the project.

Not only do you have the economic impost of that levy attaching to the project; you also have the uncertainty of that process. It adds a lot of time, you do not know what are the numbers at the start, and those numbers should be put into the feasibility mechanism at the commencement of that process. There should be further reform of that flexibility mechanism to ensure a more sensible approach in delivering or putting in place the necessary infrastructure. It should not mean taxation by stealth.

The Hon. MATTHEW MASON-COX: Do you think section 94 contributions should be the venue from which that certainty is delivered to industry so far as development is concerned?

Mr MORRISON: You have two levels: the levies by local government and the State Government levies. Over recent years we have seen both go up quite considerably. Referring to section 94 contributions, I am sure you are aware that the Government has a $20,000 cap on each dwelling. At the moment the Government is reviewing between 90 and 100 applications for increases to that cap in specific areas. We understand that some of those increases are great—up to $60,000 as opposed to $20,000. We believe it is important to keep these back down towards that $20,000 level.

When it comes to State government taxes that is where you quite often get thrown into the voluntary planning agreements. There is a lot of uncertainty in those voluntary planning agreements as well as the economic impost. One of the things we argued to the Government's review before Christmas was that we replace this ramshackle system with a flat percentage levy system so that there is much more certainty around what you are being charged and you can have a broader discussion around what level of taxation effectively is being applied to new development to fund infrastructure at a local and regional level.

The Government did not go forward with that approach but that would still be, particularly for this Committee when it is considering more fundamental reforms to the planning system, we would say that is still something that should be considered. It would be a far simpler approach to what the tax rate on local projects are effectively, with that income going in to fund infrastructure.

The Hon. MICHAEL VEITCH: Can I just follow on from that? Earlier this morning we heard evidence that it was not just the levies themselves or the section 94 contributions but that the timing of the payment was also an issue?

Mr MORRISON: Yes, correct.

The Hon. MICHAEL VEITCH: Where they are required upfront. Do you agree that they should be at detail end as opposed to upfront?

Mr MORRISON: Yes, I strongly agree, and we saw the Government move that way with its own State levies but not with the local levies, so it is a real cash flow implication for a project. When you are doing a project, the income comes at the end of that project, when you sell the houses or you lease the space, depending on what it is that you are doing, and all these costs are upfront.

The Hon. MATTHEW MASON-COX: So that is a fairly serious affordability issue?

Mr MORRISON: Yes.

The Hon. MATTHEW MASON-COX: Because the holding costs have increased over the time of the project?

Mr MORRISON: Absolutely, and that is a very important point that we would encourage the Committee to be considering. When you have these discussions around planning, 95 per cent of the discussion tends to be about process rather than outcome. One of the big roles of the planning system is to facilitate and manage urban growth. There are lots of challenges and competing interests there and some of the things the system needs to be measured on is how good a job is it doing in facilitating and managing urban growth.

Reverend the Hon. FRED NILE: You mentioned the Minister's advisory committee and obviously you are on that, and that is good. Then you said that you meet weekly. Is that a subcommittee?

Mr MORRISON: There are a number of forms. For example, there is a commercial compliant code being developed at the moment, which is a code to apply to minor matters in relation to commercial developments. The department has set up a working group and an expert panel, which involves some of our members as well as local government and others, as to the workings of that code. Then there are a number of other groups meeting on different issues. For example, Angus is our representative on a working group that has been set up in terms of setting up some key performance indicators to judge the performance of these reviews. So that is work that is ongoing as well. In addition to the monthly meetings of the implementation advisory committee, there tends to be a lot of other work going on at the moment.

Reverend the Hon. FRED NILE: Obviously you are very happy with the implementation committee?

Mr MORRISON: Yes, I think it is working well and certainly when the legislation was going through Parliament we thought it was a very worthwhile initiative. These are significant reforms so you need to have stakeholders in the room helping to implement them. I think we have seen that with a number of reforms, particularly the housing code. That was a housing code that was not going to work in its first draft and there was a lot of good work done from a lot of people around that table and we have come up with a much better code.

Reverend the Hon. FRED NILE: It is good to have the stakeholders involved in the planning. But there are unhappy events and you mentioned one in your submission on page 6 where one of your members in the summary you presented has been required to spend $1 million on a development application preparation for report studies for a modest sized housing project so that all relevant controls have been met. There must be some need for reform to prevent that happening. It is nothing to do with the levy; this is an overhead cost.

Mr MORRISON: Correct. This is why we believe the reform of those State agency referrals and decisions needs to go further. There is nothing within the current system which gives any discipline to that decision making. Some of these agencies do not have a published policy base from which they make these decisions. We have members that are sitting between two warring government departments who have a different view as to what the waterway cum drain constitutes and which piece of legislation it should fall under, both asking for different consultant reports, et cetera, so you have a proponent virtually having to create policy and mediate between different government agencies because they have lodged a development application.

The Hon. CHRISTINE ROBERTSON: That is the Sydney Water-Department of Environment and Conservation argument?

Mr MORRISON: Yes.

Mr NARDI: In a particular case it is a Sydney Water-Department of Water and Energy issue.

Reverend the Hon. FRED NILE: You mentioned in your submission that you are involved in a whole lot of State agencies—the Roads and Traffic Authority, Sydney Water, EnergyAustralia and Rail Corporation. In the same way as those stakeholders are meeting, it would be appear that there is necessity for a State Government coordination committee to work with that committee is well. Do you feel that would be a step forward?

Mr MORRISON: It would be a very useful first step. We also say that there needs to be some sort for structural integration of these decisions, for example, around natural resources. Why do we have numerous different natural resources referrals? Why can they not be one natural resource concurrence required from the State Government? We are living with a system which has really grown up from a guilt perspective—John Mant talks about this a lot—that you have single agencies with a single piece of legislation taking a single issue view towards an issue.

That is bad enough when it comes to policy making but when it comes to someone who is seeking assessment for their project, then what you have is a lot of single-issue assessments happening in a single agencies without an integrated assessment and without a focus on customer service and efficiency. Okay, make a decision on whether this is a project which should go forward or not but do it with some efficiency of process.

Reverend the Hon. FRED NILE: I think you have already answered that any further reform of legislation should be allowed to settle down for say a five-year period for any major reform?

Mr MORRISON: We would say a couple of years—year or two. Working with the Government on the implementation of these reforms, it does chew up a lot of their resources and I think we need to be mindful of that. I think it is in everyone's interests, even for those who took a very different view on the worth of the package when it went through Parliament, everyone wants to see these reforms work in the best way possible, so I think you need to, one, let the Government get them implemented and, two, see how they go for a while and then, by all means, clearly some other issues need to be addressed in New South Wales. They are a lot broader than just a review of the Environmental Planning and Assessment Act.

The Hon. CHRISTINE ROBERTSON: There has been some development in Sydney, particularly on peninsula areas, massive housing developments, that people cannot get out of in peak periods because the infrastructure has not been built to channel people out. In your mind was that what the section 94 contributions would be used for at the beginning?

Mr MORRISON: Some of that infrastructure will be outside of the capacity of local government to deliver so this is one of the reasons why the growth centres were originally set up, because there was a mix of State Government provided infrastructure as well as local government provided infrastructure which was going to create suburbs out of cow paddocks.

The Hon. CHRISTINE ROBERTSON: Cow paddocks from the beginning?

Mr MORRISON: Correct, so the infrastructure you would need to facilitate development like what you are talking about might be a road, which would be an RTA responsibility or it might be augmented public transport, which again would be State Government responsibility. One issue is around the levies, where the levies goes and what they are funded for, and ensuring once they are paid they do get spent because there is nearly $1 billion worth of unspent section 94 moneys across councils around New South Wales, which is a terrible situation when governments are trying to find money to spend to stimulate the economy and they have all this money sitting there doing nothing.

But putting that to one side, what you would like to see would be that the State agencies have got responsibility for either building new roads or providing new public transport services or other areas of government interest for that matter, but their forward capital programs and their forward spending programs are aligned with where growth is going to go. You do not see enough of that. It has been quite disconnected. With the weakness of the metro strategy, when that was created nearly five years ago, there just was not a strong enough infrastructure base to support that. Of course, when you look at those high-level transport projects, particularly rail projects, we have seen a lot of U-turns in the meantime. Clearly, something needs to be fixed in the way that we plan and coordinate infrastructure.

The Hon. CHRISTINE ROBERTSON: So the local government bodies in these big peninsular developments—not all, but some—have made the decision to support them with the developments, but not with State intervention? So in the planning process it would be their role to negotiate with the State for arterial roads? What happens? Nothing happens now; you just do not get an arterial road.

Mr MORRISON: If you back up a bit, you would say, okay, from a Sydney perspective we need a Sydney-wide perspective of how we are going to accommodate growth. So you need that. And at a local level

when the council is doing its plans to accommodate the growth of Sydney needs, you need to have an infrastructure element to that. So, council should be aligning its own infrastructure program around the growth that it is planning for, but also State Government should be doing the same. That is one of the big gaps. So, time after time when we push growth somewhere, we do not provide the infrastructure.

The Hon. CHRISTINE ROBERTSON: It has a long history?

Mr MORRISON: Yes.

The Hon. CHRISTINE ROBERTSON: You talked about the coordination of government department processes. Have you heard of these things called Premier's coordinators?

Mr MORRISON: Yes.

The Hon. CHRISTINE ROBERTSON: Should not that process be utilised?

Mr MORRISON: They tend not to play a very strong facilitation role with projects. New South Wales does this very poorly. A State like Queensland does this much better.

The Hon. CHRISTINE ROBERTSON: They have the brief to do it?

Mr MORRISON: But they do not do it. It does not happen. The SRD does not really enter this space. The Department of Planning does not really enter this space. The Minister prior to Christmas announced that there was going to be some planning project coordinators brought in. I think they have recruited a whole bunch of them and some of them have already commenced, I think. But their role is going to be limited to the major project applications, the part 3A applications and only the rezonings. So, if you have a project that is not above the $50 million threshold and therefore into the part 3A—but still a significant project—then you have got no-one to help you out. You have got no-one to guide you through the system. If you have got agencies that are being recalcitrant for no good reason, well, no-one is kicking on their door.

CHAIR: What is the capacity of your rural membership?

Mr MORRISON: Not as strong as from urban areas, but we have regional members and we do have a lot of major institutions that have a lot of assets in regional areas. So, a lot of shopping centres, a lot of commercial assets, residential development as well.

CHAIR: What would the percentage be?

Mr MORRISON: I could not guess a percentage, but it would be in line with the levels of assets and economic activity you see split between the metro area and regional areas. We do also have a chapter in the Hunter and a chapter in the Illawarra. So, they are very active. That is where we have most of our regional from.

CHAIR: It is not very rural.

Mr MORRISON: I know.

CHAIR: Thank you both for attending today. Committee members may have further questions to put to you in writing. Again, it would be appreciated if you could provide answers to those questions within 21 days of receiving them?

Mr MORRISON: Very happy to.

(The witnesses withdrew)

JOHN DAVID BRUNTON, Director Environmental Services, Sutherland Shire Council, sworn and examined:

CHAIR: We have a few formalities to go through before proceeding. If you consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today, the Committee would appreciate your responses to those questions being sent to the Committee secretariat within 21 days of the date on which the questions were forwarded to you. Would you care to make a brief opening statement before questions?

Mr BRUNTON: Yes I would. Firstly, I thank you for allowing me to make a presentation this afternoon and to be present to answer your questions. To some extent I am going to be reinforcing some of the things you have just heard from Ken Morrison. I think you will find that on a lot of these issues there is agreement between local government and the development industry about some of the reforms that may need to be pursued. Over the past couple of years I certainly have been in discussions with Ken and other members of his industry bodies on initiatives that can be taken.

I have been Director of Sutherland Shire Council now for 12 years and I have had over 20 years' experience in management at local government level. So, adding that to 10 years with the State Government, I have had over 30 years' experience in the planning area. To some extent I am one of the dinosaurs who actually was there when the Environmental Planning and Assessment Act was introduced. So, I have lived with it ever since, being a very young planner. More recently, I have been a member of the Minister's Local Government Directors Committee, which has been working with the Minister for Planning and the Minister for Local Government on introducing the planning reforms.

This afternoon I particularly would like to take a much broader perspective than perhaps Ken was taking. Ken was focusing a lot on the short and medium term. I would like to just comment on the broader term of reference that has been given to the Committee, which was to inquire into and report on national and international trends in planning. You have some detailed terms of reference, but the general terms of reference are to do with international and national trends in planning. The definition in that is very broad; it is not a very narrow definition of just land use planning or development control. You have been given a very broad brief. I particularly want to deal with that issue because the current Government has in train a number of mechanisms to be dealing with short-term reform, and Ken has been talking about some of those. But one of the fundamental things that needs to be done is to put in place a better integrated framework for planning in New South Wales. I think Ken touched on it, but I want to definitely deal with that more generally.

I was fortunate enough to be granted a scholarship several years ago, which allowed me to travel to North America. I did a study tour of 13 cities and regions in North America looking at this particular issue. My study was to investigate where planning had been most successful and where material improvements had been made to cities and regions due to good planning. The key word that came out of that study tour was "integration". Where there was integration you got good results; where there was a lack of integration, or fragmentation, you ended up with poor results.

Closer to home, I would use the example of the Olympic Games here in Sydney, where there was a very good integration of local government, State Government and all government agencies from planning all the way through to implementation, and the Sydney Olympic Games were seen as being a very great success. The key to all of that was good integration so that everyone knew what was going to be achieved. If you can do that sort of delivery of a good result with an Olympic Games, why can you not do it for New South Wales? That is what I would like you to see as the challenge with the planning system: If you have a good planning system, it should be well enough integrated that you can take the State forward to achieve a very good result.

I have given you a couple of handouts. The first page, which has some handwritten notes on it, refers to what I was talking about as being integration. Integration takes in many areas. It means that you need to have integration of the whole of government. Ken was talking about how you have environmental agencies going off and doing their own thing: You have Sydney Water doing its own thing; and you have a number of other people, such as the RTA and others in transport at times doing their own planning and not having an integrated solution. That is my first point: all of that needs to be integrated. The initiative that was taken by Premier Iemma to establish the State Plan I think was a very good initiative in that area. From the highest level of the decisions made about what was the direction that was going to be pursued, I think the lesson to be learned from that is that it needs to be regularly updated and be relevant to the circumstances every year.

The second area of integration is to integrate economic, social and ecological considerations so that you have a comprehensive understanding of where you are going. You have to integrate the plan that has been prepared for the State and for every local government area with the corporate plan of those organisations so that the organisations themselves know where they are going in terms of that bigger picture. You also have to integrate planning with the implementation. Unless you test whether something can be implemented, a plan can be a waste of time. All you end up with is a document that sits on a shelf. You have to make sure that it can be implemented, because that is a reality check, and that it provides the link through to budgets and other mechanisms for implementation.

The last point is integrated implementation. You are not talking about just doing one form of delivery in terms of achieving a plan; it is the provision of infrastructure, the delivery of services, and introducing a regulatory system. It also includes education and advocacy. Finally, you need integrated action. That includes things like monitoring and review.

What I have attempted to do with this diagram I have given you is to explain that in terms of all those areas of activity that need to be integrated there is really only one that is a statutory system, and that is the enforcing of regulations, which is what we know as approving development applications. All those other areas can be undertaken within a framework which does not have lots of rules written. For instance, the State Plan was written and introduced without any legislative framework or requirements: it did not state how it had to be done. The Premier said, "I am going to do it", and then he went ahead and did it. What I am arguing in the submission is that what can drive this is more a will than legislation.

The Environmental Planning and Assessment Act as you currently have it is one of the mechanisms for achieving this, but it cannot be the sole mechanism. What needs to be described is where that legislation plugs into your broader planning framework. You need some legislation or some documents that say, "The State Plan fits here, the Environmental Planning and Assessment Act fits here", and what are the links between these and all the various other things that are happening. It all needs to be in the context of a government and a State knowing where it is going.

With regard to some of the things that Ken talked about that are happening in States like Queensland, it is because that integration is happening at the State government level. They have very clear ideas where they are going, even if they then cascade down into areas like southeast Queensland, where you have another layer of planning occurring so that southeast Queensland has a special set of criteria rules as to what is happening in that area. It is all within the context of which way the State is going. Those general comments are intended to provide a framework for you which will help explain some of the comments I have made in the submission.

CHAIR: You mentioned in your submission that you would like to avoid the need for parliamentary counsel's involvement in the planning and assessment system. Do you have any suggestions on how it might be possible to limit parliamentary counsel's involvement whilst still maintaining a legally robust planning system?

Mr BRUNTON: I have to say, that is one of the issues that was partly behind my thinking on all of this: that there is a very significant frustration of people who come up with a plan that is a great plan but actually getting it through a statutory system is very cumbersome, very slow, and in the process certainly does not add value to what happens on the ground. What I am suggesting is that the more you can design the totality of the system so that it does not have lots of rules and regulations which then mean you have to go off to the parliamentary counsel, the better the system will be. I will go back to the State Plan again. If you had legislation that said there was a process that had to be followed to do a State Plan and it had to go off to parliamentary counsel, I think it would have been sitting there for six to 12 months before it saw the light of day and you would have a new Premier by the time it came out.

The Hon. MELINDA PAVEY: In relation to the State Plan, do you think what was envisaged by Premier Iemma is happening, or have the brakes been put on it?

Mr BRUNTON: I believe it was Premier Iemma's State Plan. He had a blueprint that he wanted to pursue. My personal view is that as soon as a new Premier came in, the new Premier, if he had a new vision, a new direction that he wanted to pursue, he should be able to have a new State Plan. That is why I suggest it should be taken out of a very statutory system, because a new Premier within a matter of weeks could have got together the people that he was going to be relying on to come up with a new State Plan. It may end up having only three paragraphs changed. But there should have been a re-endorsement of what was in that document and

that was going to be the way forward, so that then all the government agencies would know that they are the priorities of the new government.

The Hon. MELINDA PAVEY: Are you saying that you do not think there has been a clear endorsement of the State Plan as proposed by Premier Iemma, by the current Premier, that there is another hiatus?

Mr BRUNTON: I certainly have not seen the statement. When the State Plan was introduced there was a very interesting move within New South Wales Government agencies. All of a sudden they were saying, "We have to do all these things that are in the State Plan." It actually made them sit up and take notice. Whereas previously some of those agencies that had been very inward looking and pursuing their own agendas to a large extent—

The Hon. MICHAEL VEITCH: Silos?

Mr BRUNTON: Yes. All of a sudden they were saying, "We have to put our own perspective to one side because this is what the Government has decided. It is in this little document." It was not a big document; it was a little document. "This is what the Government wants us to do." For the first time that I can recall, those government agencies were surrendering some of their own corporate desires for the sake of where the Government was going. I would have thought that there was some benefit, if that was the direction of the new Premier and the new Cabinet, of having had that endorsed. In the last year or so I certainly have not heard government agencies, or people I deal with, talking about it with the same fervour as there was originally.

The Hon. MATTHEW MASON-COX: We will not dwell any more on the State Plan. I wish to ask you about your part 3A experience, if any, in the shire. Have any projects been called in?

Mr BRUNTON: We have a couple, but not many. We have had applicants who have tried to avoid it. Going to council tonight we have an expansion of the Westfield centre worth approximately $300 million. They hurriedly got the application in so that they could go through the council process rather than having to go through the joint regional planning power. We have not had any problems with 3As. There have been some at the Kurnell refinery where there are some safety issues. We agreed that the refinery processes that we have to go through in a statutory system were just so cumbersome that it was quicker for them to deal with safety issues by going through part 3A.

The Hon. MATTHEW MASON-COX: So you have had a pretty satisfactory involvement with part 3A?

Mr BRUNTON: Yes. We have not had a problem, but it is because of the way we operate, I expect. Applicants are not too concerned with dealing with the council. We currently have two big shopping centre proposals. We have one that, as I say, is a Westfield's. That application came in in November and it will be approved tonight, whereas we have another shopping-centre developer who put in their application two months previously, and as soon as they got to their 40 days they took us to court. It will probably still be there for another six weeks. It will take them a lot longer than it would have been if they had worked cooperatively with us. That is the way we operate.

The Hon. MATTHEW MASON-COX: I wish to ask you about integrated planning. Some of the evidence we have received today has talked about long delays from government agencies. I want to obtain your views on one idea that has been put to us of having stipulated deadlines within which government agencies respond, and reversing the presumption if they do not respond within the stipulated time, so that we end up with compliance being presumed.

Mr BRUNTON: That sounds good, in theory. The reality is if you are a council and you have before you a development proposal, statutorily you are required to assess the merits of that application. If the planning controls are in force, so that you cannot approve that application unless you are satisfied about something and you rely on a government agency to assure you that it can be satisfied, unless there is a mechanism that can be satisfied, then you cannot approve it. It is fine to say that if that agency does not answer within the time frame you can assume that they think it is okay, but that assumption does not help you determine the development application. You can construct a different system—there is a way around it—but merely telling government agencies that they have to respond in time is not going to solve the problem. It is more complicated than that. It comes back to things you read from many people: the system is too complex.

Reverend the Hon. FRED NILE: You just mentioned a moment ago that there are two shopping centres for which application has been made to the council. I noticed in your submission you stated that within the Sutherland shire currently there are 200 hectares that are vacant and available for retail development. But then you say that retail developers do not wish to develop that land. You are not referring to the big shopping centre; you are referring to the small one?

Mr BRUNTON: No. These are other sites, one of which is about 130 hectares, that the current owner wants to have rezoned for residential. They will make more money out of it as residential; it is right near the beach. There is land available. The argument you hear about insufficient land being made available for retailing is true in some places, but it is not universal. We have plenty of land that is available for retail—in some places we are oversupplied—but you will get people who are land banking for some other purpose or they want to develop it for residential, or a whole range of issues like that. The market itself is more complex than just saying that if you rezone the land or retain that, it will just eventuate.

The Hon. MELINDA PAVEY: Just to add to that point—have I read recently that the square metre retail profits in the Sutherland shire as high as anywhere in Australia?

Mr BRUNTON: I am not sure about "in Australia", but it is very high, yes. One of the Woolworths is one of the highest in Australia in terms of dollar return per square metre, yes.

Reverend the Hon. FRED NILE: You mentioned that the other shopping centre went to court after 40 days. What was the delay in the application? The Westfield ones seem to go straight through.

Mr BRUNTON: A lot of it does deal with government agencies. This one is right on the main highway and they took no account at all of how they were going to get vehicles in and out.

Reverend the Hon. FRED NILE: It was not so much the council but the Roads and Traffic Authority [RTA]?

Mr BRUNTON: The site was actually owned by Sydney Water, and Sydney Water went through a process of putting in place planning controls which went through the Minister. A local environmental plan [LEP] change was made, and then the applicant who purchased the site did not want to comply with the local environmental plan or the development control plan.

Reverend the Hon. FRED NILE: It was not so much the council itself delaying it?

Mr BRUNTON: The council is the one that has to deal with the application, so in that sense it is the council.

Reverend the Hon. FRED NILE: You were responsible, yes. I note in your submission on page 7 you say that action to adequately address ecologically sustainable development and the impact of climate change has been hindered by the reluctance of the New South Wales Government to take necessary decisions. What is the basis of that comment?

Mr BRUNTON: Most particularly I would refer to the issues on sea level change. There has been a draft policy released recently. That policy could have been released 12 months ago. We are in a position where we have done the modelling and the mapping of what we anticipate to be sea level changes and how it will impact on land in the Sutherland shire, but we have had to keep it under wraps because if we release that information, we would be exposing ourselves to legal liability. We would be telling people, "Within 20, 30 or 50 years, your land will be inundated."

Saying those sorts of things in public exposes you to some dangers in terms of being sued. If we had something from the State Government to say that, yes, you can start talking about those things, it would certainly make it easier for us. We have a whole village that is going to be very adversely affected by this. I am sure that none of the people in that village is aware of the real ramifications for them.

Reverend the Hon. FRED NILE: Has the Government given any real reason why they will not respond to you?

Mr BRUNTON: It is not just us; it is the whole State. It has been a whole debate about climate change: What extent is going to be? Is it real? Is it not real? Is it going to be 400 millimetres or is it going to be 900 millimetres, and what date should you choose? Should it be 2050 or 2100? There are all of those issues that come into it. It is not an easy decision, but it still needs to be made.

Reverend the Hon. FRED NILE: You are very confident, Mr Brunton, that your calculations are correct?

Mr BRUNTON: We have a range of calculations. We all rely on what the CSIRO has done. It is just a matter of putting the numbers into the computer and it will work out which parcels of land are going to be inundated. For councils, it is very important because if you have waterfront parks or areas along waterways where you are in the process of building walkways, boardwalks and cycleways, all of a sudden you think, "Oh, in 20 or 30 years time, this is all going to be inundated. We are just wasting our money doing it."

Reverend the Hon. FRED NILE: How could you be sued for giving factual information?

Mr BRUNTON: If we released this information in some of these areas the value of those properties would drop significantly. All of a sudden people would know not to buy a block of land because in 20 years time the value would be much less. If we do not have some sort of indemnity to be able to start making those statements people would sue us for releasing information and saying we had devalued the property value. That is where the liability comes from.

The Hon. CHRISTINE ROBERTSON: I was impressed by the fact you were on the local government directors committee, in an advisory role, in relation to the new changes. That would have ensured quite a lot of consultation with local government while the reform changes were going on?

Mr BRUNTON: That has happened in several ways. The Implementation Committee that Ken sits on, local government is represented on that through the Local Government and Shires Associations. The group that I am on is very much more practical hands-on group.

The Hon. CHRISTINE ROBERTSON: Implementation; how to do it?

Mr BRUNTON: More particularly identifying where the problems are going to be. There has always been reluctance for people to tell the Government beforehand if it did something what would be the implication. What we have been able to do is to give it examples that if it went down a particular path then there would be these unforeseen consequences. One of the answers to that was with the new Housing Code and running the existing code in parallel for the first 12 months.

The Hon. MICHAEL VEITCH: We were told this morning that the Housing Code was in?

Mr BRUNTON: Yes, the Housing Code came in at the end of last month.

The Hon. MICHAEL VEITCH: It is running in parallel with the existing system?

Mr BRUNTON: Yes.

The Hon. CHRISTINE ROBERTSON: Because of the flood plains in the country.

Mr BRUNTON: No, it is running in parallel. With our council, the aim is to get complying development up to 50 per cent but former Minister Sartor said 30 per cent in the first instance. We were already at 30 per cent, so we do not need to do any more. But we were able to show through the committee that I am on that if that new Housing Code was introduced into our area it would more than halve the amount of complying development we were getting because of the way it was written. In the four weeks that the Housing Code has been in operation we have had four complying development certificates issued, and of those four certificates three were illegal—there has only been one legally issued certificate under the new Housing Code. The majority of complying development in our area is still being done under our existing local environmental plan.

The Hon. CHRISTINE ROBERTSON: The crux of my question was, considering the amount of consultation and involvement of local government bodies and individuals, why was there such a massive backlash at the end of last year to the proposed changes? You do not have to answer that, if you cannot.

Mr BRUNTON: No, I am happy to. There are a number of different answers. You will get some reactions because there are some cultures in some organisations that are still living in the last century and any sort of change is resisted for the sake of change—they do not want to see anything different. That is not universal but you get some elements of that. Some of it is resourcing. Some local government areas do not have the resources to take on some of these new systems. That is one of the advantages of the local government directors group that I am on because it has three city, three coastal and three regional directors, so they are getting this view. The issue to do with flooding in rural areas came through that group because we had some rural people able to articulate precisely on what the problem was.

The Hon. CHRISTINE ROBERTSON: That 90 per cent of their land is flood prone, yes.

Mr BRUNTON: The rules that might apply in Parramatta do not apply in Parkes and you have to understand that there are different circumstances and, again, that just adds to the complexity.

CHAIR: Thank you for the evidence you have given today. There are further questions the Committee would like to ask but because of the time factor it has not been possible to do so. Would you reply to those questions within 21 days of the date on which the questions are forwarded to you?

Mr BRUNTON: I certainly will.

(The witness withdrew)

PAUL LEMM, Development Services Manager, Penrith City Council and

ROGER NETHERCOTE, Environmental Planning Manager, Penrith City Council, affirmed and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate it if the response to those questions could be sent to the secretariat within 21 days of the date on which the questions are forwarded to you? Would either of you like to make a brief opening statement?

Mr LEMM: The Penrith City Council would like to thank the Committee for the opportunity to come and speak about the inquiry. From the outset, we believe that the emphasis behind the inquiry has significant merit. It is time for something to be done about the current New South Wales planning system. Any inquiry to bring about better governance and better quality outcomes is a good thing. Something that will cut through the complexity of the system is also a great outcome. If they are some of the key themes that the inquiry will deliver then we see that as being an excellent thing.

From my perspective, I have been in local government about 20 years primarily working in the development assessment area. I have seen the development assessment area become more and more complicated over time. Back in 1979 when the current Act was brought into effect it was pretty much a forerunner for legislative governance in Australia, in terms of marrying both the built form and environmental aspects. Subsequently over those 30 years it has been amended and changed a significant amount of times and I think, as a consequence of that, the current system is very complicated and there is a lot of duplicity in it. The relationships between Local, State and Federal governments are a little blurred and various duplication in those processes add to the complexity and uncertainty of the process. Where we are now, there is a need for the legislation to be contemporised to address some of the current issues that are facing society. One of those is obviously climate change. The current Act is essentially silent in relation to climate change. So that in itself would suggest that there is a need to bring in governance or legislation that will enable those things to be taken into account through the development assessment process and the plan making process.

Some of the other things about the legislation is that if you look at the way it is structured, if you think about the main users of the legislation, the mums and dads of the world who are wanting to do development and invest into their areas, there is an ever-increasing number of regulations that they need to comply with. There are the local environmental plans, development control plans, State environmental plans, regional environmental plans, and then sitting above that is Federal Government legislation as well. So from the point of view of trying to communicate to the users of the legislation about how to interpret it, it is becoming increasingly difficult.

Some of the most recent reforms that have been brought about to try to make the system more efficient and to provide more certainty into what you can or cannot do have I think worked against the intent or the objective of those reforms. I look back to 1998 when the building aspect of the Local Government Act was merged with the Environmental Planning and Assessment Act and it was opened up to the private sector. What we have found is that the private sector has not embraced those changes to the extent that was hoped when the legislation was brought in. Also, the ability for local government to develop its own standards and its own sets of requirements meant that there was not a great deal of commonality between regional boundaries or council boundaries; so the certifiers were unclear as to what they could do in one council as opposed to another, and I think that became a disincentive for its use and it primarily stemmed the need to develop this housing code that has just been brought into effect in April.

Like the last speaker, our council was running at around 30 per cent complying development before those changes were brought in. The essence of the housing code meant that there was going to be less things in our council that were going to be complying development, rather than more, and since the legislation has been in place we have not had one complying development application submitted by privately and/or through us. We have found that the legislation has taken our council backwards rather than forward, and I think that is an example of probably where the intention behind the changes, although best intentioned, I do not think they have hit the mark.

Just generally from my perspective, from a practitioner and operator of the legislation, I have already said that there seems to be a lot of duplication in what we do. For example, the Building Code of Australia is the standard which outlines all the standards that have to be met for construction of buildings and however you can develop and bring in legislation that lifts the bar on the type of standards and the type of building standards you

would be looking for. That happened in the housing code that was just released. There was a requirement for the ceiling to floor heights in the Building Code of Australia of 2.4 metres being the minimum, but the housing code adopted a higher standard, which added to the complexity and confusion about how to interpret and use that legislation.

For another example, there are issues in relation to disabled access in and out of buildings in seniors living developments whereby the requirement of the Building Code of Australia may well be what you assess an application on. However, the Federal legislation, the DDA has different sorts of standards and tests that people can apply for. People can apply for hardship provisions and the like. There seems to be this overlap between the various legislative schemes that tend to add more and more confusion to the process. So from my perspective I think that any inquiry that will clear up that confusion and provide more certainty to the process will be a good thing.

Mr NETHERCOTE: I would like to comment on one particular matter before we go to the question phase, and it was the last term of reference which was to do with implications of the planning system on housing affordability. There has been more government policy issued since we made our submission late last year and I just want to touch on that. First, from our council's perspective, the principle of ensuring that we maintain housing affordability is critically important. I think that is common ground with our council, with local government, the development industry and the State Government. However, our view is that there needs to be a far more equitable distribution of infrastructure funding costs across the three tiers of government, from Federal, State to local, as well as the development industry. There seems in recent times, particularly with the latest local developer contribution changes that the Government has initiated, where the $20,000 threshold has been introduced, to focus quite directly on the contributions that developers are obligated to pay for a range of infrastructure elements to support new urban development and particularly release areas.

I just want to point out that from our council's perspective we think there needs to be a much wider focus on a range of initiatives to deal with infrastructure funding which would go to more structural reforms in infrastructure financing across the board without therefore limiting the considerations to what happens at local developer contribution end of things with councils. Certainly, the $20,000 threshold that has been introduced is somewhat problematic for us, not so much in the established older areas of our city, and I suspect in those similar situations in other council areas, but to do with the delivery of new urban release areas in green field locations. That particular threshold is simply unrealistic and we cannot reduce our contributions to get down to near that level.

The Hon. CHRISTINE ROBERTSON: The people cannot afford it or an unrealistic amount is required?

Mr NETHERCOTE: It is unrealistic because the cost of the infrastructure is so significant—and I am talking about baseline infrastructure that is required to convert greenfield or rural land to urban purposes; that is the roads, the drainage systems, the traffic management systems and recreation systems and all those things are quite astronomical when added up. That is why I am saying that I believe that there needs to be a much broader examination across Government, particularly State and Federal Government, of other initiatives that could be considered to take up some of the infrastructure funding opportunities. There is no doubt—you may well have heard already submissions by the development industry groups, and I heard Ken Morrison's name mentioned by the previous speaker as representing one of those groups—those groups have presented to government over some recent years now a range of opportunities and alternatives to just simply looking at the contributions regime as it is under the legislation. They go to propositions such as the tax increment financing or betterment tax type ideas, infrastructure bonding, review of the property tax regimes and those sorts of things.

I am certainly not claiming to be an expert on those but a number of those things need to be heading down the right pathway in terms of looking at a suite of infrastructure funding mechanisms that would need to be introduced, rather than just simply focussing on developer contributions as they are channelled through local councils. The other observation I make quickly is that there have been some suggestions that a review of the rate pegging or rate capping legislation under which local councils operate is required. I would say that we agree with that, but I also point out though that the notion of significant shifts of infrastructure funding through a regime where the councils would be asked to borrow money, assuming rate pegging was alleviated, is in some ways problematic also, depending on how much infrastructure needs to be funded through that mechanism. Penrith Council could conceivably be able to deal with some of that. But the sorts of rate increases that would be needed to take significant elements out of the developer contribution funding arrangements and move those across to council borrowing would see pretty dramatic increases in rates beyond the general CPI limit that the

Minister for Local Government would provide for councils on an annual basis. I wanted to touch on that particular point.

CHAIR: I understand that Penrith City Council's local environmental plan [LEP] was largely one of the first LEPs made under the new standard instrument. How did you find the process?

Mr NETHERCOTE: Very arduous and very lengthy. I think you are suggesting that we might have been pioneering the new templates, Mr Chair. That is what we felt was the case. To give you an indication of how lengthy it was, after the council endorsed a draft plan and made its submission to the Department of Planning to seek the Director-General's certification to exhibit that plan, it took us to the day one year to get that certification to enable that plan to go to public exhibition. That was stage one of our new local plan under the new template arrangements. We are now working on the second and final stage, which is all of the urban or residential parts of it. Our liaison with the Department of Planning, shall we say, has become much more vigorous. Through the regional office of the Department of Planning, we are now working very closely with them to ensure that before council signs off on a draft plan for exhibition, the Department of Planning is fully understanding of the concepts we used and the direction we want to take with it.

The Hon. CHRISTINE ROBERTSON: How much change did they make to the draft plan you presented?

Mr NETHERCOTE: I lost count of the number of changes that were asked to be made.

The Hon. CHRISTINE ROBERTSON: Were they minutiae or substantial changes?

Mr NETHERCOTE: Both, I think. The previous speaker was asked a question about Parliamentary Counsel. There were numerous attempts by Parliamentary Counsel over that time to make changes. Most of those to us did not seem consequential. But because we were pioneering new ground and because at the same time our plan was being considered new editions of the draft template were emerging from the Department of Planning, inevitably with the request that we embody those new rounds of changes specifically into our draft plan, it was backwards and forwards. As I said, I have lost count how many times.

The Hon. CHRISTINE ROBERTSON: Were Parliamentary Counsel trying to get you to do changes to issues and policy rather than just format?

Mr NETHERCOTE: Some of them touched on that, yes. Certainly most of the supposed policy initiatives did come from Department of Planning requests, it would be fair to say. But it was not unusual for us to see changes from Parliamentary Counsel that went beyond legal drafting. Can I just make one other comment about that? The previous speaker was asked a question about Parliamentary Counsel. It struck me when I was hearing that conversation that if we have a new template as a blueprint for how a local plan should be produced, that is, a local environmental plan, and we have a standard set of zones, a standard set of land use definitions, a standard framework, I pose the question: Why do we need to go backwards and forwards to Parliamentary Counsel if we are working on a standard proposal?

The Hon. MELINDA PAVEY: I have heard the same criticism in regional councils. It is very important evidence. Mr Nethercote, I want to touch on the issue of developer contributions. The Government is proposing, after much lobbying, as I understand it, a $20,000 limit on developer contributions. Where is the Government on that? Has it made a decision?

Mr NETHERCOTE: Yes. The Minister for Planning has issued a direction to all councils in the State that as from 30 April this year councils are only able to charge up to a maximum of $20,000 per residential lot or per new dwelling in a development through development consent conditions, of course, unless the council has applied for and been given special ministerial approval to charge something beyond that.

Reverend the Hon. FRED NILE: So you can apply for an exemption?

Mr NETHERCOTE: Yes, councils were given the opportunity—

Reverend the Hon. FRED NILE: When the Minister gave us a briefing, we were told the councils such as Penrith and Shoalhaven would receive a sympathetic hearing.

Mr NETHERCOTE: I can only hope so, because we have applied for an exemption from the $20,000 threshold.

The Hon. MELINDA PAVEY: Can you give us an indication of what the council would need to put on a developer contribution for a greenfield site in Penrith as opposed to an already developed area?

Mr NETHERCOTE: Yes, I can give you some examples of that. The council has submitted four release area plans in the Penrith local government area for special consideration. Those plans run variously between contributions per lot of the dwelling from just over $20,000 to $55,000 approximately. Most of them are in the middle range—around the $35,000, $40,000, $45,000 range. That covers all infrastructure, including physical infrastructure required to convert the land for urban purposes, such as drains and roads.

The Hon. MELINDA PAVEY: Such as water and sewerage?

Mr NETHERCOTE: No, water and sewer are separate to that. The Government has recently announced changes in Sydney Water's developer services charge. In fact, they have now been abolished. Those charges are no longer required to be paid by developers. There are other funding mechanisms introduced for those. The local charges go to basic infrastructure to convert the land for urban development plus social infrastructure—parks, ovals, recreation infrastructure, community facilities and so on.

The Hon. MELINDA PAVEY: So you will not approve any greenfield development within the Penrith area unless you get that concession by Government to increase the developer contributions to around the $54,000 mark to cover council expenses or if the State Government still wants to make up the difference?

Mr NETHERCOTE: Our council has not taken a formal decision in that regard. It may be that it has to consider such a proposition, but it has not done so yet. I would like to think that some commonsense will prevail in the current Department of Planning review of the plans, which is happening as we speak. I understand we will be having a conversation with the department and their consultants very shortly about this specific issue so far as our application is concerned. It certainly is problematic in relation to the notion of an arbitrary threshold. I personally do not subscribe to that. I think it really needs to have a more considered approach taken, particularly with the broader reform agenda that I was alluding to earlier.

The Hon. MATTHEW MASON-COX: Mr Nethercote, when you say a more considered approach, what do you mean?

Mr NETHERCOTE: I mentioned earlier that the focus to date has simply been on the developer contributions, particularly in what I have been talking about the threshold. That relates to local contribution. There has also been some reduction in the State Government's infrastructure contribution regime. There is a two-year period, I think, in which those contributions for more regional or State significant infrastructure are being temporarily reduced. By and large, in the new urban areas that I am referring to a $20,000 limit is impractical to be able to achieve. In some cases, and certainly probably more relevantly in other parts of western Sydney, such as the Hills area, you cannot buy land for $20,000 a lot, let alone deal with the infrastructure that needs to be supporting new urban developments and new communities as they grow.

The Hon. MATTHEW MASON-COX: It all goes into the amount of money people have to pay for land, at the end of the day, does it not? Increased infrastructure costs from section 94, the State infrastructure levy on the growth centres and so on, it all goes into housing affordability. We are very interested to hear what is an appropriate amount to pay. I suppose that differs depending on where the block is.

Mr NETHERCOTE: Absolutely. You cannot compare one growth area, release area, particularly in western Sydney, with another. Even within Penrith local government area the charges not in terms of the actual notion or item of the charge but the actual dollar values will vary from place to pay depending on, say, the topography. If you are in hilly terrain the cost of drainage networks, for example, is more significant because you have more drainage catchments to deal with or you have to manage the water quality and the amount of volume of stormwater overland flows and that sort of thing. It becomes quite difficult to be able to boil it all down to an arbitrary level and say "This is where you need to be at." I think it does require a more complex and more considered approach than that.

The Hon. MICHAEL VEITCH: An earlier witness recommended that rather than a flat rate process that there be a percentage applied to the sale value.

Mr NETHERCOTE: I think the Property Council has made suggestions that there be that arrangement. I think it is suggesting 1 per cent. I hasten to say that 1 per cent is completely inadequate for the same reason I have already outlined to the committee in a new urban area. In a more established neighbourhood where there is existing infrastructure, there are already roads and drains and those sorts of things, it might be appropriate but in these places where you need to build something from scratch out of a paddock, you build a new community, a new suburb out of a paddock—

The Hon. MICHAEL VEITCH: Glenmore Park.

Mr NETHERCOTE: Glenmore Park is a very good example, and one of the plans I referred to is a stage II extension of Glenmore Park. The costs there are in the 30s to 40s.

Reverend the Hon. FRED NILE: In your recommendations you have said "To develop a new Act to replace the EPA Act." You gave an example of the climate change omission. Could that be adjusted by an amending Act which just dealt with climate change or perhaps any other matters that need further amendment rather than a complete new Act?

Mr LEMM: I think it is high time to look at the current Act. I believe that the current Act is very process-driven. It is very procedural driven. I think a new review of the Act which is more outcome orientated and tries to deliver quality outcomes and contemporarises the legislation in a way like that, will be a better outcome than just adding another layer of amendment to it.

Reverend the Hon. FRED NILE: Will you give a timetable for that? One, two, three or five years?

Mr LEMM: My view would be a couple of years. I think there would need to be a fairly careful consultation process with all the stakeholders. I think it is high time. The industry and all the stakeholders who are involved in planning are saying that it is high time that the legislation is changed. I think a shorter timeframe but one that encapsulates consultation and involvement from all the stakeholders would be a good thing.

The Hon. MICHAEL VEITCH: The Hon. Matthew Mason-Cox questioned you about the developer contributions and that framework or regime. I think Mr Nethercote talked about a full review and reform of that process. Do you have a process or end result in mind?

Mr NETHERCOTE: Only in terms of the principles. I think it does need to involve government at both State and Federal levels taking a pretty significant role in infrastructure delivery and funding beyond where it is at now. That is certainly the first point I would make. I am also mentioning that I think local councils, and I know Penrith council could, but for the limitation of the rate pegging regime, be more active in borrowing funds to be able to deliver infrastructure over a longer period. But I think there are still some limits to how much could be funded through that particular mechanism. I guess in another way I am saying that I do not believe that the councils could be asked to pick up on all of the suggestions that the development industry representatives have been suggesting about infrastructure funding by alternative means. I think just to shift that burden on the councils will have pretty significant ramifications unless there is a much broader structural reform approach taken across all infrastructure financing opportunities.

The Hon. MICHAEL VEITCH: Earlier in the day the committee heard evidence from people who have said they want greater flexibility in their capacity to raise a spot rezone. In fact, someone said that private spot rezoning applications should bypass the council process and a private citizen should be able to do it straight to the planning department. What are your thoughts about greater flexibility and even the suggestion that spot rezones in that way can take place?

Mr NETHERCOTE: As I understand it that opportunity is already available to property owners and/or developers to bypass the council in a number of ways. One of those is through the part 3A major projects legislation already exists where the decision can be taken by the Minister for Planning to approve of a development if it meets those criteria, notwithstanding that it may be prohibited in the given zoning. And I have certainly had first-hand experience of that in Penrith. Another way in which I have also had experience is that landowners can apply to the State Government through the Department of Planning to have a property listed on the metropolitan development program. That property may be a rural property, it may be on the fringe of the urban area or some other location and there is a process within government where a fairly high level interagency group meet to discuss such proposals. If that is considered to be an appropriate outcome it is our understanding

that the Minister can include it on the metropolitan development program and then request the councils to take appropriate action to accommodate that in its zoning arrangements for the city. I think there is a reasonable amount of flexibility there.

One might say, from local council's end, perhaps a little bit too much but just in general I comment that I think it is of concern, certainly to our council and councils generally, that if those sorts of processes are opened up where there is the opportunity to completely bypass council's strategic planning direction for its own local government area—whilst I agree that there are significant proposals that come up from time to time that are of a State consequence, and I believe that is appropriate that the Government take its decision on those—but there are many examples of developments that are fairly straight up and down industrial type developments in one location in Penrith that are going through that process. They are just large sheds with racking equipment in them, or whatever they be. Those ones are going into State government for consideration as well.

Mr LEMM: In our release area Erskine Park we have had a number of part 3A applications approved in that area. Ultimately, a lot of those applications at a stretch would meet the criteria on a fairly liberal interpretation but essentially the justification for doing it is bypassing council with a view to getting a quicker approval. But essentially what has turned out in a lot of cases they have not got a quicker approval. In fact, the outcomes, the consents got a little bit tighter. From council's perspective in managing that process is that our involvement is fairly significant in terms of providing information and conditions and commentary back to the department about the merits or demerits of a particular application.

We have some issues that some of the requirements about development control plans and our policy framework generally have not been given the weight that we think they should be given. Similarly, the amount of time that we invest in providing that information is often predicated by a very short timeframe that is handed down to us by the department. We have to respond within a certain time frame. We do not have an opportunity to get things to council to hear their opinion so I make that decision about what our comments will be. We do not get any remuneration for that either. So the more things that do become State significant, there is a bigger drain and a bigger impost on local government for not a great deal of reward.

CHAIR: Thank you for giving evidence. If the committee sends questions to you would you please respond to them within 21 days?

Mr NETHERCOTE: Certainly.

(The witnesses withdrew)

(Short adjournment)

PAUL GORDON CASHEL, Program Leader, Strategic Planning, Blue Mountains City Council, 2 Civic Place, Katoomba, and

PETER LESTER ADAMS, Group Manager, Community and Corporate, Blue Mountains City Council, 2 Civic Place, Katoomba, affirmed and examined:

CHAIR: Thank you very much for coming this afternoon. If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate it if the response to those questions could be sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Before we commence with questions would either one of you like to give a brief opening statement?

Mr ADAMS: I would appreciate that very much, and I thank the Committee for its time. Briefly, the Blue Mountains City Council are stewards, in a sense, for an area that is quite different perhaps than others that you have heard from today and during your inquiry. Our colleagues at Penrith City Council, for example, have very different issues. We spend a lot of time with them and we support the things that they are saying, but I will not waste any of your time on that today, unless, of course, there are questions of relevance that you want our opinions on. We are not a growth council; we have very different issues, but each of those are critically important, particularly in the context that they are given.

What I wanted to briefly say was that in looking through the terms of reference and questions there, the answer to pretty much all of those questions is yes, but it is a qualified yes, and I would just like to make a couple of brief points that we would like you to keep in mind as you move forward with this. Firstly, the planning legislation has served New South Wales well but it has become a bit like the vehicle that keeps on getting add-ons and changes and so forth until one hardly recognises it as its original design. We believe that many of the reforms that have been put in place in recent times, for very laudable objectives perhaps, may even work against streamlining, making things more costly, et cetera, and that is because any review of legislation, we would urge, needs to be wholistic and needs to be at a higher level and needs to be integrated. That would be the first point.

Certainly, the recent thrust for looking at many of these things, and when we have a look at the agreement at COAG in terms of reviewing jurisdictions and planning legislation, it is about streamlining, minimising and standardising. But a point that we would like to make at the Blue Mountains is that a sense of place is incredibly important. I will just use a very brief example in relation to the Blue Mountains. The world heritage listing, while it was being sought to be obtained, very nearly fell over, and the reason was that it was inconceivable that people in a city could live completely contained within a world heritage area. Eventually they were convinced otherwise and the listing was made, and it was based upon an LEP that was very sophisticated and cutting edge, and that has since been gazetted. Some of the recent reforms and things that have come after that we see as threatening those things. We look at a lot of reforms and see them as very important, but we would urge you to ensure that there is the ability to identify where it does not apply and where there is something different, of a different thrust, or where high-level outcomes can be achieved.

On the issue of sustainability and climate change there is a lot of good work going on and we certainly endorse all of that. Briefly, I think perhaps it is more about Planning responding to the impacts of climate change, which is very important, but we think that there can be much more weaving of objectives, heads of consideration, outcomes and requirements, to ensure that we minimise climate change. So we see them at low levels, for example, in the standard instrument recently, but as heads of consideration we would urge that that be one of the central objectives and one of the key starting points. We would also urge that the role of the commissioner for natural resources in the State, who on my understanding has been appointed in part at least to try to align government policy, departmental practices and so forth to achieve objectives rather than work against each other, is integral to this. I think that it is a great initiative by the State Government and the role of the commissioner for natural resources could be very pivotal, particularly for things that the Blue Mountains City Council see as important.

A lot of the reforms—and I think perhaps the Environmental Planning and Assessment Act has really just been modified or changed—become incredibly burdensome in terms of resources. That applies to the State Government and its departments. We see them absolutely straining under the load, and we are the same, so if you could also keep in mind the need for things to be practical and able to be implemented because with all the best intentions, with the best drafting, if they cannot be managed, administered and so forth, efficiently and

effectively with the resources that are available, they will not have the effect desired. That is my, hopefully brief enough, statement.

CHAIR: You indicated in your submission that you found the process of Commonwealth approval satisfactory when working under the assessments bilateral agreement. Do you see any scope for that to be extended to further minimise any duplication of planning process?

Mr ADAMS: I think that certainly the ability to not have people reinvent a process or relearn or reposition things is of great importance. I do not have examples of how that could be specifically implemented without, on notice, looking at examples. Mr Cashel may have some things to add, I am not sure.

Mr CASHEL: That particular one is not my area of expertise. All I would say is that you do not want to create any duplication in any particular process.

CHAIR: Would you be able to take that on notice?

Mr ADAMS: Certainly. I could add that we see the objectives of, for example, not referring to departments unless directly required are very good, but the examples we see of new requirements seem to duplicate and replicate. So the objectives seem great, but sometimes the practice does not—

The Hon. MELINDA PAVEY: You have just had a change with the Federal legislation, as I understand it. Recently an announcement was made by the Federal Minister for the environment, Peter Garrett, that world heritage areas now have to go through Federal and State planning processes. That would affect you. Is that right?

Mr ADAMS: The Blue Mountains City Council is surrounded by world heritage area as opposed to it being within it, so I think it does not directly affect us.

The Hon. MELINDA PAVEY: So you do not have to deal with that part of it?

Mr ADAMS: No.

Mr CASHEL: We are within a world heritage area, but it is basically the national park area, so that is dealt with by National Parks and not by council. If there were developments in the national park, National Parks would deal with them and most likely liaise with us, and I believe that there are changes afoot about that with regard to tourism in national parks.

Mr ADAMS: It is the interfaces that are important in the sense that we have people living right on the boundaries and edges, and in fact perched on the sandstone escarpment above the catchment.

CHAIR: If there is anything else you can add, that would be fine.

The Hon. MELINDA PAVEY: Could you also provide more detail in relation to your concerns about loss of protection for the environment from the 2005 LEP until now—just some examples?

Mr ADAMS: We would be very happy to do that. The Blue Mountains LEP 2005, which covers pretty much all of the developed areas—we still have a review of a previous LEP that is underway for surrounding peripheral areas—is very sophisticated. It is very place-based, so it relies upon geographic information systems [GIS] mapping and it relies upon a whole lot of protections for riparian zones, slope constraints and all sorts of things. Architects tell us that even though they had problems with it in its development they very much like it because it gives them certainty about what they can and cannot put forward. The standard instrument is based upon a template and it requires us to have zones that comply with zones that might be used in Fairfield or somewhere like that. We do not believe that that is going to achieve the environmental protections and protection of character that are already woven into this LEP. The LEP was built upon a very long process of the public putting forward what their values were and working from that right through to this instrument. The Department of Planning has been very helpful in working with us to try to make the template work well and there have been changes directly as a result of some of our submissions. Nonetheless it is making a square peg go into a round hole.

The Hon. MELINDA PAVEY: You suggest that consideration be given to recommending that the Rural Fire Service amend its 2006 guidelines for planning for bushfire protection to include deemed-to-comply provisions for certain categories of development. Can you provide more details on that proposal and why you see the need for it?

Mr CASHEL: I should have a percentage; I should know what it is. However, a high percentage of all development applications that go through the Blue Mountains council are in bushfire-prone lands. The planning for bushfire protection legislation states that if you cannot provide the asset protection zones within the site, it is an automatic referral. That would be approximately 90 per cent of all applications. Once that referral process is triggered you are automatically into delays. Dwellings go to local headquarters at Katoomba and anything beyond that—townhouses, schools, hospitals, anything more than a dwelling—goes to head office at Granville. That can mean delays of months. It is not uncommon to experience delays of six or nine months.

The Hon. MELINDA PAVEY: Are the delays in relation to more complicated projects?

Mr CASHEL: Not necessarily. It seems to be the way they batch their work. They will come and do some inspections, but often they will not bother. They tend to batch our work so we get a whole series through in one hit. It can depend on timing. We are sending them through constantly, but we might get 20 or 30 back in one week and not hear anything for three or four months.

The Hon. MELINDA PAVEY: So you can be held up for months at a time on any one development.

Mr CASHEL: I have not worked in development assessment for a couple of years, but that was certainly my experience. Colleagues who still work in subdivisions and so on have those same complaints. Often the response might be that they have no concerns, or there will be conditions that are unenforceable, impractical conditions or do not apply to the situation. I had one in a very built up area right next to McDonalds at Blaxland. They said there could be no overhanging branches and no vegetation in the dish drains. That is not relevant to this part of the world because we are on the Great Western Highway. You could not get a better escape route than the highway. There are other cases where the vegetation has been removed but the mapping is out of date. There is no commonsense approach where they say that the vegetation is gone and it does not need to be considered. More often the response is, "It is mapped and these are our rules." There is no real assessment or commonsense merit assessment.

Reverend the Hon. FRED NILE: You talk as though they do not inspect.

Mr CASHEL: They have told us that they do not have time to do inspections. They are almost a de facto planning authority.

The Hon. MELINDA PAVEY: They are.

Mr CASHEL: If they say no, that is the end of it unless people want to go to court. The Rural Fire Service is reluctant to go to court. I had an example of a one-into-three lot subdivision. To avoid court the Rural Fire Service said that it would approve it subject to two of the lots being consolidated. That meant it would be a two-lot subdivision and that was not what was applied for.

The Hon. MATTHEW MASON-COX: I am interested in some of the comments you made in relation to the development of the low carbon economy and how we deal with sustainability issues on that front. I refer particularly to pages six and seven wherein you make comments about some of the things that could be included in the standard instrument LEP and the wider Act to address climate change, such as civic landscaping, potential for micro generation of power on site, design issues et cetera. Do you see any issues in terms of planning documents picking up all of these things perhaps as conditions for approval, or should they be seen as model or ideal scenarios? What about the prospective costs involved in meeting those criteria? How do we address that in the system?

Mr ADAMS: That is a huge question in the sense that moving forward as we are as a society it is challenging. Solutions are emerging and challenges are being better understood. There is a number of ways that those can be perhaps entrenched into any sort of planning legislation. The current Environmental Planning and Assessment Act and the heads of consideration are foundational areas upon which any assessment occurs. So ensuring those objectives are up-front as opposed to add-ons is key. Of course, there are other sorts of examples. I am not expert in the BASIX area, but I do know that it is a great innovation and move forward. However, there

are emerging solutions that may well have much greater effect that are not able to be ticked and therefore allow some credit. If one was to put forward more sophisticated solutions then one would have a convoluted process of convincing people and going through all the submissions and evidence. How we meet the challenges of an emerging art and somehow entrench that into the requirements of planning assessment is a challenge. There are people working on that. We have a fair amount of material here, but if there are specific suggestions we would be happy to respond. We are not experts as such, but it is very high value in the Blue Mountains.

The Hon. MATTHEW MASON-COX: That is it. I am impressed that you put together some concrete ideas. People talk about climate change and the importance of taking it into account in planning, but they do not know what they are talking about or have no way of pointing to how we might do that. I was impressed that you have thought about that. How we do that is a very complex issue and what might be acceptable to one may be unacceptable in a different environment from the Blue Mountains. I just wanted your thoughts on that.

Mr ADAMS: A solution for Penrith might be to ensure that subdivisions have proper solar access and orientation and so on. However, a subdivision of one-into-three is a significant development for us and solutions are different. The upper mountains are very different from the lower mountains and so forth.

Reverend the Hon. FRED NILE: In your submission on page four you have a reference to the 150-page housing code, which is intended for double-storey homes to pass the test for complying development, being processed within 10 days without the need for a development application. You refer to the experience of other councils. What is your experience?

Mr ADAMS: We were one of the councils involved in the trial at the outset. Our experience was that in the first version there were far more developments being caught up in the exempt and complying provisions than in fact could have gone through in a streamlined fashion under our planning requirements in the Blue Mountains. We put forward a submission to that effect and we note that that has been modified. It is a more relaxed process and fewer developments are caught in that process.

This could be controversial, but the exempt and complying developments are a way of perhaps trying to regain some ground that might have been lost in terms of efficiencies through the integrated planning approach. One might put forward an application and find that even though it is all under the planning legislation and there is an integrated approval in stages that can be achieved there is a high level of application that has to be submitted in the first instance. It might be that that development is not able to be approved and people might have put a lot of effort and money into it. It appears that additional requirements and a heavier burden have been applied and the exempt and complying provisions have all the right intentions but are an add-on to somehow free up what might have been an unintended consequence of the earlier reforms. We could provide examples of a number of reforms all of which we believe have very good objectives but that somehow have unintended consequences and add steps, or add delay, rather than the intention.

Reverend the Hon. FRED NILE: So that hopeful timetable of 10 days is not being achieved?

Mr CASHEL: I could not say how the 10 days is going. I have not spoken to our certifiers, but I do not think that has ever been a real problem. We have a private certifying arm of council. I think the point we were trying to make is that despite the fact it is attempting to catch 80 per cent of project-type homes that are currently in the market, for our area due to the exclusions and other things—bushfires knock out the vast majority of it from being complying.

Reverend the Hon. FRED NILE: Is that the main exclusion? What are the other exclusions?

Mr CASHEL: No, it is not the only one. All our protected areas—

Reverend the Hon. FRED NILE: Obviously you are in the mountains so you are different from most other councils.

Mr CASHEL: Yes. There are riparian corridors, creek lines and that sort of thing. Slope would be out, I think. It is a period housing area. Half of the place is out because it is in the Warragamba catchment. There are escarpment areas—

Reverend the Hon. FRED NILE: So they are all justifiable exclusions?

Mr CASHEL: Yes, they are, and the department has sort of said, "You don't need to worry too much about this because a lot of it will be knocked out." I am not sure if you are familiar with how the equivalent zones issue panned out just before its gazettal. Where councils do not have a standard instrument in place the department chose to have equivalent zones. That was all done in the last day or two days before it became live. It has had a major effect on our 149 certificates and processing and sending them out. There are not a large number of zones that apply to the Blue Mountains either. We probably would have done more as complying development under our own DCP as opposed to what has been thrust upon us, and all that additional work that went with it is probably going to achieve nothing. I think that is the main point we are trying to make.

Reverend the Hon. FRED NILE: On page 3 you make a comment about the current Environmental Planning and Assessment Act and the need to ensure legislative stability and continuity with the planning system because there have been all these frequent changes. You still say there should be a better structure than the consolidated Act. We have had submissions from people, even the Department of Planning, saying there have been so many changes they want to let things settle down. Even the department is having trouble handling all the changes. They do not want to go through a whole lot of new changes. Do you have something in mind, if there are some changes in the future—when would that be necessary? How long would you like to have—a two-year settling down period or a five-year period—before any changes? Would you prefer minor amendments in that time?

Mr CASHEL: On the way here in the car I was saying exactly that. It needs to settle down. Some of the assented legislation has not come into operation yet—the new part 3. There is so much to list I cannot do it off the top of my head. That needs to at least settle down and bed in and then perhaps we can see what the implications are. There are possible unforeseen problems because it talks about fast-tracking the rezoning process. That is good until you get more people wanting to put in rezoning applications as a result. The Act has been amended and bolted onto and parts repealed so often that it has become unwieldy and complicated, and it is probably time for a fresh start to review that. That process alone is not going to happen quickly.

The Hon. CHRISTINE ROBERTSON: It will take years.

Mr CASHEL: It will take years if it is going to be done properly. It could start to be acted upon now. It will take two to five years perhaps before it all comes through. Meanwhile, the changes the State Government has put in recently can be assessed over the years. That is my thinking anyway.

Mr ADAMS: I very much endorse what Mr Cashel said. We had not really thought about that sort of question. Having said that, we were urging that any review should actually happen. We believe there is a need for it, but it is important to do it in a metered way, not slowly. Just putting in place an LEP—if you talk to some of our councillors who have been involved in our LEP 2005 they will say it took 10 years and others will say it was 20 years. As the game rules shift everything gets dropped. We might have two or three planners that are actually qualified to work with this and we have an enormous community that is fiercely interested in what happens. We noticed your previous witnesses have always been very proactive and so they had their LEP pretty much prepared and then they found the recent changes meant they had to go back, perhaps not to square one but well back. Changes have an enormous impact. Nevertheless we would not want the message to be that therefore there should not be changes.

The Hon. MICHAEL VEITCH: On page 5 of your submission you raise an issue that not many others have raised in relation to the role of the Land and Environment Court in the planning process. You talk about your experiences with the Land and Environment Court from both sides of a particular case. Can you advise the Committee of your thoughts about the role of the Land and Environment Court in the planning process? They are often forgotten but they are part of the arbiter process at the end, the appeals process.

Mr ADAMS: In a democratic process the right of appeal is absolutely fundamental. The role of the Land and Environment Court probably comes up in the discussion between councillors every time there is a contentious issue and they are wrestling with difficult decisions. That is because often their decisions are shaped by the threat of the Land and Environment Court. That might be a healthy pressure or in other cases it might be an unhealthy pressure. Nowadays developers do not even want the council to determine something because they want to go straight to the Land and Environment Court. I understand there have been—I am not sure how effective this might have been—recent decisions that a development application that is submitted to the Land and Environment Court in the case of an appeal is to be the same as the one that was submitted to the council. Previously one could go to the Land and Environment Court and put forward a proposal that would have been approved by the council in the first place.

The Hon. CHRISTINE ROBERTSON: They change it to fit.

The Hon. MICHAEL VEITCH: That is why it is important. I am surprised others have not raised this. It is quite important.

Mr CASHEL: That was addressed in September last year, I think.

The Hon. CHRISTINE ROBERTSON: That they are forced to put in the original one?

Mr CASHEL: They are forced to assess what council assessed, yes.

Mr ADAMS: We are not quite sure exactly how tight that constraint is. There is a little bit of latitude in there. We had an example of a key site in the main street, the mall, in Leura. The example I was going to give was a development that went to the Land and Environment Court. It was right in the core of Leura. Anyone who knows Leura knows it has a particularly valuable character. It is very important to tourism. It is probably one of the main attractions in the mountains and plays a big part in people's experience there. This was a significant overdevelopment of a site in the middle of the street that was approved by the Land and Environment Court and approved with a shortfall of 26 parking spaces. Other requirements are part of the approval, for example, the ability to service it, and therefore to use public car parking at the rear, which meant that the 26 shortfall spaces turned out to be even more than that.

The township of Leura has a significant undersupply of parking spaces, but I think it is a key thing in Leura, particularly given the tourist experience associated with it. So, down the track we have a building that is not appropriate to the character of the main street. People will not be able to park and they will be frustrated, and that will contribute to the damage to the area and therefore to tourism and therefore to the economy. Leura residents would have to fork out of their own pockets to build a decked structure, which is inequitable, and it is the sort of development you would not want to see in the middle of Leura.

Reverend the Hon. FRED NILE: It has been approved. Has it been built yet?

Mr ADAMS: It has been approved by the Land and Environment Court. It is under construction, and I believe it may not be completed because of some difficulties with the developer.

Reverend the Hon. FRED NILE: Did the court inspect the location?

Mr ADAMS: I do not know.

Mr CASHEL: The court did attend the site during the case, yes.

CHAIR: Perhaps we can put the remaining questions on notice and get a reply within 21 days?

Mr ADAMS: Certainly.

(The witnesses withdrew)

(The Committee adjourned at 4.42 p.m.)