

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 7 - PLANNING AND
ENVIRONMENT**

**INQUIRY INTO THE PLANNING SYSTEM AND THE IMPACTS OF
CLIMATE CHANGE ON THE ENVIRONMENT AND COMMUNITIES**

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At Studio Room, Shoalhaven Entertainment Centre, Nowra on Friday 3 May 2024

The Committee met at 9:00.

PRESENT

Ms Sue Higginson (Chair)

The Hon. Scott Farlow

The Hon. Jacqui Munro

The Hon. Peter Primrose

The CHAIR: Welcome to the fifth hearing of the Committee's inquiring into the planning system and the impacts of climate change on the environment and communities. I acknowledge the traditional custodians of the lands on which we are meeting today in Yuin country. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today. My name is Sue Higginson. I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Mr GORDON CLARK, Manager, Strategic Planning, Shoalhaven City Council, sworn and examined

Mr MATTHEW ROSE, Coordinator, Strategic Planning, Shoalhaven City Council, affirmed and examined

Cr CHRIS HOMER, Mayor, Shellharbour City Council, affirmed and examined

Mr MICHAEL PARK, Executive Director, Planning and Environment, Shellharbour City Council, affirmed and examined

Ms JANE STROUD, Chief Executive Officer, Kiama Municipal Council, affirmed and examined

Ms JESSICA RIPPON, Director, Planning, Environment and Communities, Kiama Municipal Council, affirmed and examined

The CHAIR: Welcome and thank you for making the time to give evidence today. Would anyone like to make an opening statement?

CHRIS HOMER: Firstly, I wanted to thank the Committee for holding this hearing regionally in Nowra and for the opportunities to both make a submission and address this inquiry. Shoalhaven City Council welcomes the inquiry and supports its aims to investigate how best to ensure communities are protected from the risks and impacts associated with a changing climate. This council has a strong appreciation of the issues the inquiry is focusing on. Shoalhaven's communities, natural environment and infrastructure have been significantly affected by many recent natural disasters. This includes the 2019-20 bushfire season and the 11 separate flood events experienced during the last four years and earlier this year. Shoalhaven also has 165 kilometres of coastline and so is very vulnerable to the impacts of sea level rise. Council undertakes a lot of work to better understand the local area and its communities, protect the local environment and ensure that those communities and places are resilient and prepared for the impacts of climate change. Its work includes developing and implementing relevant policy strategies and it also identifies risks and ways to manage those risks through various studies.

More recently council has collaborated with New South Wales government agencies and the Illawarra Shoalhaven Joint Organisation on their disaster adaptation plans and its regional adaptive pathways planning projects. Shoalhaven itself—the area—is large and varied with many settlements that are at risk of flooding, bushfires and other coastal hazards. These places are either directly impacted by events or are isolated when power, communications services, other services and roads are cut. Council's broader strategic land use planning work is identifying which settlements can safely accommodate appropriate levels of growth. However, we are experiencing an increasing number of inappropriate rezoning and development proposals and inquiries which claim to be responding to the current housing situation. Several of council's decisions to not support or to adjust proposals to make them more reasonable have been reviewed and subsequently overturned by the regional planning panel, an increasing practice that is causing some concern.

Council's advocacy efforts—we advocate and ask for greater and consistent leadership by the New South Wales Government, noting the many and potential opportunities to contribute to managing the impacts of climate change. These opportunities are provided by amendments to planning legislation, new or updated planning policies and the publication of contemporary guidance. Council also asks the New South Wales Government to increase its support for risk assessment and planning activities, including new and increased funding for the preparation and implementation of action plans and strategies. The continued provision of consistent and well-researched datasets would also assist with this work. Council's submission provides feedback and a set of recommendations for each of the terms of reference. We look forward to discussing these with you today and answering any questions that we can. Thank you, again.

The CHAIR: Were there any other opening statements?

JANE STROUD: Yes, if I could. Like Shoalhaven, Kiama Municipal Council welcomes and appreciates the opportunity to contribute to your Committee's important inquiry into the climate change in our environment and community. To give you some context, in Kiama, like many places, we've experienced severe drought, bushfire, pandemic and the impacts of changing coastal pressure on our coastline. Whilst we live in a beautiful part of the world, disasters do not know borders and they don't understand local government areas. Climate change is something that affects every single council within the Illawarra Shoalhaven region, and we share our other councils' concerns around how we collaborate and how we partner both with the State Government and between ourselves as we all face the challenge of providing housing.

Extensive work has occurred in Kiama to support community resilience, with a number of improvements made to our assets and supporting community infrastructure. In 2021 we signed up to the corporate emissions reduction plan, which provides a really good framework for seeking reductions in emissions from our particular operations. We have a proud track record of anticipating and responding to challenges at an early stage, and in

2020 we were among the first councils to develop a local strategic planning statement setting out a 20-year plan for our vision for land use. But, as we all know, 20 years is a long period of time and many things can change. We are now in the process of developing a housing and growth strategy responding to the particular demands that we are currently facing and, like we have just heard from Shoalhaven, we too experience planning proposals that are not necessarily in sync with our strategic direction and do present real environmental risks to our community.

This does create the effect where there are limits to what can be achieved, and there are a number of important recommendations that we would suggest to enable local governments to better respond to the impacts of climate change. One of the first opportunities that we can foresee is that the current planning system could better consider the costs and impact of placing people, communities and the environment at risk through the impacts of climate change and natural disasters. We see consistency of information and collaboration as the key. Improved mapping—for example, flood maps that are updated after each event—could really help council ensure that our planning is responding in real time to the data and the experiences that our communities are facing. We would welcome the State Government's coordination of required regional studies and any data that needs to be collected, and we thank the work of the Illawarra Shoalhaven Joint Organisation in their leadership around regional climate change and the impacts of environmental hazards on each of our four local governments.

The ability to support our particular communities once they are impacted by disasters and climate change could be improved by greater coordination and the release and change in disaster funding arrangements. For a small council, with particular financial challenges, to fund the reconstruction of landslips when they occur due to heavy rains in our road environment and then subsequently lodge the grant application creates a delay in the flow of funding and a heavy financial burden for a small council to endure.

Development applications, as I said earlier, do not necessarily understand local government boundaries. There is a considerable need for greater consistency of development applications and proposals across each of the local government areas. In our region, many construction and building companies will work across the four councils. The closer that we can align our planning and regulatory framework, the better we will all be positioned to ensure that development is appropriate and delivered where it needs to be.

More emphasis could be placed on the potential risks, particularly coastal changes and rising sea levels. I will give you a particular example. All of our wonderful surf clubs are all built right on our coastlines. Every time we experience an east coast low, we experience quite significant coastal scarping and the assets are at continual risk. The process of retreat for those particular assets is a really controversial concept and one that needs deep community engagement to actually encourage the community to understand that relocating to areas that are not at such risk due to climate change is a complex and challenging process.

We see that incentivising sustainability and innovative development approaches—things that address issues such as heat mapping, street planting, roof colour and the protection of biodiversity in a more collaborative and not retrospective regulatory fashion—would be very helpful in the planning system. We all understand that the New South Wales planning system at times can be complex and difficult to navigate. It is imperative that any change or improvement provides councils with greater flexibility and fit-for-purpose frameworks that work not only for our community but have connections across all of New South Wales, as we all experience climate change in the same but unique ways. We thank you for holding the inquiry today and look forward to the outcomes.

MICHAEL PARK: Similar to Shoalhaven and Kiama, we really welcome the opportunity to participate in the inquiry. You only need to look at what's happened in this State and this country over the last few years—and even in this region over the last couple of weeks—to see the real impacts of climate change and increasing natural disasters and the impacts that that's having on our local communities. We really welcome the opportunity to see how the planning system can continue to play a really important role in building resilience in our communities.

One of the very few benefits, I would say, that has come out of the recent natural disasters—and if you look at something like the 2019-20 bushfires, a lot of the properties and a lot of the stock that was lost was older stock that wasn't built to the current standards under the current planning for bushfire guidelines. I know in the Wingecarribee shire not one property that was built to the current standards under the planning for bushfire guidelines was lost as part of that, which is a really good example of how good evidence-based decision-making through the planning system can contribute to more resilient communities to the impacts of climate change.

I really value the opportunity to participate in a committee like this that will hopefully lead to continuing better decisions. To continue to make better decisions, councils need to be resourced appropriately to do that and to have the level of data and the consistency in the data that's required to make good decisions—councils like Kiama, Shellharbour and Shoalhaven. To keep up to date with the data and the mapping that's required to support planners to make good decisions is often outside of council's capacity to do so. We very much believe that a regional approach or a State-based approach to provide consistent data and based on consistent time frames is

really critical to build capacity in councils to make better decisions. We also think that councils could be supported with model DPC and LEP provisions that are not reliant on individual staff to come up with controls around building resilience to climate change. Again, it provides that consistency across the regions and across the State.

Importantly, we are all acutely aware of the current housing crisis. Collectively, as government, what we need to be mindful of is that to address the current housing crisis we don't create a housing crisis of tomorrow. All three of our councils—and I'm sure councils right up and down the State—are receiving inappropriate planning proposals on constrained and marginal land under the guise of addressing the current housing crisis. We are committed as anyone to addressing the current housing crisis, but what's really critical is that we continue to make good planning decisions.

A number of years ago the State Government watered down the strategic merit test under the LEP-making guidelines, which turned off the need for many proposals to be consistent with strategy if they could address a current government priority—in this case, the need to provide housing. We are receiving numerous planning proposals over land that is not suitable for development under the guise of addressing the current housing crisis. It's really important that, to address this crisis, we don't turn off good decision-making, because we'll put people and property in the future in danger.

The CHAIR: Thank you. We'll ask some questions, if that's okay. I thank you for the submission from Shoalhaven. All the submissions received have been really helpful. Thank you for the effort. I want to go to one point—and, I think, Mr Rose, you raised it, but it's possibly consistent—about the experience where council staff and planners are preparing reports that recommend development not proceed but then the planning panels are going against those decisions and approving development. I think you might have raised that, Mr Rose.

MATTHEW ROSE: That's right. We have raised that in our submission. I might defer to my colleague Gordon, who has better knowledge of some of those examples.

The CHAIR: I did see that in your submission and I am just curious about what actually happens there.

GORDON CLARK: Can I say, in my time here, which is—I won't tell you how long. One of the strengths that used to be in the planning proposal system was that, essentially, before the government changed the rules, if council received what I will call an inappropriate request for rezoning, the council could just hand it back and that's where it ended. With one of the reforms that came in some years ago, the opportunity for a review right came in through usually the joint regional planning panel. In recent years, I think we probably originally had one review. We now, in the last probably two years, have had three to four reviews. What I'm saying is a consistent decision-making pattern where—forget the strategic planning merit of a proposal. If it involves housing in any shape or form, small number or big number, basically, the panel defers to that.

We have one practical example of direct relevance to this Committee, on a site on the edge of Callala Bay. Essentially, it's a relatively small rezoning of potentially up to 15 lots. Most recently, the council staff recommended not to support that proposal. The council at the time backed that decision, but the proponent took it to a review with the joint regional planning panel. The joint regional planning panel, essentially, in simple terms, supported the planning proposal. In terms of climate change, that site is right on the coast. It's currently zoned as environment protection. To actually develop the site into the future, the whole site needs to be filled to basically make it not flood prone and not subject to stormwater drainage. Essentially, that was one of the site merit considerations for us—basically, the site flooded. To actually be able to develop it, you had to fill it.

I would suggest to you that that planning proposal is currently stuck in the planning proposal system. The proponents have been requested to make changes to it by the joint regional planning panel. At this point, it hasn't progressed too far beyond just the original decision and related matters of the panel. That's a practical example in a climate change scenario where essentially a council decision has been overruled by the regional planning panel for up to 15 houses. As Michael said, we are making a housing decision but not necessarily a good planning decision, and delivering not a massive number of houses—potentially up to 15.

The CHAIR: Thank you. Just to go one step further with that, if the regional panel makes a decision that is different to what council has recommended, or even a previous council decision, is there some way of understanding more clearly what is that driver and motivation? Clearly, from my understanding, councils will generally recommend approval of development where it is sound, safe and good. That seems to be the trend of environmental decision-making. I hear a lot from communities that are not necessarily satisfied with that, but that tends to be the trend. It would seem that it's relatively unusual, or it's not the norm when a council would say no, so can you assist the inquiry to help us understand? What are the drivers or those things that are the reasons to go against the council planners' team of assessors in those decisions?

GORDON CLARK: I think Michael touched on it. It's a concern that we had in terms of what occurred. The strategic merit test was always quite a robust test until relatively recently, when the guidelines were—I'll call

it subtly changed to basically elevate, in our opinion, the consideration of proposals involving housing. Essentially, that was quite a subtle change that occurred to the planning proposal guidelines. I think now we are seeing lots of inquiries about potentially inappropriate planning proposals which would normally never see the light of day. But now it's almost worth proponents and the industry reps rolling the dice. Once in a day you could usually guess where a council would land, but now you've got a joint regional planning panel basically making decisions with that overriding guideline of, you know, if it involves housing, then it's worth consideration.

The Hon. JACQUI MUNRO: Can I just clarify who is on the joint regional planning panels and how do they get appointed?

GORDON CLARK: Again, I might let some of the other councils talk, but essentially the southern region Joint Regional Planning Panel essentially comprises three State government-appointed reps. Essentially, they come from various backgrounds. They can be well researched. Councils do have representatives on them. I just know that at this point Shoalhaven council has elected not to have a representative on the Joint Regional Planning Panel, but I believe that when it's in the other LGAs, they do have reps.

The Hon. JACQUI MUNRO: Why is that?

The CHAIR: Yes. What's the motivation?

GORDON CLARK: I can't directly answer that question. Perhaps that's one that we could take on notice and come back to you. I suppose the appointment of people to that panel by a council is a council decision. From a staff level, it's not one that I can answer today, so we might take that one on notice, if that's okay.

The CHAIR: Thank you.

GORDON CLARK: But the panel members—the three that we usually see have a background in ex-government departments or consultancies, or the like.

The CHAIR: And they're appointed by the secretary?

GORDON CLARK: That's correct.

The Hon. JACQUI MUNRO: Just on that, what is the composition, as in how many people are actually on the panel? You've got the three government-appointed representatives. How many council-appointed?

GORDON CLARK: I believe it's two.

The Hon. JACQUI MUNRO: Two each council?

JESSICA RIPPON: Normally, when you have the matter go before the panel, it will be whichever council has that matter going. If it's Kiama, I'll have two of my councillors there and then three panel members. The three panel members can sometimes change, depending on their availability, and it will depend on who you get on that panel as to whether or not you'll be successful in relation to some of these matters.

The Hon. JACQUI MUNRO: Thank you.

JANE STROUD: Just to go back to your earlier question, the composition of the panel and your question about why the regional planning panel would go against the decision of council, the way that the panel is constituted, you're inventing an element of politics that is beyond the realm of local government. So council and the assessing staff have made a recommendation to council; council resolves its position and then that decision and its recommendation get further politicised, really, in the planning system and sent to a second body. You go through a second decision-making process. We have developments in our area where the staff have said no. The councillors have said no. They went to the regional planning panel; indeed, they even said no. Then there was a ministerial intervention that overturned that decision.

The continual politicising of the planning-making process does undermine the specific and unique role that local governments all around Australia play in making decisions on behalf of their local communities about which development is appropriate. What happens at the moment, particularly in places like Kiama where there is an opportunity to ask the question and to demonstrate that your project aligns with a political agenda, it is worth the developers rolling the dice. It's a very expensive place to live. It's a very beautiful place to live and there's a lot of investment that goes into that. It's a very easy rhetoric for a developer to then establish council as the naysayer and council as the roadblock, but in fact the system is there to enable development, if it's in our LSP documents and if it's in our strategic plans. Our role is a facilitator of developments, but the addition of injunctions of decisions tends to overly complicate the planning process and you create more windows for the developer to continue asking questions and try and mount or advocate a position on housing supply.

The Hon. JACQUI MUNRO: Perhaps this is a question for the mayor: Would you accept that one of the reasons that these panels were constituted was because there was a concern that development wasn't being facilitated quickly enough or in an appropriate volume to manage population increases so that people can have homes?

CHRIS HOMER: In my eyes, and being on these State planning panels, it is to give a bespoke commentary about your region and give the facts about the region because often these regional planning panels and the people that sit on them sit remotely, including Ministers. I feel my role there is to give the facts and bespoke commentary to help make sound planning decisions on behalf of my city and my region.

The Hon. JACQUI MUNRO: As an elected representative on that panel, how have you found that process?

CHRIS HOMER: Sometimes the process feels a little voiceless, at times. Sometimes I get the feeling that what I'm offering on the panel is not necessarily receiving the right weight in regards to my region, and it sometimes to and fro a little bit in that respect.

GORDON CLARK: If I could just expand, I guess one of the things which concerned our council or concerned particularly staff at the time that joint regional planning panels were put into the planning proposal process—because they never were there in the past. It came off the back of, basically, a decision by previous governments to give councils more delegation in the planning proposal space, and the counterbalance to that was basically that the review process would come in, and the panels would play a role. But I would argue that we'd already that delegation previously anyway, so nothing much was really changing but it was badged up as "Hey, council, we're giving you more delegation, but there's then going to be greater oversight of you." But that delegation was already there. That was something that we could never really understand.

The Hon. PETER PRIMROSE: You've suggested earlier on that while the planning panels have been there now for quite a period of time, their overarching practices and their guidelines are the things that have changed. Can you talk about that, maybe in relation to the housing imperative, I think you suggested, that the current Government has enunciated?

MICHAEL PARK: I think it's a really important question because the review process has been in for some time. There has been a significant shift in the way the panels are responding to those reviews, and it is related to the subtlety in wording change to the LEP guidelines. The test for a review of a planning proposal has always been "Is it consistent with a government-endorsed strategy?" That was watered down to say, "Is it either consistent with a government-endorsed strategy or addressing a current government priority?" In this case and in the current climate, that is very much focused on addressing the current housing priority of all levels of government. What it has done is that if you're not consistent with strategy you still have a pathway to have a planning proposal reviewed. And, unfortunately, what that's encouraging is speculation.

To address the housing crisis and to make sure that we continue to make good planning decisions, it has to be strategic led. It has to be led through good evidence-based decision-making, and that subtle change to the LEP-making guidelines, albeit just literally one sentence in a 20-page document, has significantly increased the amount of speculation we're seeing in relation to attempting to have land rezoned, because I know there are developers and consultants out there who see it as a legitimate pathway forward to put a planning proposal in to council, knowing that it's not going to be supported and knowing that they can argue that this will address part of the current housing crisis.

The CHAIR: Can I just ask for your view. Do you think the regional planning panels would be helpful to a council if they were mobilised as a decision-making body on the election of the council? So they sit there as an entity, but rather than as a pathway they are there as a body that—if council's got a decision before it where there's some difficulty or council thinks that it would be appropriate. Would that be a better use of a planning panel?

JANE STROUD: This might seem a little radical, so you'll just have to understand that I worked in Queensland for 23 years, and we have a really different way of approaching planning. But my experience in New South Wales over the last three years is the complexity of the planning system where a council is responsible for setting the long-term strategic plan—that document exists and we have it, but an applicant can then come in and say, "I have this great idea, and I expect you to review your long-term strategic plan with my unique property-based solution." The council then has to facilitate that discussion, and then there's an additional layer of decision-making where it goes to a joint regional planning panel.

My experience of that process is that it's overly complex and largely unnecessary, and what you're actually doing is revising strategic planning lot by lot or proposal by proposal, which is kind of the antithesis of actual strategic planning. What may be a better and more progressive system is an agreement around what are the

urban growth areas at a regional level—so where is growth permitted. That lives in your strategy, and then we all get on with the job of approving and assessing applications in a timely fashion, which is the core business of local government. I'm not largely sure what benefit having a joint regional planning panel and an additional layer of decision-making actually gives. I think if the system is more strategic and better resourced, then you get the planning outcomes that are required.

The CHAIR: Can I just go to a consistent theme about data. I understand and we've heard in previous sessions—and I know you've just raised this—consultants can really lead the way with their access to data and the datasets and the way data's presented through consultant reports supporting these very opportunistic development ideas. Does council feel that you have the resources and that the existing data that is available statewide is adequate enough for council to challenge those opportunistic proposals? Or is there a sort of contest of how data is available and how it's used? Accepting that all the submissions are consistent, that we don't have good-enough data.

GORDON CLARK: I think the challenge for us, particularly—no disrespect to Kiama and Shellharbour—is our size: basically, as Matt alluded to, 120 kilometres north to south, 4½ thousand square kilometres. I think it's in excess of 12 to 15 distinct lake catchments. It's basically getting a level of consistent data across that whole area, at a level of data. Whilst we might have it for some, we don't necessarily have it at the same level for all. We tend to focus in certain pressure point areas. But, when you then do planning in those areas where you don't have the data, you're trying to catch up and quite often looking for funding to get you a piece of work done for that consistent bit of data for that catchment that hasn't previously been a priority. So I think for us it's maintaining and getting consistent data over such a big area—49 towns and villages spread across that whole area. We're generally receiving proposals in lots of those areas, where we may have accurate data, but in others we may have somewhat historic data.

The CHAIR: We heard from the State Government that flood data and flood mapping is the responsibility of council still. Where do you sit in relation to that? Are you getting resources to undertake that work? Or have you done that work?

GORDON CLARK: From our point of view, we have quite a detailed flood-planning program. We have floodplain plans and risk management plans in place for lots of our catchments, but we are always continually updating them because, basically, things change. I think it's very interesting, and Matt might actually speak in a minute about the experience that we had at the end of last year with an area called the Moss Vale Road North Urban Release Area, where, very late in the piece, the Government's goalposts in terms of flood planning changed, and the time and cost impost that resulted on council. Matt, do you briefly want to talk about that? It was an interesting experience.

MATTHEW ROSE: Certainly. Before I get to the exact example, the broader question or point that you made there—as Gordon mentioned, there is a rolling program of flood risk identification and flood risk management studies. Again, because of the size of the Shoalhaven and the resources that council can apply to it, that rolling program can sometimes see that data be three, five, seven years old before it's revisited and updated with, for example, sea level rise projections or new rainfall data that takes into account some of the effects of climate change. I think our submission goes to that point about extra resourcing or funding for councils to have a much more regular or frequent review of those to have that contemporary data.

In terms of the Moss Vale Road North example, that's a new residential area that council's planning. It's going to provide around about, we hope, 2,000 new lots. The release area itself was identified over a decade ago through council's broader strategic planning work, and since then it's been confirmed with planning controls. And, as we've got closer to releasing the area ready for subdivision and development, we've had to refine those controls to address various matters, one of which was flood risk. And, yes, very late in the process of finalising the planning controls, the department of planning moved the goalposts, raised the requirements for us to address flood risk to the probable maximum flood level. Traditionally and for a long time, planning has worked to something known as the flood-planning area. So we pick a certain flood event. Often it's the one in 100 or the 1 per cent annual probability, and a freeboard of varying height is added to that. There's been a long-held approach to managing and planning for flood risk based on that, and at the last minute that was changed to the PMF.

The CHAIR: I feel it's probably my community of Lismore that was partly responsible for PMF. That's what we started talking—

MATTHEW ROSE: It may well have been a sort of a response to inquiry.

GORDON CLARK: It was definitely an initial response to the flood inquiries, but I think, in terms of what Matt's trying to allude to, we'd done a whole body of work leading up to that. Then, at the very nth degree, there was a change in—Matt, how much did that cost us to actually address, approximately?

MATTHEW ROSE: It was combined with other works, but at least \$50,000 to \$75,000 on additional flood-modelling work.

GORDON CLARK: And that was money we had to find very late in the piece that hadn't been budgeted for because, basically, to a certain degree, it came out of the blue right at the end of the process.

The CHAIR: So, \$50,000 to \$75,000?

MATTHEW ROSE: Yes, for additional flood modelling and analysis of flood-evacuation scenarios and the like. But it's also the time that it added to our process: I think nine to 12 months extra to release that new—or, certainly, to finalise the controls to guide the development of that release area.

The Hon. JACQUI MUNRO: Everybody has mentioned data. Are there other specific datasets that you would like? Obviously flood mapping is a big one, but are there other pieces of information that would help you plan?

JESSICA RIPPON: I think there's quite a number, and I guess I was going to give a bit of a contrast. Kiama is actually disadvantaged because of its size in comparison to Shoalhaven. While Shoalhaven is so large, Kiama is so small. Our biggest challenge is that we don't have the expertise in house to do any of the mapping, any of the flooding modelling and we just don't have the staff or resources. When you're competing for funding with someone like Shoalhaven, it's very difficult to get that funding from a government perspective. We just don't have the scale as others and that means that a lot of our datasets are very, very aged. It's actually prohibiting us developing land that's been identified for residential development. We've had two recent developments that haven't been able to proceed primarily because of flood impacts and access. We want to allow that development but we don't have the modelling, we don't have the funding and we can't provide the infrastructure to allow that development to happen. That then feeds into the requirement of planning proposals in locations that aren't necessarily appropriate.

The Hon. JACQUI MUNRO: Are you able to provide some details about that situation, perhaps on notice, in terms of the process that it's been through and the barriers that you've encountered so far?

JESSICA RIPPON: Absolutely. I've got two good examples and I'm happy to provide that.

MATTHEW ROSE: If I may add to that? It's not necessary data but, building on the comments about what councils need to undertake good evidence-based strategic planning, there's the broader issue of stronger policy guidance on the issues, but this is reflected in our submission. It's around the housing priority, or the housing situation, and it's housing targets that I wanted to raise—not necessarily a dataset but the target or aim that the State Government envisages for each council. We need a clearer understanding of that housing supply challenge that the New South Wales Government expects of councils. Targets were proposed with the creation of the Greater Cities Commission, and the Act, in 2022. We undertake planning at a local level but, without knowing the State's expectation, it doesn't allow us to undertake that really good, broader strategic planning that responds to that expectation and those targets.

JANE STROUD: Just to round up on your question there, yes, data in relation to bushfire, data in relation to biodiversity mapping—that is often a conversation we have particularly in coastal and wetland areas—the accuracy of that biodiversity mapping and sea-level data would all be really helpful information for a council to have at its fingertips when planning.

MICHAEL PARK: Some of the challenges, though—a good example is biodiversity mapping. You can have the best quite fine-grained detailed model about vegetation types and then you get onsite and it's wrong. It's really common for the State Government datasets. Even when you look at the biodiversity value map, every second proposal that comes in that has a site survey done demonstrates the biodiversity value map and that quite broadscale modelling is incorrect when you get to the site-specific level. The real challenge is: How do you build capacity for that local-scale mapping? Because councils—and I think all three of us—would love to have a really strong evidence base to make better decisions. Even consistency in the climate scenarios—we might be using a different scenario to Kiama, and we share a boundary. That inconsistency is a real challenge, but the capacity of councils to do that work is just not there.

GORDON CLARK: One thing that hasn't been spoken about, and it's relevant in a climate change scenario, is ag land mapping—agricultural land mapping. Again, we are still somewhat operating off really outdated maps. We are still waiting for the Government to set its position on, basically, what is the ag land that's to be protected and respected in planning. In the meantime, essentially in that planning proposal space, we are still getting lots of requests for rural residential rezoning on what is currently mapped as prime ag land. Again, it's a dataset that is quite specific, not necessarily to Shoalhaven but other areas. We do have lots of what, potentially, are prime ag land. Agriculture is one of our major employment-generating industries in the Shoalhaven. So

looking forward about particularly protecting local food supply, we need good data on which to make those decisions.

JANE STROUD: I couldn't agree more. Everyone is looking at our lovely green rolling hills that are currently mapped as ag land, and council is getting inundated with proposals for housing in those quarters.

The CHAIR: In terms of prime ag land, is that like the biodiversity? When you get a site-specific consultant who gives you an assessment, they might say, "Actually, it's running 10 cows." Is that prime ag land?

GORDON CLARK: Potentially, yes. And what we're getting is very—I'll call it subjective opinions based on a property, so "This property is not viable for agriculture because it's too small." That's not the point of the mapping. The point of the mapping is that in globo that area is prime agricultural land.

The CHAIR: And what are its capacities to produce food.

GORDON CLARK: That's correct.

The CHAIR: My understanding is that, at the moment, we don't actually have those settings. We don't have those tools particularly available to us in New South Wales. The datasets we have are, as you say, very old, and we're not looking at those more granular qualities.

GORDON CLARK: To my knowledge, and Matt might correct me if I'm wrong here, we don't have contemporary positions on it. Essentially, we still have the old class one, two and three ag land mapping. But then there's also talk now about the biophysical agricultural land mapping, which, in some regards, has not yet been completed for lots of areas, or verified or accepted by Government.

The CHAIR: Do you have BSAL assessments for your three LGAs?

JESSICA RIPPON: No.

The CHAIR: No, okay. The strategic agricultural—

GORDON CLARK: No, I don't believe so, because when you look at the ag-mapping project, I think the Illawarra Shoalhaven region was considered to be a lesser priority. It's there to be done but as a lesser priority to some of the, I would call it, more defined agricultural areas. But that's not to say for us it's not important. As I said to you, agriculture is still one of our primary employment-generating sectors. We're probably lucky in the Shoalhaven that the bulk of our prime ag land is on the Shoalhaven River flood plain and, as a result, it's flood-prone. That keeps it out of the hands of developers. To pick up Jane's point, we are constantly fending off planning proposals for what is mapped currently as prime ag land because it's on the edge—

The CHAIR: The beautiful, green rolling hills?

GORDON CLARK: Yes.

JESSICA RIPPON: Yes.

MATTHEW ROSE: The Department of Primary Industries, we think—and we've engaged in the early parts of the process. They've been developing a dataset and mapping for at least a couple of years now and promising to support that with a policy around rural land: protecting, maintaining and retaining rural lands and identifying those values that—how to assess the viability of the land to help counter those proposals that we're seeing.

The CHAIR: I know we're running out of time. In terms of biodiversity, and particularly when we're moving into the threatened species zone such as endangered ecological communities and threatened species habitat, other than those legacy, zombie or older developments that you were referring to that are in the system, are you still receiving proposals that would suggest that those highly constrained lands can be cleared and intersected for development? How does that intersect with the offset scheme and council's abilities to deal with those kinds of proposals?

JANE STROUD: We definitely are but, like any council, what will eventuate is a planning proposal where those high-value pockets of biodiversity land are typically corralled in maps that are for potential stormwater areas, detention basins or green buffers, which will ultimately become council's responsibility to take on and manage. Whilst it is fantastic to protect and support those parcels of land, that too comes at a significant cost and has to be managed. You don't just get land and leave it there. It needs protection and active management. The implications for a small council on those—that is what we see. The proposals will come in with those parcels of land with the intention of handing them over to council at some point.

MICHAEL PARK: In relation to biodiversity, one of the challenges is that the legislation provides a pathway to clear vegetation. Certainly, it requires that you attempt to avoid; if not, to minimise; and if not, then

to offset. I have never seen an application come in yet that tries to avoid as its first principle. It's almost always minimising impacts or offsetting impacts, and the legislation allows that pathway. The challenge is—again, I don't want to sound like a broken record—if we allow industry to dictate where growth occurs, then you get speculation and you get the pushing at the boundaries of these environmentally sensitive areas, whereas, through a strategic approach and identifying land that is not constrained and guiding development where it should go, we can address those issues at the strategic level.

The other point I'll just very quickly make in relation to biodiversity is that the assessment process doesn't assess the cumulative impacts of loss of biodiversity. It assesses it on a site-by-site basis, and that's a real challenge because, when you go through either the five-part test of significance or if you go through a BDAR and you look at the impact of a development site in isolation, almost always there is a pathway to clear the vegetation. It's very rare that you'd have a serious and irreversible impact. If you looked more strategically at the loss of all of that vegetation and the cumulative impacts of the loss of that vegetation, you might get a very different picture, but that's not how the legislation is set up.

The CHAIR: I just want to pause for a second. We actually have got a bit more time so, if you're happy and content, we will ask a few more questions, because this is incredibly helpful. Please, go ahead.

GORDON CLARK: If I could just put our perspective to that. Our current council—noting that we will have a new one later this year—has resolved to embark on the preparation of a new planning scheme.

The CHAIR: I was about to ask where all your LEPs are up to.

GORDON CLARK: Our current LEP is coming up for its tenth anniversary, but the thing I would stress with that is that please don't take it that it's a 10-year-old document. It's not. It's been substantially amended over the last 10 years and, I would argue, to a certain degree, kept contemporary through that process. Just because it was adopted in 2014 doesn't mean it's a 10-year-old document, necessarily. Our council has resolved to prepare a new planning scheme in a staged approach. Basically, what can we achieve under the current council—acknowledging that their term will end in September—and looking to what we program with the new council and attempt to finally deliver with the new council. As part of that, the council has already put some positions on paper, and one of those is to look at future settlements avoiding areas which are basically vegetated or contain biodiversity value.

Council has made quite a strong statement about that already, but the flipside of that for us as planners is—in simple terms—that if you can't look at something with vegetation on it, then that pushes you to things like prime agricultural land on the edge of Nowra, which is flood-free. Rounding it out and coming back to Matt's comment about the dwelling targets, we need to know what those dwelling targets are because we actually need to know what we are potentially planning for to know what were actually looking for in terms of areas and where best to place those. I think we are in an interesting quandary at the moment in terms of waiting for those targets but also trying to predict future work to actually address those targets through new LEPs, new planning strategies, et cetera.

The Hon. SCOTT FARLOW: Mr Clark, when did you expect to see those dwelling targets?

JESSICA RIPPON: Last year.

GORDON CLARK: Probably 12 months ago.

The Hon. SCOTT FARLOW: I think everybody in local government had the view that they would get those dwelling targets last year. The department says they were always coming this year, but everyone in local government across the State, without exception, expected to see those dwelling targets in the middle to late last year.

JESSICA RIPPON: Correct. And certainly—as you probably would appreciate—we had commenced a dialogue with the then Greater Cities Commission. We were working—I would argue, Jess and Michael—quite collaboratively with them. All of a sudden, the rug got pulled out from underneath them and we've kind of dropped into this vacuum of who is actually doing the target work now. When are they actually going to talk to us? Or—God forbid—as usually happens, are they just going to be dropped out through some sort of media release and we're going to have to respond to them?

The Hon. SCOTT FARLOW: I think you can bet on that.

GORDON CLARK: Probably.

The Hon. JACQUI MUNRO: This is related. In terms of what your zoned capacity is at the moment for each area, do you have an understanding of what could possibly be built in your councils if you're using a maximum allowed?

JANE STROUD: We do, and we're very similar to you.

The Hon. JACQUI MUNRO: Could you give me those numbers?

JANE STROUD: Our LEP was written in 2011, but our LSP or—

JESSICA RIPPON: LSPS.

JANE STROUD: —LSPS was written in 2020 and it notes the potential growth areas.

The Hon. JACQUI MUNRO: Do you have numbers?

JESSICA RIPPON: Yes, we have numbers.

The Hon. JACQUI MUNRO: Could you provide those on notice or if you have them now?

CHRIS HOMER: For an example for the room, through our local strategic work—and there is a body of work there—we know what we need to do to meet our community's housing needs. We use local population projections. We look at how our communities are changing and ageing and how the household size is working. We know that we need to deliver about 14,200 extra homes by 2050 to continue to meet our community's housing needs. We know that the New South Wales Government's population projections are greater than those local projections, and they reflect a greater implied dwelling demand. Sorry, just going back to those 14,200. Our current zoned land—and the majority of it is provided in new urban release areas that are being rolled out over that period—meets about 80 to 90 per cent of those 14,200 homes.

The Hon. JACQUI MUNRO: Thank you. That is very helpful.

MICHAEL PARK: I don't know the number as well as Matt does, sorry, but I know that the department of planning have recently undertaken a housing audit.

The Hon. JACQUI MUNRO: Can you take it on notice?

MICHAEL PARK: We can take it on notice. We know that even in a high-growth scenario we've got zoning capacity of 15 years with planned up-zonings around certain train stations and town centres.

JESSICA RIPPON: For Kiama it's between 4,000 and 5,000, and that depends on whether you go low-growth or high-growth. Our biggest issue at the moment is that we're not certain on whether development's going to happen or not. Bombo Quarry is a very large site that could provide 3,000 dwellings, but we're relying on the State Government to cease quarrying activities and whether that's actually going to deliver housing in the short term. The other sites that I mentioned before—they are already zoned for residential development. They are in our growth plan. They are supposed to be delivering housing now. With changes in the flood plain manual, they can't. So our current status is that we know the numbers, but there is uncertainty about whether the residential land that has been zoned will deliver and whether we have other areas that we can allocate quickly to allow that dwelling.

JANE STROUD: I would just add that whilst we know the numbers, we also know the brutal reality of the fact that our water sewerage treatment plant, which is provided by Sydney Water, is at capacity. So the numbers that are even in our existing LSPS cannot be accommodated with that infrastructure. When I open Sydney Water's long-term plan for that asset, it doesn't have a significant upgrade planned, which means that I have planning proposals coming in with bespoke, individualised, onsite public amenities that present a very confronting alternative to what should be one of the most fundamental tenets of any growth, and that is the ability to have water and sewerage.

The Hon. SCOTT FARLOW: When you are talking about these bespoke solutions, are you talking about like we've seen in some areas of Western Sydney with shipping out the sewerage and the like?

JESSICA RIPPON: Yes, correct.

JANE STROUD: Indeed. Absolutely—exactly that model.

The CHAIR: I think I recall—it might have been in the '90s—Byron Shire Council put a moratorium on all developments until it got State Government support to upgrade its sewerage facility. They certainly did that. I'm not suggesting any ideas here.

JANE STROUD: I might give that a go.

JESSICA RIPPON: We're getting close.

The CHAIR: I do recall that the pressure was so intense, and they were walking into an environmental catastrophe without assistance.

JANE STROUD: Speaking very genuinely, we have a water sewage treatment plant that has the ultimate capacity of 25,000. My existing urban population is 23½. At Christmas time, when every rental unit and tourist accommodation is full, we exceed that. The risk to our incredible coastal environment is profound. We do see an increase in spills and pollution into the ocean, and that's not an acceptable urban outcome. If we are going to have a nuanced conversation around responsible urban growth, which we want to be part of, you actually need to get past the fundamentals of infrastructure supply, and it can't be the notion of just-in-time delivery. For Sydney Water to put out a long-term plan that has no response to Kiama's issue is not an acceptable solution. For growth to occur in Western Sydney and other areas that isn't part of an integrated infrastructure network speaks to a breakdown of the understanding of strategic planning and proper urban growth. I'll get off my hobby horse.

The Hon. SCOTT FARLOW: This is a high horse zone.

GORDON CLARK: Can I just note, in the same vein, in terms of water and sewerage, Shoalhaven is probably in the fortunate position that we are not in the Sydney Water area. We are our own water and sewerage authority. For us, that enables us to align our planning a lot more closely. It's not foolproof, but I would argue that it's a lot more aligned. From our point of view, our water authority has been, I would say, quite front-end leading in terms of, for example, our reclaimed effluent management scheme, which basically seeks to limit or not have any discharge to the ocean or any other body like that and has also helped us in the longer run to futureproof a lot of our prime ag land on the Shoalhaven River flood plain. Essentially, we can work quite closely with our water authority to get more locally responsive outcomes than our colleagues to the north, who have to deal with the behemoth of Sydney Water.

The CHAIR: In terms of the LEPs, I note, Mr Clark, that you have identified that your LEP has gone through iterations and been updated and amended. Going back to the standard instrument, I recall very well the period before standard instruments. We had across the State very localised planning instruments and there was genuine concern around the standardisation that was very strict initially, but it seems like a lot of LGAs have pushed back and managed to get those local provisions. In going forward now, with the remaking of your LEPs, do you think that we are at a period where the standard instrument is a bit redundant? Are we better having the standard instrument more as a guiding document and those localised LEPs are the better mechanism to drive good planning outcomes? I would be really interested in your views on how you are going to introduce your new LEP.

GORDON CLARK: I think this isn't the first inquiry that we've been asked very similar questions to that. I recall appearing before a similar government inquiry about the planning system, where one of the things I probably said at that point was that the standard LEP instrument was a blunt instrument. It really didn't do what we needed it to do. We supported somewhat of a standardisation model. Yes, it didn't make sense that we could have, I'll call it, 50 zones but Kiama might have 30 zones and they were all differently worded. To be fair, we all supported a level of standardisation, but the thing that was really blunt was that you couldn't effectively localise it in any shape or form.

For us, it took us six years to prepare our new LEP 2014 under that standard instrument process because, essentially, we were trying to take what we previously had, which had quite nuanced local provisions in it, and get them into this standard instrument process. The community arced up about it, council arced up about it and, to a certain degree, some of the other government departments arced up about it. But we were trying to deal with this very blunt set of rules. To use the terminology, "The computer says no. You can't have that clause because it's not worded the right way." The standard instrument has a role, but we would argue that our council still needs the ability to come up with nuanced controls, particular areas, particular issues and particular challenges. But some consistency is certainly valuable.

MATTHEW ROSE: I would just add that, yes, there has been some relaxation in the clauses that we can use. But, at the same time, the instrument itself has become more and more standardised. We have seen a reduction in the number of zones—the employment zone is an example there—and we've ended up with more and more prescribed or mandated uses in those zones. It's becoming more and more prescriptive as it has evolved, even though there is some of that relaxation in how parts can be used. On balance, I would say that some of those changes, like the employment zone reforms—I know it's not strictly related to this inquiry—have weakened our ability to have more specific or localised controls.

The CHAIR: In terms of this inquiry—that is, particularly looking at the planning system in relation to changing circumstances, biodiversity, climate et cetera—do you think there is value in having more flexibility at the local level and the planning instrument level around those considerations specifically? Obviously, there's the specialised flooding provisions within the LEP, but do you think there is scope to have more of that localised planning tool in your LEP?

GORDON CLARK: I think it's a balance. I think there are some things where, I would suggest, we need the State to be quite strong and lead, whereas there are probably other issues where the council needs some

flexibility to basically determine a position that is acceptable to its local community. It's about trying to find that balance. I reflect on, for example, bushfire. One of the debates we had was about the lack, at one point, of any reference in the standard LEP instrument to bushfire. We were saying, "Hang on, Government. The fundamental thing that most local people go to first when looking to develop land is a council's LEP, but there is absolutely no reference to bushfire in it." There are things that essentially the State Government needs to have in there to basically drive outcomes and direct people to outcomes, but there are other things that the councils potentially need the flexibility to set locally.

JESSICA RIPPON: In relation to the flexibility perspective, Gordon has talked about it taking six to eight years for his LEP, and our LEP has aged as well. I think as a council the way in which the planning system is set up and the process in which to amend your LEP and the requirements of the standard instrument actually doesn't enable council to be flexible and responsive. There are significant changes that have happened through the recent events—you've got 2020 and even as recent as a couple of weeks ago. Council hasn't responded in our planning scheme in any way, shape or form to that change in circumstance. Everything is still the same as it was prior to that event, and so you become unable to respond and unable to be proactive. The time that it takes to make those changes—we could be three years down the track before Kiama will have another LEP. By that stage, the circumstances have changed again. You are always on the back foot.

JANE STROUD: In 2011 in Queensland, when we all experienced really significant and brutal flooding, the State implemented a temporary local flood TLPI, a planning instrument. It was a regulatory reform instantaneously in place across all SEQ councils that had endured the really horrific flooding, enabling us all to go back to our planning schemes and instantly make those changes but, as applications came through the door, to use accurate, up-to-date flood modelling that we had literally just witnessed. Contemplating how the State uses its own role to regulate and respond immediately to empower us to go back—from the sounds of it, we are all dealing with LEPs that are over a decade old. A lot changes. We've had six natural disaster declarations. I think Shoalhaven has had something like 14.

GORDON CLARK: Yes.

MATTHEW ROSE: Yes, 11 different flood events.

JANE STROUD: Yes, a lot.

The CHAIR: With COVID we were able to introduce rapid changes to laws and regulations to accommodate, but not for planning.

JANE STROUD: Yes, in a really granular way. We extended trading hours for deliveries and we instantly changed the way that businesses could and were able to operate. I suppose the point I'm trying to make is that the regulatory provisions that the State have are the best place to empower us to go back and then immediately change our LEPs. We need that local flexibility so that you can respond to your latest landslip or your latest flood level, which we know will be radically different to the last disaster event that we had.

The Hon. SCOTT FARLOW: What would you see that needs to change to be able to do that? You talked about the Queensland experience where there was, I take it, the equivalent of a SEPP or something that was put in place.

JANE STROUD: Yes. We call them SEPPs here.

The Hon. SCOTT FARLOW: What would you say that we could do in New South Wales under the current planning Act, or whether it be by a ministerial directive or the like?

JANE STROUD: I think your SEPPs—and you're starting to use them in interesting ways. The recent decision around the TODs is a really interesting example and even the height limits, so interventionist SEPPs that actually will yield a difference in assessment. As the assessment comes in the door, staff will now have to take into account what are the allowable and permissible height limits, densities, things like that. That's typically this State's solution to that—your SEPP controls.

The Hon. SCOTT FARLOW: So you would say a SEPP would be the way that we could address it here?

JANE STROUD: Yes, I think so.

The CHAIR: We heard some evidence earlier in this inquiry about the particular climate change settings and that if we want to assist local governments to implement what we now know in terms of the settings that we're planning and working for, a SEPP would be the most efficient and effective way to do that.

JANE STROUD: Yes. They're certainly faster.

MICHAEL PARK: Can I suggest that I don't think a SEPP is necessarily the best mechanism. What I think is the best way of dealing with the need to be able to act quickly is what a lot of councils are doing already and they're trying to work a way around the standard instrument. Many years ago, pretty much every LEP had flood-mapping mapped as part of one of the LEP overlays. Almost all councils have now taken that out of the LEP because it's easier to update your flood study and just reference adopted flood studies rather than having an LEP map because there was always a 12- to 18-month lag between adopting a flood study and realising a change in the LEP. What I think would be really beneficial is if all LEPs referenced a centralised data point that could be updated.

The Hon. SCOTT FARLOW: Updated at will, effectively.

The CHAIR: Yes.

MICHAEL PARK: If we had State-led flood mapping that could respond to an incident that occurred, like what happened in Wollongong and Shellharbour over the last couple of weeks, and we had instantly updated flood modelling to show this is what happened in that event, all of a sudden our LEPs are pointing to that point to set the controls. It's not necessarily that the controls will change; it's the data that sits behind the controls about where the flood line sits.

GORDON CLARK: Can I say that that's an approach that Michael's outlined that we would generally support because we, like a lot of councils, did exactly the same thing. We took the flood mapping out of our LEP. The reason we did it wasn't because we wanted to try and hide it, but what we were actually seeing was that, as Michael has alluded to, the flood study was completed, and then it took us 12 to 18 months to actually update the mapping in the LEP. Basically, you had a lag between new information and an LEP update, not because we were dragging the chain but just because of the process. The simpler, cleaner thing to do was to basically take the mapping out of the plan, have a clause in the plan that refers to the mapping so you're still achieving the same thing but without that time lag, which was quite considerable.

Really it was a legal problem because on one hand we had a clause that said one thing but a map that was outdated. I think that's a really good suggestion about whether we could do this through the LEP process. This would, I guess, involve a lot of dialogue with the PCO, the Parliamentary Counsel's Office, because they get really jittery when you start referring to things that sit outside the LEP. But whether we could work that—that there's a set of data that's statewide data that councils sign off on and government signs off on that informs clauses within the LEP, would be a responsive model.

The CHAIR: Just to go back to something you said earlier, Ms Stroud, about planned retreat and particularly these coastal assets, could you elaborate a little bit on what's your experience, what you're thinking, and what you think is needed?

JANE STROUD: Yes. I will use a couple of granular examples and I'll probably talk about a local planning embarrassment, the Jamberoo preschool, which is actually a kindergarten built in a flood plain. Every time it floods for, literally, about more than 15 to 20 minutes, the entire community knows that it's time to bump in and start pulling out the little kids play area. Every time it rains we go and clean up that site. Recently, after the events two weeks ago, we sat down with the operator—it's a council-built facility, mind you—and said, "We need to talk about you not being here. This is not a viable long-term solution. There's a risk to life if we have heavy rainfall. You're talking about vulnerable little kids who cannot swim—they're three and four, or maybe they can swim a little bit. But we have to have a mature conversation about where are we going to put you. Where are we going to release land? Where is that land best located?"

That might be a very granular conversation, but then if you apply that to our surf clubs, or to our particular road that routinely floods, Spring Creek—we have a planning proposal where they would like to do substantial growth, but we can't allow it without a floodplain study, without a new bridge that actually enables the whole population to have flood-free access in the event of rainfall. That's not really a conversation of retreat; that's a conversation of infrastructure funding and delay of development while we catch up to be able to create flood-free access. But for the kindergarten, it is a conversation about retreat. For our surf clubs who are in the heavy coastal impact zone and whose assets are aged and approaching end of useful life, we do need to have a conversation about, "Well, if we rebuild your asset, should it be built right beside where it is now, or should it retreat back into the park further, or up the hill further?" From a service point of view, that's a poor outcome for them because their entire service is about saving lives on the beach.

It's a complex conversation. In your community of Lismore, that is a profound conversation around what do you do with CBDs—because you're talking about insurance implications. The little Jamberoo kindergarten pays over \$30,000 a year in insurance because of the floods and the impacts. In your own community I'm sure there are probably hundreds of businesses and individuals who struggle to get property insurance. Things like

buyback schemes and then complex conversations around large-scale relocations of business districts and industrial areas, and community housing that has been inappropriately built in flood plains, need to be a really significant body of work.

The CHAIR: With that, would it be wise that the State Government is already looking at and assessing proactive buyback and retreat scenarios? Is that something that would assist you as councils?

JANE STROUD: Absolutely, and that does require State coordination. They're hard conversations to have. Compulsory acquisition is a really difficult thing to manoeuvre around, but people's lives shouldn't be put at continual risk.

GORDON CLARK: I think, absolutely. As long as I've worked here, most of the floodplain risk management plans and other similar risk plans that council has prepared under the State framework, acquisition of directly affected properties is always one of the options that's investigated. But, unfortunately, it's usually one of the options that's discounted first, or doesn't proceed, because at the end of the day no-one, particularly the council, has the money to spend on fire-affected properties. But it absolutely should always be there as an option because what's that definition of insanity? Doing the same thing over and over again. So, yes, there are properties in probably all of our LGAs that every time there's a relevant event, they get impacted and they'll continue to get impacted probably to higher and more significant levels. There needs to be some sort of system for affected properties to be acquired, and remove the issue into the future.

The CHAIR: At the moment the Reconstruction Authority has developed the State Disaster Mitigation Plan, and now it's up to particular areas and regions to start with the adaptation plans. Is that something that you are all pointed towards? Are you in that process? I'd just love the views of understanding of the three councils of what—

GORDON CLARK: I don't know. Perhaps we might take where we're actually at in that process on notice, but I think the thing I can say is that this council, or Shoalhaven council, has been extremely proactive in the last five or six years for a range of reasons. We have done, as outlined in our submission, quite a lot of work in that resilient space in aiming to make communities more locally resilient. It's front and centre of our thinking because of the number of events that we've had across the spectrum in recent years. But, in terms of that new piece that's come out late last year or early this year, I think we will take that on notice and come back to you on how we are actually now responding to that, what are we doing with those things we've already worked up to actually augment them and make sure they meet the new guidelines or the new resilience authority outcomes.

JANE STROUD: Actually, we should take that on notice because I think the Illawarra Shoalhaven Joint Organisation, ISJO, has done a huge power of work for us regionally around that, so we might approach them and get them to provide you some data if that's all right.

The CHAIR: Thank you. Yes, because we hear that—all this appears to be very good work, and it's getting well resourced. But, if there's a way to feed into whether it's working with their criticism, this is a legitimate avenue to do that. We'd be very grateful. One thing I would just love to have your views on, if possible—I know that you mentioned the development, the inappropriate or the old development that Shoalhaven's dealing with in terms of housing and the zombie DAs, as they're referred to. The planning Minister, when he's been questioned about these, has said on a number of occasions council has the power to revoke development consents. I'm just curious as to what your view about that is—and that power.

GORDON CLARK: I think that the simple response I would give you is it's a very contested space, a very legally contested space, that I'm not aware of particularly our council being able to step in and revoke a consent. There may be a legal provision that allows you to, but then what's the process to do that and what does that cost you to get there. Does it end up, for example, in a court-contested process where we spend a lot more money of the ratepayers to get the same outcome, which is the consent lives on? We would look to that separate inquiry to, hopefully, start to challenge some of the thinking around that, because we accept that what was approved maybe 30, 40 years ago—it's unconceivable that it's still alive on paper and then can pop out 20 or 30 years later. Absolutely. But whether we can physically step in—legally, probably, there is a mechanism, but I don't think it's quite as simple as the Minister is making out.

The CHAIR: Just curious on a broader issue about your experiences with the Land and Environment Court and those particularly opportunistic and wealthy and litigious, or seemingly litigious, proponents in the community. Is the modus operandi of council, "We'll fight and we'll fight. But, once we've got a threat of litigation if we refuse development, we're better off not taking that because that's a very expensive path"? We've heard this about the LEC, so I'm just curious about what your council's experience is and how you approach that.

JESSICA RIPPON: We've currently got nine to 10 cases in the LEC. Either they've been brought because of refusal—some of them been brought because of deemed refusal. I think the court is becoming a much

easier process for a developer to go through. Their case numbers are relatively down, and they're finding that they're getting good outcomes. And, in some cases, from a council perspective, we're actually getting better outcomes through the Land and Environment Court as well, because then you involve a number of different experts et cetera. From a financial perspective and burden on ratepayers, that's extreme. And certainly, in a council like Kiama, where we just simply don't have the funds, we're probably spending \$100,000 to \$200,000 on each case.

GORDON CLARK: For Shoalhaven, I think we certainly have seen an increase in the number of cases that we're involved in. I think, if the note that Matt's just written me is correct—and we might confirm this for you on notice—we're currently involved in 15 cases in the Land and Environment Court. It doesn't take rocket science to work the maths out on that. That's, potentially, a direct cost to the council, just to defend those cases, of \$1.5 million or thereabouts. We certainly are seeing a rise in the number of cases, as Jessica said, both for, basically, non-determination, because we didn't deal with them within the defined time, or because a proponent didn't like an outcome.

So again it's a bit like the joint regional planning panel. With the current market economy at the moment, for residential land particularly, it's worth rolling the dice, essentially, and seeing what you can get through the court process. We've certainly seen a massive increase in the number of cases. The other thing that that does is it actually takes staff away from their actual day-to-day work of, for example, processing DAs. So again it's creating another issue for us, which is diverting resources into court process rather than actually assessing development applications, and then we cop a hiding because our DA times start to slide. So we're on this kind of hamster wheel at the moment of, basically, getting pressure on a range of fronts.

The CHAIR: What's the experience of your council at the moment?

MICHAEL PARK: I think we're currently in five cases in the Land and Environment Court. For the most part, we've established quite good working relationships with industry, and we haven't seen a significant increase in people using it as a pathway. Like I mentioned about planning proposals earlier, there are definitely developers out there and definitely consultants out there who lodge a DA and, the second the deemed refusal period is up, they'll go straight to the court, and they see that as the easiest pathway forward. Our experience on the applications that we currently have with the Land and Environment Court have ended up with fairly favourable outcomes for the council. The design of the subdivisions or developments have come back to what council's view was from the start, which is a good outcome—a significant waste of ratepayers' money to get there, though.

The CHAIR: Can I just ask finally on that point, is your practice in terms of your legal representation in those—do you have a lawyer firm? Or does it vary? Or do you do the work in house? How do you deal with initial court proceedings generally?

GORDON CLARK: For Shoalhaven Council, we have an in-house legal manager. She, unfortunately, can't manage all of the cases. It's just a pure workload. So she becomes, essentially, a bit of a triage system but, obviously, manages oversight, but we have a panel of legal firms who we use. We don't use one in isolation. We actually have a panel of firms on our legal register that we use, depending on their expertise, depending on circumstances, just depending on the number of cases that are running. So we tend to use a number of firms across that panel.

The CHAIR: Thank you. Is that similar?

MICHAEL PARK: Yes. We have a legal panel. And one of the other costs associated with it, though, is then we also almost always have to have expert witnesses, whether that's in relation to biodiversity, flooding, urban design—whatever it is. We're engaging not just a law firm but expert witnesses.

JANE STROUD: We are exactly the same circumstance.

JESSICA RIPPON: It's actually a panel that sits over all four councils. We established it through the ISJO. So everyone has the same or generally the same panel. And again, as Michael said, with the expert witnesses, you're also employing planners because, again, in smaller councils, you may not have the qualified planners to run those cases.

GORDON CLARK: For ours, I think, because we've got so many cases running, again it takes staff that should be potentially back in the office, assessing DAs or assisting with local planning matters—it takes them out for days on end when the actual cases are in court. It can be anywhere from three to five days that they've got to be up in Sydney, in court.

The Hon. JACQUI MUNRO: Is there some register or statewide information about the proportion of determinations that are challenged successfully or unsuccessfully? Is anyone aware of something like that?

The CHAIR: I think the LEC has that.

GORDON CLARK: The LEC should be able to provide you with that.

The CHAIR: They do their annual stats. This has been incredibly helpful. We've come to the end. Are there any final things that you feel you would like to add?

JANE STROUD: Just to say thank you very much for the opportunity to have the conversation. I think it's been really interesting to sit and realise that we are very much all in the same boat in experiencing many of the same issues.

GORDON CLARK: I think similarly. I think just the fact that you've brought this out into a regional area, we thank you for. I know one of the things we have raised relatively late in the piece, because it's actually not in our submission, is that issue that we're seeing currently around proponent-initiated planning proposals. It's one of those things that concerns me right at this point in time, the spike in the number of those that we're seeing and how they're being managed within the government system.

The CHAIR: From what I'm understanding, I think that's the political environment that's been created on that, intentionally or unintentionally. That's the political environment because of the housing crisis or the pressure around that.

GORDON CLARK: And I think it was very much, as Michael alluded to, that very subtle change that was made to the planning proposal guidelines, I would note, with very little or no consultation or engagement with councils.

The CHAIR: Thank you very much for such an enlightening session and for your evidence. The secretariat will be in contact with you around those questions taken on notice. Apologies for any extra work that that generates. I know what that means but thank you. We really appreciate all of your input.

(The witnesses withdrew.)

(Short adjournment)

Mr ROB BARREL, President and Convenor, Callala Matters, affirmed and examined

Mr BRUCE McKENZIE, President, Our Future Shoalhaven, affirmed and examined

Dr PENELOPE DAVIDSON, Secretary, Our Future Shoalhaven, affirmed and examined

The CHAIR: Thank you for taking the time to give evidence today. Would anyone like to start by making an opening statement?

ROB BARREL: Yes, I would. I also have 10 copies of eight different documents that I'd like to table as evidence.

The CHAIR: Thank you. The secretariat will come and assist.

ROB BARREL: Callala Bay is a picturesque coastal village whose community is vehemently opposed to a plan to flatten 38 hectares of endangered mature forest to make way for 380 expensive suburban houses. Are we nimbys? If so, then there are a lot of nimbys here today and all up and down the New South Wales coast. You've probably heard from a number of them. But we are not nimbys. We are guardians of a unique community which we want to grow into a stable, sustainable and smart place to live and to share with all of Australia, not just the few who can afford a million-dollar house most likely to join the 48 per cent of houses in Callala already empty or used as high-priced holiday retreats. When everyone agrees the need to plan for climate change and housing affordability, why is there so much opposition to development? The proposed subdivision on high conservation value land in Callala is a perfect example of the problem.

It's not that the State's planning guidelines are so bad; it's that the State doesn't adhere to its own rules. Property developers should be obliged to comply with the strategies of planners and ecologists working for a democratically elected government acting for the people. But, instead, planning departments often behave as if they're obliged to help developers make more money. No wonder communities react, protest and block. If government planning departments were doing their jobs properly, we wouldn't need nimbys. Consider Callala's forest: It survived the catastrophic fires that incinerated 80 per cent of Shoalhaven forests and the animals that lived there. It is critically endangered South Coast lowland forest, containing hollow-bearing trees well over 100 years old. It is home to endangered greater gliders, gang-gang cockatoos, Bauer's midge orchids and at least four other species vulnerable to extinction. For example, yellow-bellied gliders are extinct in neighbouring Booderee National Park, but they live on the property in Callala. It floods in heavy rain and the water flows across the main road and into critical wetlands. Climate change means more big storms.

This land is so valued by the community that out of 1,029 submissions about the proposed subdivision, 97 per cent—or 1,002 submissions—opposed clearing the land. The subdivision would see a 30 per cent increase in houses in Callala, where roads, fire protection, water supply and stormwater infrastructure are already insufficient for the population. This land is federally designated as critically endangered and is a key part of a larger vision for a connected and cohesive Jervis Bay National Park—a jewel in the New South Wales crown and an asset that New South Wales cannot afford to lose, yet the State rezoned Callala's forest to residential before a biodiversity certification. Biodiversity certification is designed to identify, at the planning stage, which areas should be conserved—those with high biodiversity; and which areas should be developed—those with low biodiversity values.

When our local council was told the truth about the forest habitat—a truth that was conveniently excluded from the developer's biodiversity assessment—council withdrew the application for biodiversity certification, leaving the developer to act like a jilted spouse who assumed entitlements from their close relationship with the State Government. There's plenty of data and detail to support our position, and I welcome questions now regarding the planning strategies that have been ignored, our freedom of information request that revealed an ignored scientific report on the biodiversity assessment, a community united in favour of habitat over houses and the ecological mapping of flora and fauna. Planning for future generations is usually about the potential to grow houses and businesses, but in this era of climate change our children's future demands that we explore the potential to grow habitats as well. Thank you very much.

The CHAIR: Thank you. Dr Davidson?

PENELOPE DAVIDSON: Thank you for the opportunity to be part of this inquiry. Our Future Shoalhaven is a local group of people concerned about the decisions that will affect our futures. We are not environmental experts or climate change experts, but we keep seeing removal of trees and habitat and development on inappropriate land—land that floods, for example, or is habitat for endangered species. When we ask, "Why is this allowed?" it's because it's a historic approval and it can't be changed, or there aren't any endangered species that need protecting, or there won't be a significant impact on that species or, if it's a tree, it's considered dangerous

or just in the way. Our submission focused a lot on a particular example of 4 Murdoch Street, which exemplifies many of the consequences of this planning system and which will be amplified by climate change impacts. In fact, the way the planning system operates currently, it might be said to promote cumulative destruction of the natural environment and diminish existing infrastructure security and access to community social amenities.

Local or State planning authorities have no power to manage or modify regulations that are producing cumulative damage to the environment, infrastructure and amenities essential to the ongoing common good. Nor do they have adequate resources to manage compliances. Again, 4 Murdoch Street exemplifies this with breaches regarding soil erosion protection, protection of tree root zones, mistaken identity of trees to be removed and leaving huge piles of mulch onsite over the fire danger period. Our coastal villages and towns might look quite green at present but slowly, bit by bit, small houses and trees are being removed and apartment blocks and large houses with mostly concrete yards are replacing them. At this rate, in the Shoalhaven, any R zones on our LEP are likely to have minimal mature habitat trees in 20 years time, inadequate permeable surfaces, and many houses may be unable to afford insurance. We're going to become a bit like Sydney. And Sydney, for example, in a study by a consultancy called Arup, is ranked behind London, Singapore and Mumbai for sponginess—that is, the ability to absorb rain. The Shoalhaven is fast mimicking Sydney in this instance. We need the houses, but we also need the environment.

The examples in our submission tried to exemplify the way in which ongoing small cuts are made to our environment, resulting in cumulative impacts that are going to leave our communities in the company of feral birds and introduced plants in uncomfortable, uninsurable and unappealing urban areas that are at high risk from climate change extremes of flooding, fire, heat, sea level rise and extreme wind and rain. We need the State to create a planning environment where the destruction stops and ensure that laws contribute to protection of contiguous natural habitats, both in urban areas and outside, and that immediate research occurs into the local impacts of climate change—including concurrent occurrences of extreme weather, tidal movements and tourist visit peaks—on existing natural and built community resources to create informed local planning regulations to augment State planning law. We need to ensure adequate resourcing of local authorities to evaluate zoning and to monitor and police the long-term consequences of current development projects from the projected 2100 circumstances that will be generated by climate change. Thank you.

The CHAIR: Likewise, Dr Davidson, would it be okay to hand up a copy? The Committee has some questions. Thank you all for your submissions; they're very helpful. And thank you for the extra documents that you have tabled. Mr Barrel, I am holding up one document that you provided today, which is an image of vegetation with the ocean in the back and one yellow line around it. Could you just explain where and what that is?

ROB BARREL: That yellow line outlines the 40 hectares in Callala Bay—on the north-west side of Callala Bay. The sailor in me gets east and west mixed up every single time, which is a problem, but this is to the north-west of Callala Bay. It's pristine forest, protected and declared critically endangered by the Federal Government, and the plan is to clear-fell the entire thing.

The CHAIR: Where is that plan up to now?

ROB BARREL: Yes, it's a good question. The rezoning was approved by the State two years ago. Rezoning is supposed to run concurrent with a biodiversity assessment. As the biodiversity assessment was being assessed by the State, they got themselves a little bit tangled up and went ahead and approved the rezoning, and the biodiversity assessment was not approved; it was pending. To make a long story short, I did a freedom of information request to the Shoalhaven council. I had noticed that this rezoning went really quickly despite the 97 per cent of submissions that opposed it, including professional submissions as well as individual submissions, and I wondered, "What's going on here? How did this get approved despite overwhelming opposition?" So I did the freedom of information request. What it revealed was a number of things, one of which was a 3½ thousand word review of the developer's consultant's plan for biodiversity assessment. The review done by the Shoalhaven council's own ecologists reviewed that and said, "Look, this is not a good idea. There are severe problems with this." I have their actual words here.

The problem was that no data was collected in the old-growth forest, which is the northern part of this. That's where the large hollow-bearing trees are. The BCA—the biodiversity application—was based on survey data and findings that were more than five years old and predated the catastrophic fires, and much of the field surveys were unrepresentative of the vegetation there. Therefore, what was required was a new rewriting of the biodiversity assessment. This report, done by council's own ecologists, disappeared into the planning department and was never passed on to the State, to the public or to the elected councillors. Nobody knew this report existed except that I found it. Upon pointing that out to the elected councillors and pointing out another message I found in the same tranche of information, which was that council was the applicant for biodiversity certification on

behalf of the developer—it has to be that way—and council has the right to withdraw that application if they choose to do so. So we talked to our councillors and they voted to withdraw that application.

Currently the developer has got to redo his whole biodiversity application according to the current standards—the new methodology—but we have concerns about the new methodology as well. You folks will certainly know about the scathing report into the biodiversity offset methodology. That's the current law of the land, and this property is being evaluated according to that law of the land, which is better than what it was before, but is still not good by any means. The problem is that the property is full of hollow-bearing trees holding endangered greater gliders, gang-gang cockatoos and at least four other species that are vulnerable to extinction. While housing is important, housing in this location is not important—is not worth the sacrifice to all of the animals that already live there.

The CHAIR: Is it fair to say that you feel that the council understands the community's view and is trying to put a hold on this at this point in time but is subject to the current assessment process, so anything may happen?

ROB BARREL: That's correct, but the decision-making process is out of council's hands.

The CHAIR: Is it the regional panel or is it the office of environment where the decision is made?

ROB BARREL: The office of environment handles the BCA, but the overall planning decisions were taken away from Shoalhaven council and handed to I'm not completely sure who in the State Government or which department, because it's—I can't remember their terminology—a critical developmental or something. So it got fast-tracked, which meant that council had very little input, actually. All that they could do was withdraw this biodiversity assessment application. That slowed the thing down by a couple of years, but it didn't stop it by any means.

The CHAIR: Is it your understanding that this was identified as an area appropriate for housing at some point?

ROB BARREL: I can tell you exactly. The Halloran family has owned this property for over 100 years and many thousands of hectares on the South Coast and elsewhere. The original Mr Halloran was a surveyor. He surveyed the area and then, miraculously, he owned the property shortly thereafter. They've been trying to develop it for at least 50 years. The Jervis Bay Regional Environment Plan 1996 included paragraphs saying that 330 hectares in Callala Bay was nominated as a potential urban release.

However, a few years later, the Jervis Bay Settlement Strategy 2003 acknowledged that the large part of that 330 hectares is actually a wetland and contains significant native vegetation. So that 330 hectares was reduced to 35 hectares and listed as a potential urban expansion of Callala Bay—"potential" being the critical term because that was contingent on the resolution of site constraints including threatened species, localised habitat corridors, significance of vegetation within the subject land, and buffers to wetland area and local watercourses. The developer, instead of 35 hectares went for 40—might as well round up—and he ignored all four of the first requirements laid out in the Jervis Bay Settlement Strategy. The State and the council policies and strategies have opposed this right from the get-go but, for some reason, the developer is able to work his way through and have it approved or partly approved.

The CHAIR: Going to Our Future Shoalhaven's submission, from it we get a strong view about cumulative impact. Can you tell me a little bit more about how we are getting to that point? What are you seeing in terms of the lack of grappling with the cumulative impact that we are seeing—the destruction of trees and loss of biodiversity in the environment?

PENELOPE DAVIDSON: I have a start. I guess 4 Murdoch Street is an example of that, where we are told it really should never have been given the zone for housing or any kind of development in the first place. So most of its clearing—certainly I think there were 16 or 18 hollow-bearing trees. One of those that has managed to stay was used by gang-gangs. This is probably going to be a bit longwinded. The ecologists said removing that tree or going ahead with the clearing would not be significant to that species. The gang-gangs stayed for that one year when the clearing was halted. They haven't gone back. What wasn't considered at all in the decision just around Murdoch is that, at the same time, there was a huge clearing at Edendale Street just five kilometres north of there. At the same time or previously, there has been untold clearing on rural blocks, particularly as a consequence of the fires and people now being incredibly fearful of trees on their property. At the same time and since, there has been continuous clearing of other rural blocks.

The CHAIR: When you say the fear of having trees, is that from fire risk?

PENELOPE DAVIDSON: Yes, fire risk and also storm events. People fear limbs dropping and stuff like that, which is an incredibly big challenge for us to deal with when we want an urban canopy and we want to

protect habitat. While the permission went ahead for the clearing of 4 Murdoch Street, it was based just upon that block. It ignored the clearing that has gone on at other large blocks and it certainly ignored the removal of large habitat trees within that little urban area itself. Within Huskisson and Woollamia I think I've counted something like 30 or 40 trees that have been removed over the last eight years. Most of these are mature trees because that's what really gets in the way of development and that's what people fear, and they are the ones with the hollows and would provide some feeding opportunities. The decision for 4 Murdoch is not taken in the context of this other constant removal. For example, just going back to the gang-gangs, I luckily lived under the path of that pair of gang-gangs and I could see them fly to the hollow in the morning and fly back to somewhere where they roosted north of us. I haven't seen them since that particular breeding cycle. We used to always see gang-gangs in Huskisson, but they are not there now. We won't see them again, probably.

BRUCE McKENZIE: I think the point that we want to highlight is that the planning laws privilege the single dwelling or the single block over the collective and that there is no way that you can argue the collective in court. We've been ruled out of order when we've attempted to do this as it being even to the road that runs beside the block, which is going to severely damage a riparian reserve and a fish habitat essential to Jervis Bay's ongoing viability of fish. We are ruled out of order because the court and the law only concerns the individual block and that process. Coming up with climate change and such, climate change doesn't affect a single block; it's a holistic experience that we are experiencing already.

Our plea is that the law has to start balancing the individual against the collective. Unless that happens, we are just going to continually get this creeping depreciation of the whole area. Incidentally, the reason people come to the area is because of what's there at the moment. And then they turn around and chop a bit of it out and say, "It doesn't matter. It's only one little piece." But something like 100 little pieces over the last two or three years have really created a hole in that whole environment. That's our plea: the collective and the individual, and how planning law is changed to accommodate that.

The CHAIR: At the moment, the law has a provision that within every development assessment, the public interest is something that must be factored in and taken into account. As I understand it now, that considers ecologically sustainable development and a few other things. Is it your experience and what you are communicating and your evidence that that is simply not getting the weight or the airing or the platform that it really requires and that the balance is skewed towards that facilitation of one development and, if that is your view, that there is very little you can do to prosecute that case and there is no place to really take that? Is that what I'm hearing?

BRUCE McKENZIE: Yes, that's what I'm saying. It is point 9, I think, in the list of points that have to be taken into consideration, which is the bottom and the last: "Collect everything". The only way you can really do it is with a sympathetic developer who you negotiate directly with as a community to see what they'll do. But our experience was that the developer on 4 Murdoch Street indicated an interest in doing that until such time he realised that there was no way to build on that block if you followed these issues that Penny has raised. He then pushed us off and we became the enemy, rather than sharing the concepts. So it's there and it's certainly written into the law, but it has no bearing. Even with our local council, who were just sitting here a moment ago, I was a little bit agog as I listened to them talking to you about the efforts they were making. While they have tried to help us many times, there has been a block. We are asking for something too far by that community interest.

PENELOPE DAVIDSON: I'll just add to that that I've made numerous submissions about developments and raised some concerns and not all of them—but I think more lately—have used the public good argument and it seems to have no weight. I'm not sure how it's read by council, but it seems to have very little impact.

The CHAIR: The issue is that weighting of those considerations. Just going back to your experience where you say you are blocked—and I think this was your experience too, Mr Barrel, and about trying to access information—is that consistent across the community organisations? Where does that happen? Is it when a development is proposed or when it's being assessed or is it after the event or is it just consistent that there is a lack of facilitating community's access to information?

ROB BARREL: Our experience is that we can't tell. It disappears into a black hole. Unless you do a freedom of information Act, like I did, to find out what they are actually talking about behind the scenes, we don't know. In our case, there were those 1,002 submissions. Those were tabled by council and you are able to look at what they all said—or at least summaries of them—and so that was a little bit of information. But what else was going on, we just didn't know. We weren't told and there was no way to find out that information.

The CHAIR: I am interested, then, to understand if it is your view and evidence that, if there was more transparency and you could see what was happening, what was tabled, what was said and the conversations that are happening about particular developments, that could enable better outcomes.

ROB BARREL: I certainly think that. We know that the council planners sit on the same committee as the developers do and have lunch together, so there is certainly communication going on at that level. But we don't sit on that board. We don't have lunch with them. We don't know what's being discussed. More transparency would be better, and some free lunches.

The CHAIR: Fair call.

The Hon. PETER PRIMROSE: Throughout the process, who will be the final decision-maker in relation to this matter, in your view? We've spoken about the council, planning panels and the role of the developer. Who, at the end of the process, will be the final decision-maker?

BRUCE McKENZIE: The developer.

PENELOPE DAVIDSON: The developer.

BRUCE McKENZIE: The developer has the rights. Once the DA is granted and the council has assessed and made its judgement on limited information—as they argued a moment ago about their reduced resources. Once that decision is made, the developer then has total control. We live with it, we fight it and we try to make it hard. In the case that we wanted to put before you for Murdoch Street—we'd like to circulate to people a map of that, if it's possible—I want to highlight, in answering your question, the road. There is no legal access to this block. The only way you can access it is by damaging the riparian zone, which is 40 metres wide from the edge of Moona Moona Creek—which is the fish habitat and suchlike—to the block. They're going to build a road down that for access of 32 apartments, 64 car parks and suchlike, and rubbish trucks and all the building materials—everything's going to go on. It's going to destroy that. The developers don't care about that. They've got a block and council has to provide access, so the decision on this road—which has nothing to do, if you like, with the developer—is still under the developer's control.

The CHAIR: That's a very interesting answer because we heard in this inquiry at the Central Coast that one of the issues there is there're quite a lot of developers right now sitting on development applications and land banking, and not developing and producing the housing that authorities are being pressured to produce. The council is experiencing a compounding problem, which is to release more land, but there's no guarantee it will be developed.

BRUCE McKENZIE: Precisely.

The CHAIR: It's interesting that where you get the grant of a right, there's no responsibility or obligation to develop the outcome if it's a public interest outcome.

BRUCE McKENZIE: Just to develop that further, Chair, in the sense that this particular block was put up as housing and is now being marketed as a resort.

PENELOPE DAVIDSON: Resort-style apartments.

The CHAIR: In your submission, you provided a very interesting photograph of land flooding. Could you elaborate a little bit because, based on what council was saying in the earlier council evidence about flood data and flood mapping and that being a significant area of trouble for councils, what can you tell me about that in relation to the image in your submission?

BRUCE McKENZIE: I think Penny took the photo, so she can explain.

PENELOPE DAVIDSON: I'm in the photo. That was an event that actually wasn't August; it was July 2020 when we had 250 millilitres over two days, I think it was, or mostly in the night, I think. We went down there to see what was happening at the block. I don't know what tide it was. Most of that is probably run-off that is slowly making its way into the creek. That was probably the deepest part. From memory, on that page of the submission I think I'm standing probably about the number 4.

The CHAIR: Yes. That's what you've identified, number 4.

PENELOPE DAVIDSON: Okay, yes.

BRUCE McKENZIE: In the material we've just handed out, we've shown you—

The CHAIR: I was just about to say, how does that photo relate to the diagram that you've just tabled with us?

BRUCE McKENZIE: The blue line on it represents the flood area.

PENELOPE DAVIDSON: The light blue line.

BRUCE McKENZIE: The likely urban flood, and that's in the zoning of the area. All the land planning and suchlike shows that as flooding. The issue, to link to what I was just saying about the roadway, is that if you damage the bank of that creek, that obviously is going to accelerate because this is tidal. It's the estuary coming in out of Jervis Bay, so if we get a north-easterly blowing or suchlike, the water backs up in the creek even more so we could have quite significant flooding in this area.

The CHAIR: Is the proposal here to fill the land?

BRUCE McKENZIE: No, to actually put in a basement under the housing and pumps. We don't know where they would pump it to, but—

PENELOPE DAVIDSON: Also, as I understand it, the units adjacent to this proposal—which, again, shouldn't have ever been built—have a basement car park. What happens is they'll build the entrance to the car park at a height that should be above the expected flood level, so that car park shouldn't flood; but I can tell you that there are certainly quite a few basement car parks in Huskisson that flood and need to be pumped out. I'm not exactly sure why. They're in the groundwater, I guess; I'm not sure. But because it's in a flood zone, our understanding is that's all fine. You just have to do X, Y and Z and you can build in a flood zone. These maps are the current estimates. As you would be fully aware, there is a map of the expected flood zone for 2100, so that's of the flooding.

Council is about to revisit their sea level rise estimates. They have gone, I think, for the lowest in the State. As I understand it and as long as the councillors approved it, they'll align with the international assessments and the other to go up to a 0.85 sea level rise in 2100. That map on page 5, all the land area—certainly on the north side—is likely to be under water. This is the one-in-a-hundred chance each year of flooding. It hasn't been that bad since 2020, but it certainly has been flooded since 2020. We just haven't had whatever circumstances to do quite the same again.

The CHAIR: The council was speaking earlier about having to update all of their flooding requirements because of the 2022 event and that we have to also model the probably maximum flood heights. Is that something that—obviously as community organisations concerned about the impacts of weather events on development, do you think it's a good thing that we will start to get better data on how these events will impact development and therefore what's suitable or unsuitable development?

BRUCE McKENZIE: That will help in the future, but at the moment these DAs that have already been granted aren't considered under the planning law. They're accountable against the law as it applied when the DA was granted. Even though these will be updated, making this a totally dangerous place to put any development, it won't apply as, even at the moment, this particular development for Murdoch is accountable against 2011, not against 2024. So they're able to do things, which everybody now accepts is unacceptable. The interesting part I hope you will carry on in your mind: It's not the developer who will suffer the penalty. It's the people who buy the houses because the developer can then wrap up the company that built it, make it non-existent, and the people who buy are totally responsible for whatever happens to that particular house. We're seeing this in a lot of places around the State. Again, it's a weakness in the planning law that removes the accountability from the person who has flouted the law in many ways, or manipulated it, and then can very easily pass the buck off.

The CHAIR: As this inquiry has heard, you're not alone. The Insurance Council of Australia has made similar submissions about us having to really look at where the liability and accountability lie because, for them, obviously it's all about the cost.

BRUCE McKENZIE: Yes, because these probably aren't insurable even though they're still on the plan and they're being sold off the plan. But I doubt that they're insurable when the insurance company looks at the situation.

The CHAIR: Apparently—we've been told that everything is insurable. It's about the cost, whether it's a prohibitive cost, although we think that's possible. Is it your view, then, or is it your evidence that there really should be a limit in the planning law that sends a clear message that this is not an appropriate place because of these factors and whether it is the impacts or the harm that would happen to the development, as well as the harm the development may cause to the environment?

PENELOPE DAVIDSON: Can I quickly just say yes. The Insurance Council, as I understand it, is also saying, "Stop building on flood areas." Fire and other events, you can strengthen the houses to some extent but flood, it's impossible. So there needs to be, in many areas—for example, in the submission, there's also Edendale Street, which clearly floods. It's already been built on one side and now they've cleared on the other side, and there's no legislation that says you can't build in flood zones. So there's going to be more and more hard surfaces and that's going to impact the people who are living around there. So, yes, there needs to be something done to stop houses being built in flood zones.

The CHAIR: Is the Edendale Street development being proposed to have fill as well? Yes. So they're all still operating on that clear, fill, build and then flood.

PENELOPE DAVIDSON: With Edendale, it's been cleared. The original permission to subdivide was you will need to put mounds on, I think, all of the blocks, and then the developer said, "No, that's too extreme," and now they only have to put mounds on a few blocks. So there's a clear recognition that it's a flood zone and the way around that is to build it up. Sorry. I've forgotten your question. Does that answer it?

The CHAIR: Yes. That's quite clear. So the requirement is not necessarily to fill but just to build up in certain areas.

PENELOPE DAVIDSON: Yes.

BRUCE McKENZIE: Because the water's got to go somewhere.

The CHAIR: Yes. Seeing this play out up in the Clarence Valley as well, where there's still massive amounts of fill going onto a flood plain, and the issue there that's presenting is the existing development is getting absolutely flooded out.

BRUCE McKENZIE: That's Edendale exactly.

The CHAIR: So the idea then, as I understand it, is we actually start to create islands and that those islands potentially get cut off for long periods of time and create whole new development and safety risks for the environment and the rest of the community.

BRUCE McKENZIE: And existing residents. They weren't built up.

The Hon. SCOTT FARLOW: One of your recommendations was around the department. Effectively, it was around moving the marine parks from Primary Industries to Environment. What sort of impact have you seen with that so far in the assessment process?

BRUCE McKENZIE: When they work with Primary Industries, they're working on a profit basis. That's what it's about: making money out of agriculture and aquaculture and so on. Therefore it prioritises those sorts of things over conservation. It doesn't reject that conservation is there. It's the privatisation that goes on in the minds of the people that you're working with all the time. We believe, if it was in the other department, it would still have to be considered for Fisheries and other things as profit-making, but now you would have a prioritisation of conservation. It's that mindset that we're particularly concerned about, and we run into that mindset when we're dealing with Primary Industries.

The Hon. SCOTT FARLOW: Have you found that to be the case in terms of your current engagement with them? Or is this more of a fear?

BRUCE McKENZIE: I don't know. I'll take that on notice because the person who's dealing with that—

The Hon. SCOTT FARLOW: I was just wanting to see if you have any particular examples in terms of how that's been assessed.

PENELOPE DAVIDSON: Can I answer that? An example that we haven't put in this submission is concerned around Jervis Bay as a marine park, and probably purely because marine park is in with Fisheries. I'm not sure why, but Fisheries has got an aquaculture. There's actually a commercial industry within the marine park for mussels, which was an application made by Fisheries to DPI and then Fisheries put it out to tender. Just having an industry like—in setting up the marine park, it was a big effort to get rid of any commercial activity, all the fishing. They bought out the fisher people. There are sanctuary zones and it's there to really protect that very special bit of the New South Wales coast. Then we have a mussel farm in the middle of it, which whilst they said—and I think in the legislation they're only allowed to farm native mussels—there's definitely contention around whether the species of mussels that they're farming is native or not and so that commercial interest, I guess, is exactly the example that Bruce is talking about in that commercial interest seems to dominate and override the marine park concerns. As we understand it, the marine park wasn't particularly happy to have the mussel farm within our pristine area, but Fisheries—they didn't have the voice to stop it.

The CHAIR: We have come to the end of our time. I'm sorry. Are there any final things you wanted to say? Mr McKenzie, I saw you jump in there.

BRUCE McKENZIE: I think we'd like to leave you with this message about the cumulative versus the individual in the sense that this seems to be a fundamental assumption in the planning law, and your inquiry, I think, would be the first opportunity to raise it as a critical issue, that we're using an assumption about planning in New South Wales which is not valid, and we have to deal with that before we can fiddle around with all the bits and pieces within it, particularly if we're going to be critical thinkers about what we've got in front of us.

The CHAIR: I take it from that you're saying the current strategic planning framework is not addressing the cumulative loss at this point?

BRUCE McKENZIE: It is not.

ROB BARREL: I would just like to thank all of you for even having this inquiry. I listened to some of the planners earlier talking about some of the headaches that they're facing, trying to get their councils' approvals and facing lawsuits from the State et cetera. It's a huge issue and it's good that somebody is taking it by the hair. Congratulations for doing so, and good luck. I'm glad it's you and not me trying to handle this.

The CHAIR: Thank you very much for your time and your evidence and your submissions. The secretariat will be in contact with you with anything that was taken on notice.

(The witnesses withdrew.)

Mrs REBECCA SLEATH, Secretary, Culburra Residents and Ratepayers Action Group, affirmed and examined
Mr KINGSTON ANDERSON, Treasurer, Culburra Residents and Ratepayers Action Group, affirmed and examined

The CHAIR: Thank you very much for being here today and giving your time to present evidence. Would either of you like to start by making an opening statement?

REBECCA SLEATH: Yes, I would like to do that, please. On behalf of the Culburra Residents and Ratepayers Action Group, Kingston and I would like to say it's a pleasure to be here speaking with you. It's such a unique situation to actually have members of the community sought out and listened to, so thank you for that to start with. I'd also like to acknowledge the traditional owners of the lands upon which we meet today. The mission of our community group is to protect Culburra Beach and Orient Point from inappropriate development. We formed in 2021 to give voice to those who object to the proposed west Culburra development, a 47-hectare subdivision on the outskirts of our village. This proposed development sits between the sensitive waterway of the Crookhaven River, the internationally recognised and environmentally sensitive Lake Wollumboola and on a site currently forested by native bushland unburnt by the 2020 bushfires.

We are committed to appropriate town planning that is sustainable, economically sensible for the community and respects our environment and cultural heritage. As a result of our efforts to protect our living environment and preserve our home's unique Australian beach village culture for future generations, we have experienced many instances where the current planning legislation is failing in its job to protect and balance the needs of the people and the environment. Out-of-date legislation and planning loopholes are being used to push development approvals that are environmentally destructive, particularly in light of climate change and society's current understanding of the fragility and value of ecological communities. We see developers taking advantage of the housing crisis to achieve their own goals, and the Government pushing an inappropriate one-size-fits-all housing solution at the State level.

In coastal towns, statistics show a large portions of new builds will ultimately either be holiday homes or short-term rentals. While it's appropriate to build medium-density housing on already cleared land that is not environmentally sensitive and is in residential areas close to services and employment, it is completely inappropriate to be knocking down forest for holiday houses. If the true goal is to alleviate the current permanent residence housing crisis, the Government needs to tease apart housing patterns in greater details and follow plans based on that. We see an enormous imbalance in the legislation and government processes that greatly favours the power and wealth of developers over the needs and opinions of the community. We see a planning system that is not looking at the overall bigger picture of all these pockets of development being forced through, up and down the east coast of Australia—literally, from the Daintree to Tasmania. Most significantly, we see a planning system that lacks the ability to amend, revoke or review past decisions when current evidence shows those decisions, made in a different era—sometimes half a century ago—are no longer appropriate in light of current facts, or were made based on self-serving goals of a few rather than for the greater good.

The Culburra Beach developments are a prime example of these failings. These developments have been rejected as inappropriate multiple times in multiple formats, and yet still we face these destructive plans. Why? Because, despite the plans making no sense on environmental, financial, heritage or cultural grounds, we have a planning system that cannot reassess or change direction, and a development community well-versed in working with the system. Not only must we change direction in planning legislation, we must do it fast and make it apply to all developments immediately. We cannot afford a slow change as there is too much at stake. We must not forget that the Federal Court of Australia, in 2019, found that the government has a duty of care to protect young people from the climate crisis. Surely this is extremely pertinent in the planning and development arena.

The CHAIR: Thank you. In terms of the west Culburra development site that you've spelt out in your submission here, could you just give us a little bit of context in terms of where that's up to now?

REBECCA SLEATH: At the moment, west Culburra is at the Federal level looking for EPBC Act approval. The development was knocked back in 2018 by the Department of Planning. It came back in 2021 at the LEC hearing, which gave conditional approval. They're now working on those conditions—I think that takes about 18 months—and during that process they've also applied for EPBC Act approval.

KINGSTON ANDERSON: There's no approval at this stage. They have to comply with the DPIE conditions. We find this is one of the problems, because we have no idea what's going on within that site. In fact, the EPBC application that they made was interesting because it was the first time we actually got to see some of the things they were putting up environmentally, which were completely incorrect and not factual and based on assumptions. So we're very concerned that we don't even know what's going on. It's a bit similar to our Callala

colleagues: We're sitting on the outside and we're not even allowed to go on the site. In a couple of instances we've seen trucks go on to the site, which we then rang the DPIE and said, "What's going on? Is there a development or something happening?" They said, "No, there should be nothing happening." The DPIE then rang the developer to clarify what was going on. They didn't even know what was going on. So we're in a situation where it's being investigated and the developer is taking all the readings to do with water, particularly. That's the major issue there, similar to before, because it's on a critical waterway.

Effectively, if the development goes ahead, the oyster industry will be devastated on that part of the river. That's been admitted by the developer, and so they're going to pay off the oyster industry. There were middens there that have been identified; they will be destroyed. That's been recognised as well. There's a number of those things. There's no DAs in place, and there's no approvals in place at this stage. However, recently on a post on the local Facebook page for Culburra, the developer stated, "We'll be going ahead and we'll have these in 2025." And we're going, "But, how come? We haven't seen any approvals." That's what we know. One of our problems with the planning system is that we are sitting on the outside with no information of what's going on, and the other problem is that the developer has been given the job of proving what they say is correct. The company that they engaged, Eco Logical, when the EPBC was being assessed—no-one knew that they were actually even doing it. As a result, we complained to the Minister and they opened it up again and then they had a number of submissions opposing what they'd said, and again, they had information in there.

Eco Logical were being paid by the developer to assess them. I know they're a Federal body, and that doesn't concern you, but we're seeing similar things going on here, where the developers are paying companies to assess their ecological credentials. Who do you think these companies are going to report to? It's to the developer. Who do you think they're going to be biased for? You can make up your own mind, but it's pretty clear to us. We have no say in any of those. I think it's interesting that recently, across Sydney, the government has had to bring in new legislation in regards to those large residential towers because the developers have been faulty. We have no oversight, really, by DPIE on what they are doing except to bring in the results. I think that's one of the issues that we see, again, supporting our Callala colleagues, is that we're sitting on the outside. Sorry that's a long answer to your question, but it's a frustration.

The CHAIR: No, that's really helpful.

KINGSTON ANDERSON: We formed because this development continues to be put up.

The CHAIR: Even though it was initially actually refused years ago.

KINGSTON ANDERSON: Even the DPIE said, "No, no, it's sensitive wetland. There's areas around this." And then the biodiversity offset that they're putting up can't be built on. That whole biodiversity offset is just ridiculous. It's like they're saying, "Oh, no, we're going to give you this land as a biodiversity offset," but that can't be built on. It's already been recognised as impossible; it's wetland and nothing can happen there. They're putting up something that they know can never be done anyway, so it's not like for like either. Even though we would oppose that; we wouldn't support that. We think that biodiversity—and my colleagues at Callala have already said that—there's a real problem there that needs to be addressed as well in light of what's going on.

The CHAIR: Absolutely, there is a broad recognition that the offset system is in trouble. I think the State Government is about to release its new plan but, as was identified, that won't help because these developments are generally being assessed and held up to a standard of the past.

KINGSTON ANDERSON: Yes, and that's our problem. The Halloran trust—that's 100 years ago when this land was acquired. A hundred years! They still own extremely large amounts of land. We are talking about the same organisation with the same development company. Yet the attitude and the things that are being put forward are 50 years old in terms of what's going on, and they don't recognise the changes that have gone on in the last 20 years. That's really where we feel the planning system is failing. It's that there is not this ability to reassess based on current climate and information that's provided ecologically. If you wanted to put it in a nutshell, that's one thing that we think is a problem.

The other side of it is, it does not take into account a balanced view of community—and I take my colleagues from Callala again—collective against the single. That's a real problem because it will impact our community at a level that no-one really has an understanding of. Certainly the developer doesn't, because our community has a 40 per cent vacancy rate. We know what will happen with that development—40 per cent of those homes will be holiday houses. They will be empty. They will also be an average price of \$1 million to \$1.5 million per home, which is not affordable for the nurses who need to work up here at Shoalhaven hospital. There are so many levels there that don't add up as well for us.

The CHAIR: You've identified in your submission, quite uniquely, that this was land that was quite unusual in that it was originally environmentally zoned land but then, somehow, in the LEP of 2014, it slipped into a deferred matter zone.

REBECCA SLEATH: You've really hit the nail on the head with that one. That's the example about how something that doesn't meet any requirements for our century now—we have documents now like the *Illawarra Shoalhaven Regional Plan 2041* and the *South Coast Regional Strategy: 2006-31*, and they lay out the guidelines for how we should be developing for the future. They say, specifically, things like you mustn't tack housing developments onto the smaller villages, and you must not release new land zoning because we already have enough land. They're really explicit like that, and yet these developments which do all of these things that they say shouldn't are here. The reason for that is because 50 years ago, in the 1980s, the developer managed to get the Shoalhaven council to pass a resolution that named Culburra as an urban expansion area. That was really done to deal with the Halloran lands, because we had this developer owning great swathes of land in the area and had a lot of power and had plans that he wanted to develop. That happened in the early '80s.

By the time they came around to doing the draft of the SLEP 2014, we were now under the South Coast regional strategy plan, which had these guidelines that said, no, you must build in the right areas for good growth. You must not tack onto small towns, because the small towns don't have the infrastructure available and don't have the employment opportunities. So there was this conflict, but there was no ability to turn around and say, "No, we can't do that anymore. This is where we are going." Even though the local government at the time said that we need to make this land rural and environmental to be in line with the South Coast regional strategy.

That obviously didn't work for the developer, and he stepped above the local government's heads and went to the State-level planning Minister and said, "That's not going to work for me. I need to develop this land. What can you do?" The planning Minister at the time decided to defer the land. So there are hundreds of hectares outside of Culburra that are still deferred today because of that decision when the local government had said that this land should be rural and environmental to be in line with the regional strategy for the greater good. All right. West Culburra is still a deferred matter. They don't even have the zoning.

KINGSTON ANDERSON: Yes, it's not zoned. That's one of the problems. The South Coast regional strategy clearly says the region is well supplied with vacant urban land to cater to new housing demand. Again, it says that small and isolated villages should not be impacted by this, so it's bizarre. But it's not bizarre because, obviously, this particular developer doesn't own that land. He owns the land that is forested with wildlife that is endangered and with middens. Some of these middens are now being estimated to be some of the oldest in the region. That's the land that is owned and is constantly being knocked back, but it doesn't stop the continued attempts to get it to the next stage.

REBECCA SLEATH: Because no never means no. There is not a point where, when no is said—we really mean it now. As long as they have the budget to keep coming back, they do.

The CHAIR: In this case, the levering of the open gate was actually the LEC in 2021.

REBECCA SLEATH: Partially opened, yes.

The CHAIR: Yes, it didn't quite open it, but it—

KINGSTON ANDERSON: Yes, it opened the way, and that's what we're constantly about. We continue to oppose those things at different levels. Officially, obviously through the EPBC, we've opposed that. There is no decision being made on that and, I think because there was such an outcry—the whole process was extraordinary. The developer is supposed to notify the community, so what did the developer do? The developer put a notice in a book in the library here in Nowra and in the State Library. Did anyone put a notice on a board in Culburra? No. Did anyone notify anyone through the webpages or the Facebook pages of the community? No. This is what we argued to the Government, and they said, "Well, there's clearly been a breach here." They told the developer to go back and start again. So they opened it up again. They then had a huge number of objections, funnily. Before that, they had no objections; they had no response. I wonder why. Even the behaviour—

The Hon. SCOTT FARLOW: Just to clarify, this was the Federal Government process.

KINGSTON ANDERSON: Yes, this is Federal; it's not State. There is no criticism here, I'm just giving you this as an example of the developers and what they are doing. It's the same developer. Clearly, it's the EPBC. We also know the EPBC Act is being reviewed as well. There is clearly an appetite across the country here to look at our planning laws generally, and clearly the EPBC Act is not fit for purpose, as far as we can see either. Federally, it's got to be dealt with, and it's been said publicly by a number of leading ecologists and judges that this just doesn't work. We hope that that will also change and, in concert with what you're doing—and these are

the two most important things that I think are going to happen to make it feasible for us to develop and manage that land.

As I say, we're not against development that's reasonable and going to help balance that, but we are a coastal town that is basically a holiday destination. We have no industry. There is no industry in Culburra except holidays, and that's what the town relies on. For people who are going to work in Nowra, there are thousands of hectares that this local council is developing—cleared ex-farmland, close by for housing. I know they've got a huge plan for a massive number if they can get it through, and I know there's all sorts of difficulties there, but that is an appropriate place for this sort of development. We've got one road in and one road out.

The CHAIR: I was just going to ask you about that. Obviously with the increase of events that we are experiencing—whether it's coastal inundation, big storm events et cetera—what is the current community resilience plan for that town? Is there one in terms of our communities mobilising and how to protect themselves at times where maybe they are cut off?

KINGSTON ANDERSON: We have to because in the last large bushfires where the fire was heading towards us—and I'll never forget this moment. We were told to evacuate. I told my family, "Wait here. I'm going to go down and see what's happening." So I drove to the one road that goes into Culburra, and there was a police car across the road and a police officer. I jumped out and said, "What's happening?" The police officer said to me, "I wouldn't have a clue." "We can't leave?" "No. I've just been told to stand here and not let anyone out." Then the evacuation orders for our town were for everyone to evacuate to Callala.

The Hon. SCOTT FARLOW: It's hard when you can't get out the road.

KINGSTON ANDERSON: Of course, being a pretty smart bunch, we were all going down to the surf club. That's where we'll be heading if this fire hits the Coonemia Road, and then it will just come down towards us. I'm afraid that the answer is no. The council has been doing some things to improve that, which is great, but we are in that situation with that one road. We know we live in that, and you accept that. But the flooding is another issue that is now becoming incredibly problematic in the region. The river takes all the water. It can take a certain amount, but where they're planning for this development it will become a huge run-off area into the oysters. They know that. It's really clear. I don't understand that either. One of our wonderful industries in this region are those oysters. They're fantastic. They bring people to the region, and it works in balance with the environment. It's not something that we all go, "Oh my God! They're wrecking the environment." Not at all. They're actually doing it wonderfully.

The CHAIR: Can I just ask, on that, has the oyster farmers' voice objected to this development?

KINGSTON ANDERSON: Yes, absolutely.

REBECCA SLEATH: At the 2021 hearing they did, for sure.

KINGSTON ANDERSON: At the hearing that was held in Culburra, they did object and they objected strongly. They basically said, "A lot of our businesses will go down." They are literally where the development is.

The CHAIR: Yes, it's quite clear.

KINGSTON ANDERSON: You can see it. The developer said, "No, we will pay them compensation." That's a livelihood and an industry that has been going on here long before me. That's just one of the aspects. There are a lot of aspects to this development that don't add up. Economic is one of them and environmental is probably the biggest of all of that.

REBECCA SLEATH: In answer to your question about the flooding plans, it's one thing to have flooding and fire plans for an already built community but it's a very different question to say, "What about the land that is going to be built on?" They are talking about putting 47 more hectares of housing up in land that needs to be assessed based on new projections from sea level rise, not on old data. That hasn't happened. The 2018 refusal by DPIE for the development was really based on water and soil problems and that's what they are working on proving—that their solution is going to work.

But their solution involves ponds to soak up the stormwater. At least one of the three ponds lies in flood-prone land. Already that makes no sense, does it? You have the stormwater from a new development being collected in a pond that lies on flood-prone land. What is going to happen there? It makes no sense. Not to mention the fact that they are not really accounting properly for the effects, like Kingston said, of the run-off and the flow-on effects into the surrounding land. We have coastal swamp oak, which is an endangered species, bordering onto where the pond will be. That's going to completely change the environment for that species and we don't know what's going to happen there.

KINGSTON ANDERSON: The flooding is a real problem and there is no upgrade to our sewerage system. When we have a big water event, we get overflow from the sewerage system. That's also not being taken into account. The solutions that they have come up with all the experts have looked at and said, "These have never, ever been proved." Again, we are looking at solutions that have no verification. I think the best one I love is that they are going to put an oval in the middle of Culburra and all the stormwater will go into the oval.

REBECCA SLEATH: Into west Culburra.

KINGSTON ANDERSON: Into west Culburra oval—this new oval they are going to build in the middle of town, which, of course, runs into the river. It's moving water from here to there to go there and just taking it around and around. Again, that is of concern. We hope the DPIE will obviously assess this effectively. But, to be frank, again, as I say, the developer engages the company to deliver the report. For the reports we have seen prior to this, some of the facts are not really correct. I have to say this and we have said this in our submission.

Obviously, we are community members who do not have that hydrological expertise, but we do have community members who do. They have looked at these plans and put in submissions basically showing that this is actually not going to work. So then it becomes about whose experts do you believe. The only experts the DPIE will listen to will be the developers'. That power imbalance always will see it difficult for us to effectively—even when the DPIE have knocked this back in the past. That's what we find incredible. It's not that this is the first time they are assessing it. They have actually knocked it back saying that this is going to damage the environment and yet we still continue to go on and on with the old regulations. Sorry, I'm repeating myself now.

The Hon. SCOTT FARLOW: To that question, what is actually before the department of planning at the moment? Where is it up to?

KINGSTON ANDERSON: With the department of planning is the application for them to get that area zoned for housing so they then can go and get a DA from the council.

The Hon. SCOTT FARLOW: So it's a planning proposal, is it?

KINGSTON ANDERSON: DPIE has said, "Okay. We will give you a conditional approval, but you have to prove this: You have to do water testing over this period of time." There is a whole series of conditions that they have to go through, which they have to deliver to the DPIE and say, "Yes, we've satisfied all these conditions." When that happens, they would give them the approval and then they would go to the council for DAs. There are a number of processes. It's not straightforward.

But, again, we question who is doing the testing. We don't have any view of this testing. The DPIE will just get the results of this testing. I hate to put aspersions on the developer, but the history has not shown them to tell the truth a lot. Callala is a good example of that. They denied there were particular species in the land at Callala and in five minutes you could find them. For some of it you just think that either this ecological company that they've hired is very incompetent or they are just not revealing that information. You can decide which is which.

The CHAIR: There are two things. One thing I think I am hearing loud and clear is about the failures in the system to properly hear and consider the local community's voices and their knowledge of the local environments and that there are flaws in the system around notification and accessibility to information to properly have local communities leading in the conversation about what can happen, what should happen, what shouldn't happened and what the impacts should be. That's one. The second part as well that I am hearing very loudly is this issue with the paid consultants and that they seem to be the ones that have the capacity to drive and advocate for the proponent because literally they are profiting from or there is a financial incentive that they would drive this in a particular way which facilitates the outcome that the developer wants.

REBECCA SLEATH: The onus is always on the developer, whether it's community consultation or whether it's proof of concept. The onus is left with the developer. That is not the person that it should be left with. The developer has the least interest in communicating with the community and they have the most to gain from the studies showing what they needed to show. The other overriding thing, from my point of view, is that, at a higher level, these developments simply don't meet the guiding principles for this region. Why are they not being reassessed based on what the Government says are the plans that meet the needs of the greater good, not the needs of this developer? The needs of everybody should be guided by this document and they aren't. Why are the two things coexisting? They can't coexist. If we say, "This is what the community needs and this is the direction we need to go," and these developments, which have not progressed to even DA or zoning, are not meeting those needs, they need to be reassessed and revoked, don't they? That's where the system is falling down. There is no provision for that.

The CHAIR: We are coming to the end of time. I acknowledge that the member for South Coast, Liza Butler, is in the gallery and has been here for a little while. I welcome her. Are there any final matters you would like to leave with us? We are very grateful for your evidence today. It's very helpful.

KINGSTON ANDERSON: No. We are just sad that Alfred wasn't able to make it today, the chairman of Jerrinja. Hopefully he may be able to meet us out at Culburra. If anyone has been affected by this stuff more than anyone in this whole country, that group of people, who have been moved and moved and moved—and I'm not going to speak for them—and are fighting incredible battles on their own with very little resources, is a good example that the imbalance exists. Hopefully Alfred can speak to you or write to you at another time.

The CHAIR: Thank you, Mr Anderson and Ms Sleath.

(The witnesses withdrew.)

Mr WILLIAN EGER, President, Manyana Matters Environmental Association and retired RFS volunteer, affirmed and examined

Ms JORJ LOWREY, Founder and Committee member, Manyana Matters Environmental Association, affirmed and examined

The CHAIR: Thank you for giving your time to be here today. Would either of you like to make an opening statement?

WILLIAM EGER: If it's okay with the Committee, we both would like to.

JORJ LOWREY: We're going to share it.

The CHAIR: Go for it.

WILLIAM EGER: Thanks very much. Manyana is one of the five small hamlets on the Red Head peninsula, separated from each other by bushland. There is still a great deal of trauma being held by the community in this post-Black-Summer fire period. While the Currowan megafire was still annihilating vast tracts of forest and national park after incinerating homes and taking lives next door in Conjola, a developer was poised to clear a forest of threatened species habitat in our small coastal hamlet—one of the last ecosystems not destroyed by the fires and a hold-out for the small amount of life that remained. These climate-fuelled fires changed everything for us, and they really brought home the inadequacy of the planning system for protecting our community and our environment.

In our hamlets the oldest zombie DA is 39 years. The development footprint holds endangered ecological communities and a serious and irreversible impact entity. It is home to threatened species, some critically, and is in a historical bushfire corridor as well as in a flood zone. Current development plans would have many negative impacts for the environment and the community and would exacerbate the bushfire risk to the existing hamlets, yet this has not stopped successive owners from taking a gamble on plans which test the resolve and resources of community and council to protect this land.

These examples show just how broad the failures in the system are. I reiterate a submission point that these insidious planning legacies could proceed in our towns where only 34 per cent of homes were occupied at the last census. Many of these zombie DAs predate digitisation. There is no database of where they exist or how many there are. Cumulative impacts of these developments directly threaten our biodiversity and resilience to disasters and are exacerbated by climate change. Protections must be built into a planning system that takes a holistic view of the whole of the New South Wales environment. These zombie DAs last forever, yet there is no mechanism by which to put a halt to them, not even in exceptional circumstances such as the Black Summer fires.

We are concerned that there is a rush by zombie developers to clear trees, ecosystems and valuable wildlife habitat while loopholes exist in our instruments and laws, which are failing to protect our flora and fauna from extinction. We believe that it is imperative to create a database of these legacy DAs and immediately enact a moratorium on them until the system can catch up and provide real protections from climate change for our communities, natural systems and threatened species. Therefore, we welcome this inquiry. Thank you for the opportunity to speak and give witness.

The CHAIR: Thank you. Ms Lowrey?

JORJ LOWREY: I don't think that there's a better example of community that has been impacted by climate change and the effects of poor planning than Manyana. At the time of the Black Summer bushfires, although our fires absolutely fought valiantly, the RFS aerial support team had to leave due to the thick smoke over town, just as our back fences were on fire. The locals were using buckets and hoses, but the available pressure in those hoses was merely a trickle. It was lucky for us, and unlucky for others, that a southerly change kicked in just in the nick of time. Like others, the Currowan mega-blaze left our remote villages completely cut off. In the midst of the devastation, we found ourselves without mobile phone connection, without electricity, with a road that we could no longer go down for many days. We didn't just have to look after ourselves, our family and neighbours but we had about 3,000 tourists trapped in there with us, who we later helped evacuate. We had to coordinate that. We had to find those resources within ourselves.

The Black Summer proved beyond doubt that the Red Head villages are already beyond the threshold of housing capacity, yet the zombie DAs that are slated for our hamlets would double its size. It would be completely irresponsible to increase the population of our remote villages. Who will take responsibility when the next flood and the next bushfires come again? And they'll be worse next time. Who will fight? Who will save the people and care for the injured wildlife, and who's going to foot the bill? The devastation to the natural environment and the

loss of billions of animals during the fires affected us deeply. Being surrounded by forest, the ocean and the creatures these habitats contain is the main reason most of us chose to live where we do—amongst nature.

Zombie DAs mean that communities like ours will always have a noose hanging over our heads and we never know when the axe is going to fall and we'll potentially lose everything that we hold dear. We are in a constant state of fear and fight. Manyana Matters committee and members continue to work tirelessly to preserve the exceptional environmental values of our area. At times, it's a full-time job on top of a full-time job that we already have. Our work, our health, our relationships, our family all suffer. It shouldn't be up to communities to defend that which is really the remit of government to protect. If government cannot, due to legal loopholes, then the laws must change to close them.

The CHAIR: Thank you very, very much. I just want to acknowledge everything the community has been through and is still going through. Could you tell me where the proposed development is right now in the planning system? Clearly, there's a zombie DA that has been approved. The community has fought back. The community has put its bodies on the line, as I understand.

JORJ LOWREY: Yes.

The CHAIR: The community also has engaged in very, very high-profile litigation, and I can guarantee to you that I understand what that takes. Where is it now?

JORJ LOWREY: We don't just have one. We have two big zombie DAs running concurrently, which also is really confusing for the rest of the world, let alone our own community. We had another zombie DA that went ahead. That happened before the fires in 2017. Because so much of our area had been slated—and, as Bill said, some a long time ago—for potential or future urban release, a part of the problem was because nothing happened for so long, the community was quite laid-back—"Oh, that'll never happen." Then all of a sudden, one of them did and 40 house lots went up. Some really sensitive coastal heathland was destroyed. All of a sudden, we found diamond pythons, kangaroos and all sorts of things in our backyards because they'd been displaced. There were injured animals that we had to deal with, and I think that was such a wake-up call. In some ways, I guess it was good that that smaller one happened.

Then, just before the Black Summer bushfires, a developer had pegged out their 182-lot subdivision. It's on mature native forest. There's some littoral rainforest in there. There are endangered ecological communities. We know that there are species that are threatened and rely on that land. There are rare birds, like the square-tailed kite, that nest in there. It's been their home well before any of us were there.

Then the fires happened, and the developer was ready to go ahead, and we're just like, "Hang on. Actually, this is one of the only places that didn't burn." Eighty-six per cent of the 11,000-hectare Conjola National Park—96 per cent, correct me—was fire affected, some of it beyond rehabilitation. And anything that did manage to escape or happen to be living in that forest—all of a sudden, we were potentially going to lose that as well. Those animals were going to lose that. We needed that forest to be the source of regeneration, to heal the Conjola National Park. So we did. We ended up having to force the hand and, with the help of the Environmental Defenders Office, take the developer to court.

At the moment the hearing was about to start, we struck a deal with them, whereby they would go back and do further surveys, and they would give the community and the environment some time. It ended up that the developer had to refer the matter, which is another problem with the planning system, where the onus is on the developer to say, "I think I'm going to have an impact on threatened species. Perhaps I'd better put my hand up and talk about how I'm going to mitigate that." Even who can make that referral—there's a lot of buck passing. Anyway, I'm getting distracted.

WILLIAM EGER: If I can just barge in.

JORJ LOWREY: Yes. Sorry.

WILLIAM EGER: Currently it's under—

JORJ LOWREY: Controlled action.

WILLIAM EGER: One zombie DA is under a controlled action and is sitting with Tanya Plibersek at the moment. Her decision on that is imminent, and that's putting a lot of fear into the community at the moment. On the second zombie DA, it's currently before the Land and Environment Court. Shoalhaven council is defending their position to stop that development. That's the one that's been around for about 39 years.

The CHAIR: Sorry to interrupt, but can I just ask what is your understanding of the basis, given it has been approved? What is council's refusal at this point to land it, in the Land and Environment Court?

WILLIAM EGER: It hasn't been approved.

JORJ LOWREY: This is the confusion. Actually, I might just point you—you've got copies of our submission. If you look at the third page, there's a little mud map of our town. This one here is what we call the Manyana Special Conservation Reserve. That's the 20-odd-hectare lot. That's the mature forest. Then there's a 76-hectare lot. That's the one that's gone to the Land and Environment Court. The smaller one is the one that's a controlled action.

The CHAIR: The one in the Land and Environment Court, the 76.57-hectare development—how is that a zombie DA but hasn't been approved? Was it a concept plan or—

WILLIAM EGER: It's probably a little—

JORJ LOWREY: Zombie zoning, if you like.

The CHAIR: I understand. Thank you.

The Hon. SCOTT FARLOW: So it's not a DA, but it's been zoned.

The CHAIR: It was zoned appropriately. Therefore there was this kind of expectation that there would be an approval.

The Hon. SCOTT FARLOW: Looking at the planning map—it's zones C3, R1, R5. Correct?

WILLIAM EGER: Yes.

The Hon. SCOTT FARLOW: Different to what we were hearing in Culburra before, where it's deferred. This has actually got a zoning, but it's not approved—

The CHAIR: And there's T2 land as well on there.

JORJ LOWREY: Yes. And, to the letter of the law, in actual fact there is a pre-approved keyhole development. If you look at the current zoning—but of course this has been passed from one developer to another, one hopeful to another. They couldn't make any money if they actually went ahead with that zombie DA.

The CHAIR: Got it.

JORJ LOWREY: So that's why it never happened.

The CHAIR: And so then they went to council with a newer, bigger, grander—

JORJ LOWREY: Exactly.

The CHAIR: And here we are.

JORJ LOWREY: Yes. "Let's put 350 houses there." That's where it started.

WILLIAM EGER: Cart 260,000 tonnes of fill into the flood zone there that drains into an EEC. There's about five or six EECs on there, as I explained in my introduction. There's a serious-and-irreversible-impact entity. I think there's only probably less than 5 per cent left of that particular plant community in the world, for that matter. But again these old sort of zoning proposals take precedence. The other one, what we like to call the Manyana Special Conservation Reserve, would be the true zombie DA. He has a development approval for that, but if I could actually table—this has been going on for about four years since the Currowan fire hit.

There was a lot of information. There was a huge fight, as I'm sure some of you would be aware, about this. A couple of months ago, while it landed in Tanya Plibersek's lap, I put together a failures document. And, as I was going through all the old information, it was quite—what would be the word, Jorj—disconcerting, to say the least, about the errors, the failures, the way that so many different parts of this proposal way back in 2005—misidentifying plant communities in there. From one of our very esteemed ecologists that has looked on the site, he said the whole place should've been classed as an EEC right from the start. So there's a whole mass of failures. This, like I said, was mainly relating to under the Federal system and talking to Tanya about that, but there's many, many State issues that cross over between there as well, especially under environmental issues.

The CHAIR: So the driver of those failures is the consultant, essentially. That's where these failures begin, and they get perpetuated through that.

WILLIAM EGER: Very much. We absolutely concur with everything that's been said from the previous associations and groups that have spoken here. We're just at the back there, nodding our heads, going "yep, yep".

The CHAIR: I'd love to know, given this experience so directly with this, has there been thoughts around what do you do? We need environmental assessments, obviously. Do you have consultants that are at arm's length from a proponent?

WILLIAM EGER: Absolutely.

The CHAIR: However that works, whether there's a pool over here to put money in—

WILLIAM EGER: I think the Government should probably have their own pool of consultants, and you draw a straw as a proponent and the Government says, "You go and see Mr X."

The CHAIR: And there's a broker of some sort that deals with the passage of information or something that puts that one step removed. So the consultant, no matter what, is going to get paid, whether they say it should or shouldn't go ahead. But at the moment what we're hearing is that that relationship is one of, "We pay you. You deliver us the success of our development."

JORJ LOWREY: Yes. And, unfortunately, wherever there's money to be made, then it seems that—I mean, the environment certainly ends up coming off worse.

WILLIAM EGER: There's a classic example that hit the news recently, though we have many in the failures document. Up at, I think, a place called Calderwood, just north of here, on Macquarie Rivulet, the ecologists did a couple of hours of research to find out whether it was platypus habitat there or any platypus in the river. Of course, they came back and they said, "No platypus here", and then the locals said, "Hang on. We've seen them, and we've actually got video of them." But in that initial period, where it was being to-and-froed, the ecologist and the proponent completely denied it. This stuff is going on all the time.

JORJ LOWREY: The developer on that Manyana Special Conservation Reserve has come back and completely ignored even some of the species that in the controlled action they were requested to survey for, like the swift parrot and the scrub turpentine. Then, I guess, it falls up to council as the consenting authority because these part 3A major developments, of which this is one, that then got handed to council—it's up to them to double-check these things afterwards when they do sign off. We've found that that's a real issue too because there's so many hands in the pie that, I guess, it's hard to keep track of where you are up to in your role. Once it's gone past the first step, then it goes to the second step. But then, maybe, somebody needs to be keeping check all the way along. Am I making any sense?

The CHAIR: Yes.

WILLIAM EGER: There's no oversight, and it's very complex. You've got plant communities; you've got experts doing mammals; you've got experts doing hydrology.

The CHAIR: We just heard from council that they don't actually have a single source of truth of data that they can say, "This is right," or "This is wrong." Often what they were saying is you might get an environmental impact assessment, and then you go to the site and it's very different to what is in the data.

JORJ LOWREY: Exactly.

WILLIAM EGER: As you said before, Chair, I think it's vitally important that the community is consulted. I think it's either in the BC Act or the EPBC Act that there is a recommendation from the scientific community—it's not law, it's just a recommendation—that local people are consulted about the flora and fauna in their area, but it's not done. We've had a few issues about that, where that local knowledge base hasn't been consulted. There is that resource on the web—

JORJ LOWREY: Atlas of Living Australia.

WILLIAM EGER: Yes, the BioNet Atlas.

The CHAIR: BioNet, yes.

WILLIAM EGER: But we know that even that can be manipulated as well.

The CHAIR: We just saw there were years where certain data hadn't been uploaded. I think that has been rectified now, but there was a whole couple of years where data being entered hadn't actually landed on the database. It was quite a problem. The Minister's assured us it is rectified now. It is always the intention under the current planning and assessment Act that public participation is a vital component of the legislative architecture. I think, consistently, what we are hearing is that that is not operationalised in any meaningful or effective way. The platypus example couldn't be more clear of an example where, if you don't get that local knowledge input and it's not facilitated and it's not harnessed proactively, then we fail in the exercise of identifying what is there.

WILLIAM EGER: As others have said, sometimes these zombie DAs pop up without any pre-knowledge of the community. They pop out of nowhere, and all of a sudden the proponent puts a fence around it and no-one can get in there or they charge you with trespass or something like that. Sometimes it's difficult for communities to find the results of actually what is in there. We've just got to believe what the proponent is saying, and obviously he's got an interest to not say certain things.

The CHAIR: In terms of the zombie DA components, what is your view in terms of what should happen? Obviously we've got these commencement provisions, "What is substantial commencement," et cetera.

WILLIAM EGER: That certainly needs to change.

The CHAIR: That needs to change. I think that, in your submission, we're looking at—was it DAs, five years, or have you got—

JORJ LOWREY: Yes, totally—first of all, an immediate moratorium on zombie DAs so that there won't be panic clear-felling of important habitats. There should be a database created of all of the zombie DAs—some of them do predate digitisation. I believe even some councils aren't aware of what lands they have that are zombie DAs. That should be made publicly available. They should have to be reassessed under current environmental and planning laws, and then we fix those laws so they do have to be not only substantially and significantly, actually physically commenced, but that they have to be completed in a time frame. We are suggesting five years. I think the fires showed us that, overnight, things can completely change. We went from greater gliders being pretty commonplace around here to now being on the threatened list and it's a real treat if you get to see one. The little populations are now in islands.

WILLIAM EGER: There's no connectivity; that's been lost. An important point to make here is that the system is really behind the eight ball because threatened species lists are increasing every year. How do you keep up with that? I used to say to people, "It's like if this proponent has come in and is going to bulldoze this block and it's the last white rhino in there." It's just crazy. How you do that and what sort of time frame you put on these zombie DAs before they're commenced and started or they have to be reassessed—we were thinking five years. The reality is in the last two years, I think, the threatened species list has increased at more than any other time. The trajectory is just up, especially with climate change happening.

JORJ LOWREY: The crazy thing is, too, that whenever we allow—a lot of the point which the other groups made so eloquently as well is that it's the cumulative impact. We can't look at these lots in isolation at all. The problem is that it's kind of a double whammy as well, because when we're losing these habitats we're actually destroying the very thing that is protecting us from climate change, that's helping save us from climate change. When we destroy these habitats and these trees and these carbon-storing areas, and we bring in more people, more cats, more dogs, more people on the beaches—in our area we have the most northern range of the critically endangered hooded plover. There is only 44 nesting pairs left in New South Wales, and we're looking at doubling the population that are going to access that beach. It's counterproductive, absolutely counterproductive.

WILLIAM EGER: It's been said that our little town—as beautiful as it is, it's not our backyard. This nimby sort of thing that comes up all the time—it's not our backyard. It's everybody's backyard. People come from all over the world, and they're welcomed. We love to see people there but we have to protect what's there as well.

JORJ LOWREY: That's right. We appreciate that we have to act locally and think globally. If everybody did that—in other words, if everybody was a nimby and if everybody said, "I'm not going to put up with what isn't right in my backyard"—I mean, that's the actual definition, isn't it, that we look after our own backyards? If everybody actually did that, then what a different place it would be. We know when we care for country, country cares for us. That means that the original inhabitants, which are actually the little critters that live in those homes and that we have to share this place with—that we are part of biodiversity. When we lose our biodiversity, that's when we're losing our grip on climate.

The CHAIR: Thank you very, very much for your evidence and for your time today. If anything was taken on notice, which I can't recall, then the secretariat will contact you. Otherwise, thank you very much for sharing everything you have with us today.

WILLIAM EGER: It's great to be here and to give you all this information. We really appreciate it. Thank you.

(The witnesses withdrew.)

The Committee adjourned at 12:40.