

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 Oaks Room, Dee Why RSL, Dee Why on Friday 10 May 2024

The Committee met at 9:30 am

PRESENT

Ms Sue Higginson (Chair)

The Hon. Mark Buttigieg
The Hon. Scott Farlow
The Hon. Jacqui Munro
The Hon. John Ruddick (Deputy Chair)

The CHAIR: Welcome to the seventh hearing of the Committee's inquiry into the planning system and the impacts of climate change on the environment and communities. I acknowledge the Garigal people, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal people and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today.

I ask everyone 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, so 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 JOSEPH HILL, Executive Manager, Strategic and Place Planning, Northern Beaches Council, affirmed and examined

Mr YIANNI MENTIS, Executive Manager, Environment and Climate Change, Northern Beaches Council, affirmed and examined

Mr DOMINIC JOHNSON, General Manager, Mosman Council, affirmed and examined

Mr CRAIG COVICH, Director, Environment and Planning, Mosman Council, sworn and examined

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

DOMINIC JOHNSON: Thank you for providing Mosman the opportunity to appear before you today to assist the Committee's laudable inquiry into the impacts of climate change on communities and biodiversity and the role of development and adequacy of planning and planning bodies in managing the process. Firstly, to introduce myself, I am the general manager and I have been in the role a few months shy of eight years. I have a master's degree in environmental science and have spent most of my career working within the three tiers of government, including a spell at the New South Wales department of planning. I'm joined by Mr Craig Covich, the director of Environment and Planning, who has qualifications in civil engineering, science and a master's degree in administrative law.

I'm sure all of the Committee will be familiar with the local government area of Mosman, but just a couple of facts may assist you in your understanding of our geography and demography. Mosman is Sydney's second smallest council, with a population of roughly 30,000 residents and a land area of approximately nine square kilometres. The governance of the area is effected by seven councillors, including the mayor, who are all declared Independents; the local Liberal State member for North Shore, Felicity Wilson; and, at a Federal level, by Zali Steggall, the Independent member for Warringah.

While the area is small, it is comprised of a number of highly valued natural assets, not least being a number of highly touristed areas, including Balmoral, Chinamans Beach, Chowder Bay and Clifton Gardens. In addition, it has a number of important parks and reserves, notably Sydney Harbour National Park, Taronga Zoo and the significant lands owned and managed by the Sydney Harbour Federation Trust. Finally, Mosman enjoys a comprehensive tree canopy, large amounts of bushland and a corresponding mix of ecologies, flora and fauna, and geomorphic landscapes. These assets, like much of New South Wales, are highly vulnerable to the impacts of climate change.

The residents of Mosman can be characterised as politically informed, socially active and environmentally progressive. The biennial survey we do of our residents places the maintenance and protection of our natural environment very high on their list of priorities—however, behind their concerns about excessive traffic and overdevelopment. Mosman Council takes the existential threat of climate change very seriously and, in November 2019, declared a climate emergency. This declaration was in response to ongoing political and community pressure to address the issue—a pressure so significant, it directly impacted on the Federal election of that year, with the new and still in-office Federal representative, Zali Steggall, describing herself as a politician focused on this issue.

Since the declaration of a climate emergency, Mosman Council has developed climate mitigation plans and a range of climate resilience and adaptation plans. This process has been embraced by the community and ably led by a climate change committee chaired by our mayor, Carolyn Corrigan. I won't talk you through the myriad of actions we've taken, or intend to take, as part of the plans. But please be assured that it includes the typical responses—in an urban environment—to resilience, temperature increases, sea level rise, high rainfall and extreme weather events, and increases in bushfire risk.

As a well-established urban area, Mosman has a well-established asset base to deal with most of these impacts in the short to medium terms. These include the most appropriate placement and resourcing of emergency services, planning controls to regulate the built form and locate it in the appropriate placements, building lines and coastal infrastructure to deal with minor sea level rise and storm surge, and bushland reserves and bush corridors, as well as strong tree canopy polices and pest controls, to deal with biodiversity and habitat loss.

Importantly, both council and most of our community are financially advantaged enough to be insured and fiscally resilient for any climate-driven extreme circumstances, at least in the short term. We are also broadly comfortable with the planning and regulatory framework that exists for assessing and determining developments on all our lands managed by council, as well as the adequacy of council's planning powers where it is given control

over development in the Mosman LGA—it being best placed to balance the need for growth with sustainability in all its forms, including environmental sustainability.

However, I would like to conclude my opening statement by identifying a new risk currently before council and the Mosman community in terms of its ability to respond to climate change impacts in both a planning and regulatory sense. Simply put, it is unplanned population growth and unplanned urban density. As I'm sure the Committee would understand, longstanding councils such as Mosman have iteratively adapted to population growth over time. Building and managing key environmental assets has evolved as the population has grown.

Whilst we are now actively engaged in minimising and off-setting Mosman's contribution to climate change in carbon emission terms, we are simply not equipped—nor can we adequately plan—for any sudden and substantial uptick in population as our key mitigation assets are working to capacity. For clarity, I am not referring to Federal, State or city-wide immigration levels, but rather the housing reforms currently proposed by the current State Government. Should they take effect, we have modelled a potential near doubling of the population of Mosman. This growth has not been anticipated nor planned for. The time frame in which this will occur is unknown.

Simply put, it will result in additional stress on our emergency services to respond to climatic events, require a significant enhancement of our stormwater capacity, reduce and compromise bushfire buffer zones, double our waste, double our carbon budget, reduce deep soil zones, create even more pronounced traffic congestion, and have a detrimental impact on the tree canopy and other key mitigations for heat stress. Whilst all urban environments can adapt over time to iterative densification, the cumulative impacts of unplanned and substantive residential development proposed under the housing reforms are of a scale that would challenge the resilience of any community. It would lead to further biodiversity loss, flooding and place even more pressure on the bushland and coastal ecosystems so cherished and valued by our community.

Mosman Council does expect its community to grow and has always planned for residential increase, but abandoning planned population growth and strategic town planning in the manner now proposed by the housing reforms will have a major negative impact on Mosman's capacity to deal with the impacts of climate change in the longer term.

YIANNI MENTIS: Thank you very much for the invitation to Northern Beaches Council. I'm the executive manager and I'm responsible for environment, climate change and also community sustainability and corporate sustainability within council. Joseph Hill, my colleague, is the executive manager for strategic and place planning. Because of its location on the coast, Northern Beaches Council is particularly impacted by variable weather and, indeed, climatic conditions. As you're all familiar, we've been impacted most recently, particularly in the last 10 years, by fairly significant storm events due to the exposure on the coastline.

We are blessed with very significant amounts of coastline, estuarine and lagoon environments. There are also significant amounts of bushland in our area—some of which we have direct control and care of, and others which belong to and are taken care of by national parks. We're therefore very exposed to significant threats that extend across the whole of our area, including bushfire risk, coastal erosion and inundation and flooding—which we've quite comprehensively detailed in our submission, so I won't go into the detail of those. Our recommendations still stand as they are, and we would like to thank you all for the invitation today and hope to be able to answer any questions that relate to those recommendations that we've made.

The CHAIR: Thank you very much, and thank you all for your submissions. You clearly, as councils, have undertaken works and planning. You've developed informal or non-enforceable instruments such as mitigation and adaptation plans. Do you see that they are able to have the full weight of the intention of those documents implemented through the planning system? And what assistance or barriers do the State Government—or your existing instruments—have to being able to implement those strategies and plans?

DOMINIC JOHNSON: At the heart of my opening statement you'll understand that the problem with plans and strategies we've developed and are enacting is unregulated growth. Simply put, the variable of population growth has a profound impact on all of those plans and strategies. The more that our community and our councillors are removed from having direct control over planned outcomes, the more vulnerable those particular plans and strategies are to being either overridden, disregarded or ineffectual. In this instance, as I've mentioned, the capacity for us to realise those plans is going to be greatly reduced if, without a lot of notice and understanding, we suddenly get a very significant increase in residential density.

The CHAIR: Because you don't have the planning powers to control what is getting approved and how and where—that's the mechanics of it?

DOMINIC JOHNSON: If I can be more specific, it's not the planning powers to determine consent; it's the planning powers to strategically plan with our community for the future and to anticipate future growth.

That strategic planning power, which has always been exercised by our council, is being greatly eroded by the proposed planning reforms which are not going to be exercised through our controls but rather an overriding statewide SEPP.

The CHAIR: Getting to the granular level of that, those documents that you have and your strategic documents and plans—are you suggesting that they're not being properly considered by the current State department that is setting strategic priorities? There isn't a reciprocal relationship there?

DOMINIC JOHNSON: I can't identify what might happen into the future but, as you probably understand, we have always worked hand in glove with the State Government and various other agencies apart from the department of planning to evolve a housing strategy—and therefore a density strategy—over time, and that's informed our climate mitigation and adaptation plans. That power has, it looks like, been removed from us and, through the stroke of an administrator's pen, we're likely to get a very different result than we've been anticipating for many years. The Greater Sydney Commission, which has been dissolved, had a function in that. Indeed, there was a commissioner whose responsibility was to look at the environment and climate. We believe that this particular change at this time—and I'm talking about Mosman Council—is perhaps the greatest threat to the efficacy of the mitigation and adaptation plans we have.

The CHAIR: Thank you. Mr Hill, were you going to add something?

JOSEPH HILL: Yes. Thank you, Madam Chair and Committee. As Mr Johnson quite articulately put, we do have the powers to do the planning. We have just not been given the opportunity to do the planning, yet we're very willing to do so. Of the reforms that were spoken about, effectively, unplanned population is the bit that local councils can do very well. Northern Beaches Council, in particular, has looked to promote these mitigation strategies through its Conservation Zones project, a project that was endorsed by the department of planning, so they are considering these ideas. However, when we got to the pointy end and the outcomes of that conservation zone—the objectives were to control density in areas that were evidence-based—that we considered to be affected by bushfire, flooding, coastal, they were not in a position to embrace it.

We do the evidence-based planning very well. The issue, really, is that albeit that the State did consider it, they didn't come up with the answer that really would put the local government or planning system on the edge of it actually embracing more change that will address greater densities. The last comment there is, just on the "density" word, we do plan for iterative density pretty well. We do not plan for unplanned density very well at all. That subject is extremely complex and that's the bit that is the most challenging about the latest set of planning reforms.

The CHAIR: This is my last question. When you say "iterative", what are the timeframes that you have been planning for versus the unplanned?

JOSEPH HILL: In reverse order, the unplanned really is not something I can give you answer on. It seems like a little bit of a void that drops down every couple of weeks and has some variation between councils at the moment. So I can't give you an accurate timeframe there, other than to say it's short and it's uncertain. The longer term timeframes that we've been working on in my 20-odd years of town planning—you work on a five-year development target, a 10, a 15, and as you take the longer term, you start moving out of the planning documentation into the council corporate planning and you start establishing a 20-year vision. So, working from the earlier period or the shorter period being five or 10 years, you get more specific and then, as you get into the longer-term planning, you get a little bit more general. The iterative planning is really the five- and 10-year targets and, yes, all about that.

The Hon. SCOTT FARLOW: From the outset, I'll make the public declaration that I'm a ratepayer in the Northern Beaches Council area. I used to live about 300 metres from here. To start, in terms of the issues the Northern Beaches faces—as you mentioned in your opening statement, bushfires, floods, coastal erosion—you've got a lot of the big issues when it comes to climate impacts and environmental impacts. Back to the planning reforms, I note in your submission you talk quite a lot about bushfires and bushfire risk, and some of the areas, particularly with aged-care facilities, that are bushfire risk areas. From my understanding, Northern Beaches is working across three LEPs, is it, from the old Manly-Warringah and—

JOSEPH HILL: It's actually four.

The Hon. SCOTT FARLOW: Four, is it? Four LEPs which have not been standardised, so to speak. So when it comes particularly to the old Pittwater area, you've got a lot of R3 zones which, from looking at them, are largely aged-care developments. A lot of them about the bush, and with these changes that are proposed, you could see densities of up to six storeys on some of those locations. Does that present a concern for you in terms of bushfire risk and what is happening in terms of a changing environment in the Northern Beaches?

JOSEPH HILL: Yes, is the very simple answer. We have gone through a process that has been a bit murky in terms of doing the analysis of the planning reforms. You're talking about the distance from a town centre, for example, which might encapsulate those types of properties that you talked about in sensitive zones, and not only properties but types of uses. We've got enough of a picture to say we're very concerned about certain uses and, essentially, aged care was one of them. And the sensitive zones overlaid with bushfire zones, we have a lot of very good analysis around that. That concern was very strongly stated in pretty much the past five or six pieces of correspondence that have been tabled to the State planning department.

The Hon. SCOTT FARLOW: In your submission you also mention asset protection zones. Does council keep a register of all the asset protection zones? What's council's responsibility with those?

JOSEPH HILL: I would have to take that question on notice about the register.

YIANNI MENTIS: I think I can provide some answer to that.

The Hon. SCOTT FARLOW: If you can, Mr Mentis, thank you.

YIANNI MENTIS: Council is a member of the bushfire management committee in the local area, the Northern Beaches Bush Fire Management Committee, where we work with the RFS and other emergency agencies locally. They have a process where they keep records of all of the hazard reduction burns that are undertaken and other such stuff. We've also got a very clear understanding of where our reserves are and where our APZs are, and we regularly review that and ensure that we are up to date on a quarterly basis to ensure that we are delivering against our requirements to manage those APZs. We do have a very discrete record of all of the APZs across the whole of the LGA that we are responsible for.

The Hon. SCOTT FARLOW: What is that requirement in terms of the management of those APZs?

YIANNI MENTIS: We are required to regularly clear the APZs and make sure that they're appropriately taken care of. On a quarterly basis, we engage contractors to do that work.

The Hon. SCOTT FARLOW: I might turn to Mosman council now. In terms of the commentary about the changes to the low- and mid-rise housing, to play devil's advocate somewhat, you said that this wasn't a criticism in terms of migration either at a State level or a Federal level, but we do have an increase in population and they do need to be housed somewhere. Every council across the State would say that those increases in population change their plans. How would Mosman suggest we approach that rather than apply a blanket one-size-fits-all across the State?

DOMINIC JOHNSON: Essentially Mosman has always been planning for growth, and it tends to try to concentrate that growth in the best areas. In our particular case, it's primarily around Spit Junction. That has been the epicentre of growth from a planning perspective for the council for some years. That wasn't done by ourselves unilaterally. It was done in concert with many conversations with departmental planning staff and also with the Greater Sydney Commission and, in fact, with the community as well through local strategic planning statements and the like. Simply, we believed that the growth should occur where there is appropriate access to the utilities and amenities and transport.

In Mosman's case, we have a reasonable amount of low-density residential areas, but it might surprise the Committee to realise that two-thirds of the residents live in apartments. You'd probably see them as you drive down Military Road and Spit Road. We don't think that allowing greater density than our established low-density suburbs is going to be good, specifically in terms of climate change. The reason for that is inevitably it results in a loss of tree canopy. Tree canopy covers about a third of Mosman. It will reduce deep-soil zones. It will create increased traffic and require greater emergency services responsiveness. Those are just a few; you could probably list many more. The answer is we would put density where it has been planned for density—and that's in the town centres—by allowing greater heights. That was something we were actively pursuing, but that's now being put on the backburner because of the planning reforms that are proposed now.

The Hon. SCOTT FARLOW: We've heard evidence from other councils that they expected to receive their housing targets last year. Was that the expectation of both your councils?

DOMINIC JOHNSON: Yes, it was.

The Hon. SCOTT FARLOW: If that had been the case, what would you have done in response to those targets?

DOMINIC JOHNSON: It's a bit hard to say because we don't know how big the targets are. We've always had modest targets. I will be honest, the last target was 300 dwellings in five years. That seems incredibly small, but, as I mentioned earlier in my opening statement, we're just essentially a suburb. We're not Parramatta, and we're not Penrith. We're just a suburb of nine square kilometres, minus three kilometres of parklands, so six

square kilometres. If we had a very aggressive target, and I anticipate essentially that's what we're going to get, we would have had to look at the entire ribbon of road system that encompasses Military Road and Spit Road and look at upzoning that and, as I mentioned, looked also at Spit Junction and perhaps all the way to Mosman Junction at the other end of the high street. Having said that, we can create capacity, and in fact we have capacity but it doesn't mean that it gets built. We have many consents that are not activated and in addition the—

The Hon. SCOTT FARLOW: Do you have a register of how many consents you have that are not activated?

DOMINIC JOHNSON: We don't have a formal register, no.

The Hon. JACQUI MUNRO: Do you have an idea of the number of dwellings or range of the number of dwellings that would be provided if those were activated?

DOMINIC JOHNSON: To quantify, I think about 20 per cent of our current consents are not activated, so I guess that's probably the best indication I can give you.

The Hon. JACQUI MUNRO: Could you take it on notice to get the actual figure please?

DOMINIC JOHNSON: Yes.

The CHAIR: And in particular whether they are residential capacity.

DOMINIC JOHNSON: Yes. I would just like to make a distinction. That likely number will be many factors lower than what we're looking at. As I mentioned earlier, the modelling we've done with a very reputable land economists firm also used by the State Government is indicating we would get potentially 10,000 to 12,000 new dwellings; that would double our rateable residential property base. It's a bit hard to say if suddenly you're asked to double your population, what would you do, because in planning terms we've never done that. It has taken us over 120 years to get to where we are and we're being asked to do it in a matter of months.

It would be basically looking at all of the things I've just mentioned, but it would be challenging and the height limits would be like nothing Mosman has ever seen before or has in precedential terms. Do I think that the surrounding social infrastructure, the schools, the playing fields and everything from emergency services could cope? No, I don't think it can, and nor do I think that importantly in terms of climate change things like managing stormwater could cope. We'd basically have to re-plumb every major stormwater line, water line, every utility in order to accommodate that sort of growth.

The Hon. MARK BUTTIGIEG: I'm just trying to grapple with some of these figures in the context of an obvious housing crisis. I think it would be fair to say, and I'm sure you accept that, there's a general community perception, and the Government has accepted that perception, and reality, that there's a housing crisis and we need to find places for people to live. Everyone has to carry the weight and share the load. You mentioned 300 dwellings over five years, which is 60 houses a year. Notwithstanding the size of the LGA—I understand it's a small LGA—you would accept that there would need to be an uptick in the share of housing in this particular LGA. My question is, what dialogue have you entered into with the Government to try and find a way through in terms of those metrics and how sophisticated is that conversation?

DOMINIC JOHNSON: Up until, I guess, the Greater Cities Commission was dissolved and even beyond that there is regular dialogue between staff and departmental officials. As I think we've all said, that's an iterative process and it's longstanding where we talk about future targets and capacity. In terms of these recent reforms, we're learning as much by reading newspapers as we are in terms of getting official information, to be honest.

The Hon. SCOTT FARLOW: As are we all.

DOMINIC JOHNSON: However, I did benefit from a meeting with the planning Minister two days ago. The mayor and I went and met with Mr Scully and had a conversation. Again, we still don't have housing figures. We still don't know when the SEPP that will bring this all into train will occur. It has never been put to us that we should anticipate a 10-fold doubling of our normal target. Just remember, the housing targets that have been set for us haven't been of our own making. They have been given to us, recognising the very significant impediments we have. We have one road through Mosman, which is at capacity, and that's recognised. The one piece of infrastructure we were going to get to alleviate that outcome—the Beaches Link tunnel—has been cancelled. We are already a dense suburb by Sydney standards: two-thirds of our residents live in apartments. In some respects, one could argue that if you're talking about equity, we've done heavy lifting, historically.

The Hon. MARK BUTTIGIEG: Can I tease out some of these points you're making? You say that you haven't been informed of this tenfolding so where did that tenfold increase come from?

DOMINIC JOHNSON: We've looked at the statement of effects from the proposed housing reforms that have been released. We've then modelled, as I mentioned earlier, with an economic land firm, what those effects would be in our low-density and medium-density areas.

The Hon. MARK BUTTIGIEG: Was the reconciliation of that metric raised with the Minister when you met him?

DOMINIC JOHNSON: It was.

The Hon. MARK BUTTIGIEG: What was the response?

DOMINIC JOHNSON: There will be future conversations about where there may or may not be the ability to deliver, but we've all got to shoulder this load. I wouldn't want to breach any confidences, but I didn't walk away thinking that there would be a substantial haircut to that number.

The Hon. MARK BUTTIGIEG: My understanding is that the view of the Minister's office is that if councils have a pathway forward about where they want the uplift and how that might happen within the constraints, then that dialogue is more than happy to be facilitated. But what we've seen in some LGAs is a not-in-my-backyard. I'm not suggesting that's the case here, but I'm just trying to tease out the extent to which you got any joy in that respect.

DOMINIC JOHNSON: I think it's a fair question, and I think it's on the public record that our mayor has been very open about wishing to be at the table and wishing to do our share. The issue is it's very difficult to know what's on the table and what's off the table when you don't have a target. If you don't know whether you're trying to deal with a 5,000 or a 10,000 whether you can be excluded from some of the density changes in the median area—and then we have a compounding impact where we've got town centres that are on our border, such as Cremorne, which will have an impact, but we don't know where North Sydney is going to go with that.

I think it was Mr Hill who said it's complex. It is complex, and that's why it takes so much time. We've reached a level of comfort—understanding—historically, but this is a game changer which, coming back to the central point, we weren't prepared for, but I don't think any council was reasonably prepared for. To know that we could potentially write our destiny with the latitude of the Minister is not something we can put our hand on our heart and say, "We are confident we'll get it," because we don't know what the task is yet.

The Hon. MARK BUTTIGIEG: Coming out of that meeting, were there takeaway next steps as to getting a more precise parameter on what's required and how you'll get there?

DOMINIC JOHNSON: Not as a function of that meeting, but it was explained to us that the meeting that is imminent with my staff next week will be a further iteration of the dialogue. But the time frame is pressing, and it is one that is set by the National Housing Accord, as much as I can see, as anything.

The CHAIR: In the submission from Northern Beaches you referred to the Land and Environment Court returning the seniors living:

An example of this is the "deferred lands" area in Oxford Falls and Belrose North. Under Warringah ... seniors housing development is permitted in this area. Despite Council opposition, the Land and Environment Court has approved several developments ...

Is that something that continues and something that you are facing as a council?

JOSEPH HILL: Madam Chair, I can only speak to it generally. There will be ongoing cases where council will make a recommendation—or come to a position—and the court will find different for various reasons. The court process is not straightforward. Decisions are made once they narrow down on the key issues. In a general sense that will continue to happen. Once an applicant takes council to court on an issue, council's control is basically ceded and the determination body takes over from there. That's not going to change in the short term.

The CHAIR: Do the outcomes of each of those impact the next decision that you make?

JOSEPH HILL: Invariably, yes. To what degree, I think we'll leave it at a pretty high level, but if you get a court decision that's been made before with a very similar or exact scenario again, you would expect that decision to impact the way council writes, or approaches the determination—or assessment report, sorry.

The CHAIR: Do you have matters before the court now?

JOSEPH HILL: We will. I'm not across the detail of all of them.

The CHAIR: Do you have matters before the court?

DOMINIC JOHNSON: We always have matters before the court.

The CHAIR: Do you know how many at the moment, or do you ever consider what is the average at any given time?

DOMINIC JOHNSON: The average at any given time would be approximately 10.

The CHAIR: Accepting there is the challenge right now with housing and the State's plan for councils, what do you see as the best outcome for your two councils in the next couple of years in relation to addressing the housing crisis but also with managing the climate adaptation and mitigation capacity of your assets that you've talked about? What do you think are the best outcomes in the negotiation? At the moment, what I'm saying is the State, it appears, will drop at some point figures for you. What would you like to see next?

JOSEPH HILL: What I'd like to see next is collaboration actually genuinely undertaken. It's within the department's ability to come and talk to all local governments. The key thing from the submissions has been we'd like to talk to you and understand where these reforms are coming from; so the question before was around genuine dialogue. It was available for the State to tell the councils before the reforms dropped. Councils would really go, "This is what we're doing."

For Northern Beaches, we have a set of controls and documents that we'll work through. We established centres that we were looking for increased population, housing diversity areas. We're going to bring them all together, the four LEPs, that will be put to council in June. Council is also accepting that there will be some development. If a number was to pop out, we'd obviously have a right of reply as to what that might look like, but give us a genuine right of reply and have genuine collaboration, which does mean that the State will have to be open as to what, say, targets are or where the targets have come from.

As I said, despite repeating myself, it's available for them to do that. Their staff are willing to talk to us. It's about them being able to provide us with information. You'll find, from what I've seen from most councils who made a submission that we'd like a seat at the table that is actually genuine. Then, to one of your first questions, we have planning powers that can enact increases in density in an appropriate manner. Councils want to do that on their behalf and on behalf of their community. When councils do have the confidence of the community to do that, that's actually the most efficient way to deliver, in this case, more population in an appropriate manner.

DOMINIC JOHNSON: I'd echo many of those sentiments, but just add two things. One is that the notion of housing affordability and housing supply is not new for us. It's the space we've been in, really, since the Cumberland plan first came into being and town planning became a thing in Sydney. It's a challenge that we are well versed in and have some skill and understanding of, and it's disappointing that many of the thought leaders but also, I guess, the planning muscle has been ignored from the local councils' perspective. Again, I'll just point out that the decommissioning of the Greater Cities Commission is a retrograde step.

I guess in terms of going forward how we would like it to work would be, first of all, to be given the figures for the housing targets and be given an opportunity to prove we can rezone and plan for them before, I guess, that is taken away from us, which is what I understand the SEPP will do. We're happy to accept that would be a fairly tight time frame, but we're riding roughshod over 47 councils' LEPs. There's probably many more LEPs than 47. Those have all been carefully curated with the community in mind. It's not just the fact that we would like a seat at the table but, by default, we would like to bring the community with us. I can't pretend there would be a social licence for a lot of the development that's going to occur under these reforms. I think that's an important piece of the puzzle.

The Hon. SCOTT FARLOW: Part of the problem now is that you're going to get the targets and there's going to be a low- and mid-rise SEPP in place. Councils are going to throw up their hands, aren't they, and say, "Our job has already been done. We've got the low- and mid-rise SEPP. Why bother?" in terms of doing a proper strategic plan and revising those LEPs because, effectively, the State Government has come in and intervened already?

DOMINIC JOHNSON: I strongly agree with that statement.

The Hon. MARK BUTTIGIEG: Notwithstanding those restraints—and I understand the overriding desire of councils to bring the community along with them—you would accept that there is a huge demographic out there that is experiencing housing stress in a housing crisis. Government is in a position whereby it has been elected on a platform to solve that crisis. Obviously there will be sections of the community that don't want that, for their own benefit and self-interest, and that's perfectly understandable. Are you suggesting that the Government's position is unfair in terms of balancing those concerns given that it was elected on that platform?

DOMINIC JOHNSON: No, I'm not suggesting that, with respect. What I'm suggesting is that all planning, whether it be for climate change or population growth, takes time and needs to be done in an expert

fashion. This seems to be an aberration of a process that is well established for us which we have felt we have contributed to. It's perhaps the manner that is of concern. In terms of addressing the housing crisis, we totally understand that that is an important thing for this Government to do, but essentially being overridden in its execution is the concern.

The Hon. JACQUI MUNRO: I had a question for Mr Hill or Mr Mentis about the coastal protection works that you mentioned in your submission. I was wondering if you've got some examples of situations that have arisen where the council has had to coordinate with Crown Lands to obtain relevant approvals. You note that there have been issues in relation to affecting public amenity and that there's no clear definition. I was just wondering if there are some concrete examples that you can provide that demonstrate these issues.

YIANNI MENTIS: You'd all be very familiar with the Collaroy-Narrabeen works that are being undertaken. That's a specific example of those particular issues that have been raised.

The Hon. JACQUI MUNRO: How is that going? Is it on a path to resolution?

YIANNI MENTIS: In terms of those problems or in terms of the coastal protection?

The Hon. JACQUI MUNRO: In terms of those problems.

YIANNI MENTIS: We are working closely with Crown Lands whenever we need to in order to try to resolve those problems as planning assessments come to bear, and also dealing with them with regards to the public works that we're doing at those locations, which involves the car park area near the Collaroy pub. The road ends in between the private works that are being conducted.

The Hon. JACQUI MUNRO: Is that a common occurrence? Obviously that's an example that has played out fairly publicly. Are there any other examples that have demonstrated that this is a problem over time?

YIANNI MENTIS: We have a number of locations on the northern beaches where there is the requirement for coastal protection—some historical ones like, for example, at Manly and elsewhere. In many instances, the interface between Crown land and public land is a little bit unclear. On all of those occasions, we're required to communicate with Crown Lands in order to understand exactly where the borders are.

The Hon. JACQUI MUNRO: Is there any process that would make that easier for you at this point, or has it just been a matter of charging through, essentially?

YIANNI MENTIS: I would say that we have a good relationship with Crown Lands and with the staff there. It does take some time on occasion to get through the process, but we do work with them closely.

The CHAIR: I've just got one question on that. In relation to retreat, what is the consideration of any planned retreat and where is that sitting at the moment?

YIANNI MENTIS: As you can appreciate, planned retreat is a consideration in terms of different methods that might be used to deal with coastal erosion in particular, but also any hazard. But as you can also appreciate, the difficulty for council and generally for State and Federal governments is the cost associated with that, in particular in locations like the northern beaches or, arguably, Mosman and the other areas where the land values are significantly higher. The consequence of planned retreat would be, I think, astronomical.

The CHAIR: Just to finish on that, when you say it's a consideration, to what extent and where does that happen? Is it put forward and then it's not an option, or is it put forward as a discussion? Is it something that is within our planning scope?

YIANNI MENTIS: I don't think I can answer that, Chair. I'm not familiar with that specific area of how we deal with that in the planning regime.

The CHAIR: Is it possible to take that on notice and provide it to us? It seems like it's the hard edge of adaptation, obviously, and it would be very good for the Committee to understand what does council do. Obviously, we build walls, we talk about beach nourishment—all those sorts of things—but what do we do and where do we talk about planned retreat, if at all?

YIANNI MENTIS: Yes, of course.

The Hon. JACQUI MUNRO: You might want to take this on notice as well. It says that councillors identified inconsistencies between the resilience and hazards SEPP and the Coastal Management Act. I just wondered if you could provide on notice what those inconsistencies are, please.

YIANNI MENTIS: Yes, we can take that on notice and provide that to you.

The CHAIR: Are there any final things that you want to add?

DOMINIC JOHNSON: Thank you for your time.

The CHAIR: Thank you for your time. The secretariat will be in contact with you for questions taken on notice, to facilitate that process.

(The witnesses withdrew.)

Mr STEVEN HEAD, General Manager, Hornsby Shire Council, affirmed and examined

Mr JAMES FARRINGTON, Director, Planning and Compliance, Hornsby Shire Council, affirmed and examined

The CHAIR: Thank you for attending today and giving your time to give evidence. Would either of you like to make an opening statement?

JAMES FARRINGTON: Thank you, Madam Chair. I will do so. First of all, thank you once again for inviting us along to present to you this morning. Just a little bit about Hornsby shire—you're probably well aware where we're located, but Hornsby shire actually is a little bit larger than Mosman. We're 460 square kilometres in size. But of note, nearly two-thirds, or 70 per cent, of Hornsby shire is bushland or national park—so quite a sensitive environment—10 per cent is urban, 15 per cent rural, 5 per cent open space and we have over 1,300 kilometres of rivers and creeks. It makes us a very sensitive environment. We've experienced significant bushfires and impacts of flooding along the Hawkesbury River. Extensive portions of our residential areas—34 per cent, in fact—are bushfire-prone. We have extensive interface areas with our national parks and our open space areas. Our own flood mapping also shows that 20 per cent of our properties are below the probable maximum flood level.

Some of the key issues for us of note—approximately 3 per cent per annum of our tree canopy in our residential areas is being lost on an annual basis. We continue to have adverse impacts on the health and function of our creeks and waterways from development. One thing that we are happy with is that we currently recycle 45 per cent of our waste, diverting it from landfill. But we acknowledge the challenges in terms of climate change, population growth and land use intensification. Hornsby council has been proactive in this area. We have adopted an emission target of net zero by 2050 and an interim target of 50 per cent by 2030, and we're well on the way to achieve that target. Of note, we've adopted the *Sustainable Hornsby 2040* initiative, which acknowledges the challenges of climate change and has a number of actions to address that.

In terms of the terms of reference of the inquiry—and I note the comments from the previous session—Hornsby council are very aware of the population challenges faced across Sydney, and the housing challenges, and we've been very proactive in that space. At the end of last year we adopted a master plan for development of the Hornsby town centre to facilitate another 4,900 dwellings, and we're currently working with the State Government in relation to planning around Cherrybrook metro to facilitate housing provision in that area.

However, whilst we acknowledge the challenges of population growth and the need to provide housing, some of the issues that we do see and key recommendations are that there should be acknowledgement that climate change is a legitimate constraint to development by excluding sensitive areas such as bushfire areas, mapped high-biodiversity areas and flood-prone lands, which are unsuitable for increased intensity of development. There should be a willingness to work with councils in relation to identifying those sensitive areas, including vegetation mapping and the like.

Outside those areas that have been identified as being of high sensitivity, there should be working with councils in relation to those targets and the development standards for development within those areas. For instance, in terms of the low- and mid-rise housing reforms, we would say that whilst the initiatives and objectives may be on point, some of the densities proposed are just far too great. For instance, one dwelling per 25 square metres in our low-density zones will have a significant impact on both the character and our tree canopy.

In relation to the building sustainability SEPP, we'd also argue there should be ability to work with councils to include initiatives that go beyond that. One of the initiatives we're currently working on, for instance, is a ban on gas in new residential developments. This is an issue that is being addressed not only by Hornsby but a number of other councils, including Lane Cove, Waverley and the City of Parramatta, who have introduced similar controls. We'd say that should be a State Government position in relation to the use of gas in these buildings, as being done in Victoria and the ACT. Thank you for the opportunity. I'm happy to take any questions.

The CHAIR: Thank you very much. Mr Farrington, with your opening statement, could we arrange to make that available to the secretariat?

JAMES FARRINGTON: Happy to do so, Madam Chair. They are dot points, but I'm happy to provide them anyway.

The CHAIR: I think everything helps. Thank you very much. We'll have some questions. Do my colleagues want to go first?

The Hon. JACQUI MUNRO: My question was around data, actually. I know it's something that you didn't necessarily explicitly call out in your submission, but we've heard a lot from councils who are concerned

that they're not getting enough detail in terms of bushfire or flooding data, and I'm wondering if you're facing that problem at all or if you have managed to collect a set of maps that is already adequate for your purposes.

JAMES FARRINGTON: Madam Chair, in terms of planning for bushfire protection, council has updated bushfire maps, and we're comfortable with that mapping. The flood mapping, obviously, is a challenge for us, and we're currently working through that process. I can't speak for the specifics in relation to the data for the preparation of those maps, but one of the key issues facing council and, I'm aware, also facing a number of councils is getting the community acceptance of that mapping and the implications for their property. It's a bit like bushfire-prone land. It has an effect on property values. One of the key challenges for us is the education of the community about the need for that mapping and how it applies to their lands.

The Hon. JACQUI MUNRO: How are you addressing that challenge with residents?

JAMES FARRINGTON: We're in the middle of that process. We're doing it factually. But, at the moment, we have exhibited those maps on one occasion. In response to those concerns, we're actually undertaking a peer review of that mapping to reaffirm council's position. It is a lengthy and costly process for the council.

The Hon. JACQUI MUNRO: When you say "exhibiting" is that online or in a physical location, advertising that it's all available?

JAMES FARRINGTON: A combination of both.

The Hon. JACQUI MUNRO: Are people invited to make submissions on that?

JAMES FARRINGTON: Correct.

The Hon. JACQUI MUNRO: Will responses to those submissions be made public as well? Obviously, if it's a conversation, it's not just about people's feelings towards things; it is about addressing information that may not be correct or needs to be provided in more detail.

JAMES FARRINGTON: Correct. Council's process would be to take on those submissions. But, at the moment, that exhibition process has been placed on hold in response to community feedback to enable that peer review process I mentioned earlier. We have commenced the exhibition. But, in response to the feedback from the community, council agreed to undertake a peer review process of that mapping. But it's anticipated that will then be reported to council in the future to undertake a further consultation. Our process is normally to review those submissions and report those back to council for consideration and finalising any plans.

The Hon. JACQUI MUNRO: Is this a process that other councils are using as well, or is this something that you're pioneering and perhaps could be used by other councils if necessary?

JAMES FARRINGTON: No. It's a process that other councils are following.

STEVEN HEAD: I might just add, if I may, that there's not a lot of understanding, I think, in the broader community about the implications of the consequences of unmapped areas but also just understanding what happens once we have mapped areas. And, certainly, the community feedback we received was in the hundreds, and it's detailed. There have been one-on-one meetings. It's been a very extensive process. But you can imagine, for an individual property owner with their most significant asset, being told that it has now been identified for a flood-prone lot, it's quite concerning to them. Working through that is a very challenging process for individuals. We're trying to do it in a way that both balances the public interest but at the same point in time respects the concerns of individual property owners.

The Hon. SCOTT FARLOW: And how are you doing that balancing, apart from meeting them and telling them, "This is the consequence of it"? Is that an iterative process as they present to you their own evidence, so to speak?

STEVEN HEAD: We've encouraged any property owner that wants to provide their own detailed assessments to do that. As Mr Farrington said, it's been a process whereby we had a number of concerns raised. Whilst council, in our instance, we're fairly confident about the veracity of the mapping that's been undertaken, one of the things we thought to do to ensure that there's community confidence in the work that's been undertaken was that we'd undertake a peer review. We use that as the basis with which we can then go back and have a broader discussion—and probably a more nuanced discussion—with a number of property owners that think that in some cases the mapping isn't accurate. But we have encouraged any property owner that wants to undertake that to undertake some further analysis themselves and come and talk to us about that.

The CHAIR: And are you seeing that? Have you already received—this is bushfire-prone land and someone's come and said, "No, it's not"? Is that happening?

STEVEN HEAD: We find that most people, as they go away, it's a complex matter for them to—it costs money to go to do that, for one thing, generally. But I think where some people go and do it, they usually come back with fairly similar findings to what we've found. The mapping process is fairly standardised. What I think, unfortunately, is probably there's not a broad understanding in the community—I'm talking well outside of just Hornsby; I'm talking broadly in the community—about just why we need to do it and what it is that we do, and what it actually means and what it doesn't mean, too, for that matter.

The CHAIR: With the flooding, you mentioned probable maximum flood and the PMF. Is that something that you have changed in terms of going from the "one in whatever" to incorporating PMF? Is that something more recent?

JAMES FARRINGTON: No, it's not. Look, we're using the standard process, as Mr Head said. This is not unique to Hornsby council. All councils are undertaking and should be using the same process and procedures. We've used the 1 per cent at this point, but that's not a resolved position of the council at this time. We will be going back to council with the mapping and results of the community consultation at the end of that process.

The Hon. MARK BUTTIGIEG: What sort of dialogue have you engaged in with the Minister's office in respect of these planning uplifts and trying to get a handle on the metrics and the density? Has there been any sort of interaction?

JAMES FARRINGTON: Madam Chair, were you referring to the housing reforms—

The CHAIR: The housing, yes.

JAMES FARRINGTON: —or the housing targets?

The Hon. MARK BUTTIGIEG: The housing targets.

JAMES FARRINGTON: We have a pretty good dialogue with the Government and the department of planning throughout the process. Through our housing strategy preparation we had dialogue with the Government; we're having ongoing meetings with them in terms of planning for the Hornsby Town Centre because we are an accelerated precinct. Council have used that as a great opportunity to take forward its adopted master plan to deliver housing.

The Hon. MARK BUTTIGIEG: That's the 400-metre—the TOD SEPP?

JAMES FARRINGTON: No.

The Hon. SCOTT FARLOW: No, they're the tier one.

The CHAIR: And this is the 4,900—yes.

JAMES FARRINGTON: The transit-orientated development is divided into two components. One is the precincts, which is the ones around the stations, and then there's the eight accelerated precincts. We don't have any of the stations but we have an accelerated precinct, being the Hornsby Town Centre.

The CHAIR: We're doing an inquiry into that. Are we seeing you again at that inquiry, possibly?

STEVEN HEAD: I think you will be, yes.

The CHAIR: Yes, I suggest we will.

JAMES FARRINGTON: So we're in a very good position. We've done the strategic work for the Hornsby Town Centre and we have an adopted master plan. We're working with the Government to see how that can be implemented. We had the master plan and now we're working with the Government on the actual planning controls. The key issue for us, like most councils, is about the infrastructure delivery.

The Hon. MARK BUTTIGIEG: Yes.

JAMES FARRINGTON: There's both State and local, so we see it as a great opportunity to work with the Government on bringing forward the associated State infrastructure as well as the local. That's one component.

The Hon. MARK BUTTIGIEG: And you're satisfied with the level of feedback and metrics around all that sort of stuff?

JAMES FARRINGTON: Today we are. But as I said, the two things we see is that we've got the adopted strategic position. The two outcomes that our council is keen to see through that is taking that forward, so we want to see the planning controls implemented plus the funding strategy. We still haven't seen that, and

that's an ongoing discussion and dialogue that we're having with the Government. Provided we get positive outcomes, council would be happy.

The other area that we're working with the Government on is the low- and mid-rise reforms, which you're aware of. Our position is, as I stated there, that we want to see some movement on the exclusion of certain areas which are not appropriate for increased densities. That seems to be an area that there seems to be open dialogue to consider, and we'd say that's appropriate. The other area we're seeing—

The Hon. SCOTT FARLOW: Can I just ask quickly: Are those areas ones that perhaps, in the terms of reference of this inquiry, are impacted by climatic events?

JAMES FARRINGTON: Correct.

STEVEN HEAD: Specifically.

The Hon. SCOTT FARLOW: You are looking at bushfire-prone land and particularly flood-prone land.

JAMES FARRINGTON: We would say the three main components being bushfire, flooding and vegetation. The other component is heritage conservation, which we say, as well, should be excluded.

STEVEN HEAD: I may just add very quickly, Madam Chair, to address your questions, we have had direct dialogue with the Minister's office and with the Minister. We have been very pleased to find an open ear to those conversations. As Mr Farrington says, for senior levels of the department, there has certainly been an ongoing dialogue there. What we would like to see is, certainly, an integrated approach across the various departments representing the State Government. We would certainly like to see Transport and TAHE engaged with planning around the delivery of the infrastructure and even, for that matter, potentially the delivery of critical housing within some of those areas as well.

The Hon. MARK BUTTIGIEG: This is an interesting piece of evidence which contrasts to other evidence we have heard where it seems as though you have proactively reached out and the Government is open-minded about where this goes. Whilst there are obviously issues across departments and infrastructure delivery, you can see a way forward whereby Hornsby shire can navigate a path where the community comes on board and we get the housing uplift we need.

JAMES FARRINGTON: We are in good position because we have undertaken the strategic work upfront, and we've already done the community engagement. We believe that the community is supportive because, going back to the housing targets—

The Hon. MARK BUTTIGIEG: Sorry, in the timeline of that, was that in anticipation of what the Government was saying when we were elected, or have you done this work even prior to that?

JAMES FARRINGTON: This is prior to that. We had a commitment under our Local Strategic Planning Statement, which included a housing component to meet our ongoing housing obligations and which we incorporated in our housing strategy which was endorsed by the Government. It was an action arising from our housing strategy that we would do that. We would also do work in relation to medium-density housing. The actions we were working on were the Hornsby town centre, which has been endorsed, and we've also prepared and are in the preparation of a medium-density housing strategy, but we have placed that on hold because of the current low- and mid-rise housing reforms and seeing where they go. We have made representations and we will be making the same comments which are, "Give us the target. Give us a timeframe and let us do the work locally," because we are certainly not shying away from the need to provide housing, and we've demonstrated that. We're just saying let us continue to do that work locally.

The Hon. SCOTT FARLOW: Has Hornsby exceeded its housing targets?

JAMES FARRINGTON: We are on housing targets. We would say we are on the current targets. Is the target set to increase? Let us know and we can plan appropriately in conversation with our community, having regard to our local constraints. That's what we've got a proven track record of doing.

The CHAIR: On that, you mentioned in your opening statement that you are losing 3 per cent of tree canopy per year. I do not recall the percentage of the LGA that you said is tree canopy covered. Do you have a figure on that?

JAMES FARRINGTON: I don't have it. I can provide that figure. I certainly can.

The CHAIR: That would be great, but with that loss of 3 per cent—

JAMES FARRINGTON: Unless Mr Head can.

STEVEN HEAD: I can tell you that the Herald reported us as having approximately 42 per cent of tree cover across the LGA. I would say the accurate figure is somewhat less than that. Please remember, as Mr Farrington said, about 70 per cent of our LGA is actually bushland, so that offsets. Our concern is the loss of tree canopy within our urban areas, particularly if you look at some of the unconstrained development within the low- and mid-rise proposals that are there. It's the capacity for overdevelopment on some sensitive sites which means we further lose tree canopy. When we look at the impacts of climate change and the heat island effect, that is something that's a real concern. I think Mr Farrington talked a little earlier about the fact that, as a council, we've planted over 30,000 trees in a very short period of time—going back a few years ago. We are trying to mitigate the loss of tree canopy as best we can, but that's largely restricted these days to the public realm and, increasingly, we are running out of space to do that.

The CHAIR: Is the 3 per cent loss per year from clearing for specific development? Is it for housing?

JAMES FARRINGTON: It's largely on residential blocks; you're seeing residential development. The size of dwellings on residential blocks are getting larger; backyards are getting smaller. So we are losing trees on these sites.

STEVEN HEAD: The other component that's probably worthwhile mentioning from a policy perspective of our council is where trees are allowed to be removed within certain areas in bushfire-prone areas without approvals as such. That's probably something that certainly had concern of some in the community and our council over an extended period of time as well.

The CHAIR: So you're suggesting those fire requirements and the APZ—is that moving into the bushland areas and that's where the loss of canopy is happening?

JAMES FARRINGTON: As I mentioned before, given that we've got such a large part which is national parks, a lot of our properties have interface with open space and parks, so they have quite significant APZ requirements in terms of planning for bushfire protection. Where we're seeing replacement dwellings, the APZ is going to be 20 or 30 metres into properties, which sees clearing on those interface areas. So it is a combination, as Mr Head said. There's the planning for bushfire protection, but also community expectations for larger dwellings and smaller back gardens is putting pressure—

The CHAIR: Are you experiencing LEC challenges in that specific realm or have you found a way that you're navigating in terms of applying?

JAMES FARRINGTON: We haven't seen a significant increase in Land and Environment Court appeals. We have around about four to five per year. The majority of those we're able to mediate outcomes on. I don't see a link between, necessarily, a change in planning controls and court appeals. We try to work with applicants to get an outcome and that keeps our appeals down.

The CHAIR: I'm curious about where the ban on gas came from.

JAMES FARRINGTON: It came from our councillors as a mayoral minute. They were concerned about the health impacts of gas. They had received representations from members of the community raising concerns about the health impacts of gas. A mayoral minute was moved and endorsed by the council to explore it. We got some advice in relation to the health impacts and reported that to council, and it was supported. Council was obviously mindful that a number of other councils were doing work in this area as well and were keen to explore it as a possibility for how it would apply in Hornsby Shire. It's just gone on exhibition.

STEVEN HEAD: I think Mr Farrington's earlier point was a little bit about the preference to see State Government actually take an overarching lead role and see it as a policy initiative or otherwise for that matter so that there is more regularisation rather than having individual councils doing something in that particular space.

JAMES FARRINGTON: Thanks, Mr Head. That's exactly right. We would say that the issues that we're dealing with on the ban of gas are not unique to Hornsby. It is something which would apply equally across the State, so we would suggest that, rather than councils doing individual strategies dealing with it, it'd be more appropriate that the Government make a position as to whether or not it's appropriate to ban gas or otherwise.

The CHAIR: When you say it's on exhibition, have there been positive findings around it and feedback or is it too early to say?

JAMES FARRINGTON: It's just gone on exhibition. We literally haven't received submissions on it at this point.

The CHAIR: We will be watching, I suppose. In terms of flood and fire, what is your engagement in terms of emergency services? Are you satisfied with your current arrangements and what's happening? Or do you think there needs to be an uplift in the way things are done?

STEVEN HEAD: We work really closely with local emergency services and, particularly given we've got such a large rural area and we work incredibly closely with the Rural Fire Service, both the central organisation but also all of the local brigades, we're actually very, very proud of the work that we do there. Having said that, it's an extremely costly exercise for an individual council to be able to support. I think we have something in the order of 13 local brigades which, for a council which has both urban and peri-urban areas, is quite an extensive commitment that we need to provide there. Things such as the recent increases in the emergency services levy and some of the other funding arrangements certainly put a strain on council in a way that I think, ultimately, is impacting our community. We've recently committed to doing more work around resilience and working very closely with Recovery NSW around development of resilience plans.

In particular, we were impacted by the floods in the Hawkesbury over the past few years, particularly down at Wisemans Ferry, which is somewhat of a community hub, servicing almost four local government areas. We're working very closely with the community, Recovery NSW and the local emergency organisations to better prepare for how we can both avoid, and better prepare communities for and be more resilient during and in that recovery phase after, emergencies. I think it's an area, given the impacts of climate change, we recognise we need to take a stronger role in.

But funding constraints for that for local government—and this is probably one point I was hoping I might have the opportunity to make, which is around the disaster recovery funding arrangements—are a real challenge for councils such as ours. We want to provide great service to our communities when they most are in need of our support. The means by which disasters are declared and the way that the funding piece works, we almost need to upfront provide the cashflow to service the community's needs during emergencies when they most need our support. We almost do that on a gamble that we will receive some compensation further down the road.

The processes around that are not particularly helpful to our communities, ultimately, and certainly Hornsby is out of pocket to the tune of millions of dollars over the number of natural disasters that we've experienced over the past six or so years, which have included several significant storms, floods, risk of bushfire in a couple of instances. The preparedness around that and the capacity for local government to have sustainable funding to be able to support our communities through that is something I'd certainly like to bring to the Committee's attention.

The CHAIR: Thank you. Yes, that reminds me of Lismore City Council in 2017, after the flood then. It was in debt for a long, long time, and then 2022 came along. So, yes, it's a really valid point.

STEVEN HEAD: We haven't suffered, of course, anything like what Lismore have suffered, thankfully. And we're very lucky in terms of flooding that, although it's very heavily impacting for those properties that are damaged, we don't get a lot of riverine flooding which hits properties within our LGA. But it's the support that we provide to people who are often landlocked or unable to access their homes for long periods of time—that's where we see a key role for ourselves.

The CHAIR: Given your experience and the debt that you're carrying, do you have a suggestion of what that might look like?

STEVEN HEAD: I actually think we need some pre-planned agreements around the funding that's going to be available. I think the work that we're doing at the moment is actually very helpful in coming up with how are we going to respond when we know the emergency is coming, who is going to be—some real clarification around the roles. In general, the LEOCON process, the whole emergency management process, works reasonably well. But also, what happens the day after the flood passes? Who is doing the clean-up? How are we doing that? How are we supporting communities to get their lives back on track?

That's an area where I think local government is incredibly good at that sort of responsive nature. What, probably, I think we've been less adept at is what we do in the day after the emergency's passed and how we support communities to see their lives get back on track as quickly as we possibly can. What I'd like to see is agreed arrangements around how we're going to do that, understand what the funding is and where that's going to come from, so that we can then be clear with our communities, we can help them to be more resilient in the face of adversity and we can be better prepared at how we're going to help them after the event.

The CHAIR: I am just trying to visualise how that all works. Is there a role then in terms of the planning system and the increases on those pressures and those disaster events that will inevitably come from planning decisions? Should there be some consideration in the planning system?

STEVEN HEAD: I think the comments that Mr Farrington made a little bit earlier is that we know it's sensitive. To Ms Munro's point around the data that we've collected, we know an extraordinary amount around what's actually happening in our area: the areas that we're going to see suffer greater storm activity, flooding, bushfire; the capacity to be able to build that into our strategic planning for what is appropriate land use into the

future; and understanding that we're going to have to take into account the impacts of climate change in preparing future planning documents. If we're following through with those, I think we put ourselves in the best possible position. I will come back to understanding the scale of the problem, therefore the number and the time frame that we need to be dealing that in, and then giving local councils—particularly where they have demonstrated a willingness to work with government around achievement of those broader policies, let us get on with the job of doing that.

The CHAIR: Finally, I would like to ask about the biodiversity values and the threatened species that are present and known in your LGA. What is the interaction between the State biodiversity laws and system, and your capacity as a council to give life to the vision of that kind of healthy biodiversity or high-biodiversity urban environment?

JAMES FARRINGTON: Good question. I think our strategy is one that we deal with on a DA-by-DA basis. That's really the only way I could respond to you in relation to that. It's case by case and there's an approach that we have. It's challenging, and it's costly for applicants going through that process of demonstrating avoidance, minimising and mitigation principles. It's a process we're working with, but it is timely and expensive for applicants. That delays the process, but it gets good outcomes.

STEVEN HEAD: At the broader level for council, our community are incredibly supportive of maintaining our unique environment. Whenever we survey our communities, the first thing they tell us that they want is the retention of the bushland character. We are blessed with some incredible natural areas, with some particular endangered ecological communities—Blue Gum High Forest, Sydney Turpentine-Ironbark Forest and a couple of others. We take that commitment incredibly seriously, and we put quite extensive amounts of resources into the preservation of that where we can. We see ourselves as a model applicant whenever we are seeking to do works on public land as to how we might progress a development application. As I can tell you from the applicant side, yes, that is a time-consuming and very expensive but ultimately a worthwhile exercise if it means we can preserve and continue to see a really important value for our community being preserved.

The CHAIR: Just on that, can I ask you specifically about the Westleigh Park project? Is it in your LGA?

STEVEN HEAD: Yes.

The CHAIR: I disclose that I think I've had correspondence with council about it on behalf of constituents. That is an area—and I think the Committee will visit that area—of very high biodiversity. You've got endangered ecological communities that are literally some of the last extant of that. Do you think that that's a project that council has got a good plan and is getting the balance right? How do you see that progressing?

STEVEN HEAD: It's a very important project for a council in a number of areas, both for the protection of biodiversity—as you say, it's incredibly valuable that it exists on the site—and also balancing that with the demand that we need to supply recreational facilities and other community facilities, which are desperately needed by our communities and have been identified as a need over a very long period of time. Our council has committed an extraordinary resource to the development of a plan that will help, we believe, to both maintain that incredible biodiversity and also share the use of the land for other uses that the community needs.

Over a long period of time and through some incredibly extensive consultation and engagement, council developed a master plan for the site. Off the back end of that master plan, we have prepared a very comprehensive development application, which is currently going through assessment. It has been exhibited. Obviously it's on council land, so Mr Farrington has acquired an independent planner, and of course it will be referred, ultimately, to the Sydney North region planning panel, I believe it is. Ultimately they will provide a determination on the thing. It's one where we are so critically aware of the challenges of what we're wanting to achieve across that site broadly and what we want to preserve, and I think it has been an extraordinary effort by council. In 30-plus years of working in government it's probably the most complex development application I think I've personally ever been involved in. I think ultimately we'll deliver something that's very special for the community there.

The Hon. SCOTT FARLOW: I was actually just going to ask that question noting that it's a site visit and what council's perspective was on it.

The CHAIR: Just on that, there are contamination issues, aren't there, because is it not an old—I can't remember the history. I know I've been told.

STEVEN HEAD: Yes, it's a former landfill site. Mr Farrington will correct me if I get anything wrong here. Maybe you should answer the question first.

JAMES FARRINGTON: Just to be clear, as Mr Head said, I've got a different role on this one, being the director of planning and compliance. It's just important to note that my team is coordinating the assessment of the application.

STEVEN HEAD: Yes, it has contamination on the site. There is former landfill activity that occurred on parts of the site over a long period of time. Rural fire services used the facility as a training facility, so I think there is some localised areas of some PFAS, which is being resolved as part of the work. Of course, there is a very extensive contamination management process that is being looked at as part of the development application. It had a history as that. Sydney Water ultimately acquired the site. It was actually zoned as residential land. Council acquired the site back in 2016 with a long-term view to being able to preserve significant bushland and also provide for recreation. It's also fair to say, just in terms of bushfire risk, that Westleigh, the suburb, is actually a bushland peninsula, if you like, so at this stage there has only been one road of access in and out of the peninsula. We hope that this facility will actually provide for an additional emergency exit in times of need for the community to egress from Westleigh should we be in the unfortunate circumstance of facing a bushfire there.

The CHAIR: Just on that, with the contamination, is there State government assistance to clean it up? How does that work in terms of your vision?

STEVEN HEAD: The site ultimately will be of course subject to an independent environmental site audit, so it will exist under a contamination management plan that will help us to manage that site. Council did receive a grant from the State government that was for the overall development of facilities. I'm afraid it's available for council to manage its former landfill sites with the exception of being able to charge the community for those works that need to be undertaken. That's a broader issue probably in terms of management of landfill sites that were constructed, managed and closed to long-passed standards, and in some cases councils are now having to deal with contemporary standards on landfill sites that may have closed 50 years ago. That's a significant issue for councils and our financial sustainability.

The CHAIR: One thing I forgot to ask earlier was we have heard from councils consistently that there are DAs sitting on paper that haven't commenced. Is that an experience of your LGA that could be providing housing stock? Is that something you're aware of?

JAMES FARRINGTON: I think it's a common position across Sydney, given construction costs and the challenges for providing housing under the current market. The feedback we're getting from the community is the same as every other council, which is that developers are saying that construction costs have increased not disproportionately to the sale prices which means that a lot of the multi-unit housing developments are just not feasible under the current market conditions. We know that we've got in excess of a thousand dwelling approvals for multi-unit housing over recent years sitting in the system which have not been actioned upon.

The CHAIR: Just to get those numbers right, a thousand—

JAMES FARRINGTON: Over a thousand dwellings approved to commence. I'm happy to give the exact number, but we have done that analysis.

The Hon. SCOTT FARLOW: If you could take it on notice.

The CHAIR: Yes, if you could provide that, that would be very helpful for us. I think we're getting a bit of a consistent analysis across many LGAs, so it's very helpful.

JAMES FARRINGTON: Just extending from that is a concern that we have with the low- and mid-rise housing reforms. That is the potential that you may see fragmentation of some of the lands around the stations and in good locations for future uplifting in zonings and when the market changes. That's why we're saying there should be opportunities for councils to plan locally to meet housing targets, because the concern we have is if you get fragmentation in the short term to deliver townhouses and duplexes, it may sterilise the opportunity to get sound planning around accessible locations in the future.

STEVEN HEAD: There's probably one additional point around that, and Mr Farrington and I have discussed this many times. If we see a fragmented development or a very decentralised development pattern occurring through low- and mid-rise housing—through some of the dual lots et cetera—how we plan and deliver the infrastructure upgrades that are needed to support that is difficult. I'm sure other local governments will be talking to the Committee about the financial sustainability. We need to be so focused with every dollar that we have, as to where we spend it, so that we can get the maximum value for our community. If we decentralise developments too much, how do we cope with the traffic upgrades that are needed, the open space, where we put the community facilities, how do we provide the services that we need to—that has quite a long tail for councils and adds to the financial burden that we're currently struggling with.

The Hon. SCOTT FARLOW: To that point with the Hornsby Town Centre Masterplan and the master planning processes you go through, you allocate certain lots that you might acquire through section 7.11 or 7.12 contributions for public open space—a pocket park or the like—you're denied that opportunity, aren't you, if you've got that fragmented parcel?

STEVEN HEAD: It's harder. You will still collect, obviously, funds for development. But where you will go about, then, providing the facilities, if your new populations are spread across the LGA—and this is part of the process for council around wanting to engage and develop a Hornsby Town Centre Masterplan: We can see the opportunity there to concentrate the delivery of some much-needed community facilities in a central location. Noting that we're serviced by two rail lines, we're at the junction of three major road routes. There are enormous advantages to being able to do that, just from an efficiency piece, as well.

The CHAIR: Excellent. We've come to the end of our time. Thank you very much for giving your time and for your evidence. The secretariat will be contact about the process for those few things taken on notice. We're very grateful. Thank you.

(The witnesses withdrew.)

(Short adjournment)

Mr MARK BRISBY, Director, Planning and Sustainability, Lane Cove Council, sworn and examined

Ms BERNADETTE RIAD, Manager, Sustainability, Lane Cove Council, sworn and examined

Councillor TANYA TAYLOR, Mayor, Willoughby City Council, affirmed and examined

Mr DYALAN GOVENDER, Acting Head of Planning, Willoughby City Council, affirmed and examined

Mr DAVID ROBERTS, Environment Manager, Willoughby City Council, affirmed and examined

The CHAIR: Welcome. Thank you for coming today to give your evidence. Would anyone like to begin with an opening statement?

TANYA TAYLOR: Thank you for the opportunity to speak to this issue of high significance for the city of Willoughby. When we consulted our community to inform council's strategic priorities, they told us they want a city that's green, liveable and resilient. We've enacted plans, like our Green City Plan, resilience strategy and Reconciliation Action Plan to reflect these values and we've been active in addressing the housing crisis, with our LEP adopted in June last year and our established affordable housing scheme examples of this. We're on track to meet our target of increasing housing capacity by 6,700 homes in centres well serviced by transport and amenities. We're not a community that objects to growth. We want to do our part in housing future generations sustainably and affordably.

We're doing everything we can, but we're hindered by a planning system that is complicated, unresponsive to contemporary challenges and needs and compromises environmental outcomes, and government departments that are working in isolation rather than addressing planning issues holistically. The Environmental Planning and Assessment Act is over 50 years old and fails to address contemporary challenges. We're falling behind and the impact is tangible. Over the past decade, we've lost 13 hectares of tree cover from private land in Willoughby, primarily due to development. This has intensified climate change effects, like urban heat and biodiversity loss. Stronger measures are needed to mitigate this loss, especially considering urban densification is increasing and we're aiming for a canopy target of 40 per cent by 2035.

The system is not effectively funding and responding to challenges, such as sediment control, building compliance and overland flow management. Fragmented responsibility split between private certifiers, councils and State regulatory bodies exacerbate this. So what do we need to address climate change through the planning system? We need cross-government solutions to fund much-needed resources? We need higher penalties for non-compliance and vandalism. We need investment in new technologies that help measure climate change, such as heat and water, providing real-time data so we can respond and be agile in our approach.

The imminent low and mid-rise housing and TOD programs need stronger environmental standards than currently proposed. Large and minimum deep soil areas, more stringent tree-planting requirements and smaller building footprints are needed if we are to achieve our tree canopy targets and provide enough soft areas to handle more rainfall. Investment in services and infrastructure, including better public transport and active transport options to reduce our reliance on cars is needed. Better quality buildings are needed, with stronger waste management requirements, higher environmental performance standards and systems that uphold these standards effectively. We need State policies and requirements, such as BASIX and Apartment Design Guide, to be urgently reviewed so we can provide a standard of housing fit for our future climate.

We need a unified commitment between Government, industry and the wider community to overhaul the EPA Act and the developer contribution system. It is no longer fit for purpose. Every iteration to the Act over the past almost 50 years has made the system more complicated and less effective. So much has changed since 1979 when the Act was made. The construction sector was very different. Our housing needs were very different and our understanding of the future climate was very, very different. It's time for the Government and industry to come together and enact meaningful reform to build sustainable, affordable homes for future generations. Thank you.

The CHAIR: Did anybody else want to make an opening statement?

MARK BRISBY: We've collaborated with our colleagues from Willoughby and we'll try not to cross paths too much. Lane Cove Council welcomes this review of the planning system and the intent to ensure that people and the natural environment are protected from the impacts of climate change. Like many other local governments across the State, Lane Cove declared a climate emergency in September 2019. In recognition of this, council has taken a leadership role and progressed a number of initiatives to mitigate climate change such as installing solar panels across all our properties, purchasing renewable-energy LED street lights, delivering public EV charging, and developing urban forest strategies and new planning controls in the DCP to improve sustainability.

The planning system plays a critical role in supporting resilient, sustainable and liveable communities in the face of a changing climate. Land-use planning decisions have far-reaching and long-term consequences as to how exposed people and the natural environment are to climate hazards and climate impacts. Council sees an opportunity for improved alignment between climate and planning policies and for the New South Wales State Government to provide stronger leadership through State environmental planning policies, known as SEPPs, to provide best-practice guidance to local government.

Local government plays a critical role in guiding and overseeing development. Increasingly, this role is being diminished through interventions imposed by the New South Wales Government. An example is the recently announced planning reforms. Lane Cove believes that provision of new housing needs to be undertaken in a strategic and integrated manner, with evidence-based demographic projections, housing trends and analysis of an area's capacity to cope. The lack of up-to-date data is a barrier to planning for disaster-resilient communities. Councils are left to fill the gaps.

A best-practice approach should be modelled in the strategic framework, with specialist guidance and funding being made available to councils. Lane Cove Council is of the view that information about adaptation should be available for councils in a centralised location with effective coordination. To raise a further challenge, there's gas versus electricity. Installing new onsite gas is counted in the New South Wales Government's net zero goal and becomes a costly retrofit. Lane Cove Council is of the view that onsite gas should be limited across all development and should not be preferenced in the BASIX tool.

In response to community concerns and scientific evidence, Lane Cove Council has introduced sustainable initiatives into its DCP, known as Part S. It aggressively addresses climate change. We've prohibited gas in new developments, mandated solar panels and solar energy and have aggressive tree targets to protect our tree canopy. As mentioned by our colleagues at Willoughby, it's a challenge on the North Shore. The concern is that the new SEPP for sustainable buildings is a very conservative, business-as-usual document, particularly in relation to BASIX, and has disappointed the sector. For example, to mitigate climate change and reduce greenhouse gas emissions, higher BASIX standards are required to provide a clearer pathway for development to transition to renewable energy, such as was introduced by the New South Wales Government. The BASIX tool should exclude onsite gas for cooking, heating and hot water.

Like many other councils across Greater Sydney, Lane Cove raises the issue of increasing temperatures and the potential for development to exacerbate the heat island effect. Like it is for our colleagues at Willoughby, tree canopy is a huge issue. Greater leadership from the New South Wales Government to institute stringent planning controls that address methods of reducing heat in the Sustainable Buildings SEPP would be appreciated—the use of lighter coloured roofs, external sun shading, solar reflectivity and the like.

Further, a review of the exempt and complying development SEPP would be supported, as well as allowing sustainability initiatives and requirements within our LEPs. Revisit the apartment design guide and revisit the clause in the sustainable buildings SEPP which limits the councils' ability for a competing provision to improve thermal performance in buildings. Our colleagues at Willoughby mentioned the waste infrastructure. We support that. Some practical suggestions for the hardcore planning: The introduction of the NSW Planning Portal has been a great initiative, but it needs greater resources and updating. It could play a greater role in there, such as accepting fees for DAs, doing the notification process for councils on DAs, and supporting the assessment process of DAs. That has enormous potential that we would support.

I mentioned sustainability initiatives in the LEP. There have been some recent inclusions from certain councils allowed by the department in their LEPs for sustainability, but only with potential floor space initiatives attached. We see that introduction in LEPs to be a positive. Further, strengthening of DCPs so they are no longer considered to be super flexible and ignored by courts, review the private certification system which causes local government enormous struggles, and I mentioned the exempt and complying development SEPP. Thank you. We welcome any questions.

The CHAIR: Thank you very much. We will free-flow with some questions. One thing I want to pick up on very quickly as an initial point is this DCP of council being an enforceable instrument as opposed to being flexible. This is something that we have heard quite consistently from various councils already in this inquiry. I'm just curious to understand, has that view formed from the outset or has it formed through the test and time of the DCPs? Where has that come from and how do you see that playing out if DCPs were an enforceable instrument?

DYALAN GOVENDER: Thank you for your question, Chair. I would characterise it as something that has evolved over time. The DCPs, under the statutory framework, have always been guidelines with some flexibility built in. That is, to some extent, necessary. However, over time that has eroded further and further. Particularly as the interaction between local and State provisions has increased, with increasing State provisions, those inconsistencies become more and more challenging and the level of flexibility required of DCPs has grown

and grown. In addition, a number of those State policies have specific provisions stating that where there is a higher standard in a DCP, it does not apply. That is in various areas which, again, further erodes that ability for councils to set local provisions.

MARK BRISBY: I might add that the Act—I forget the clause number—states that councils must apply DCPs flexibly, and that is supported by the court, so we struggle.

The CHAIR: I'm very cognisant that the current system has that hierarchy of instruments and DCPs don't even rate a mention. It is just one of these things. I'm curious because it does seem that it is through, as you say, an evolving process where, I think—from what we can tell, and I'm really interested to hear your views—there have been frustrations from council. They have been trying to implement the guidance of State Government policies and strategic documents. They are trying to actually give local truth to that direction, but then councils find themselves in courts being challenged because they are trying to implement those standards at the DA level and then the pushback is "Well, you can't do anything about that."

DYALAN GOVENDER: In short, I'd characterise it more as—or the bigger challenge is those examples where local communities or local strategies have set higher standards than the State minimums. That's particularly where we find the challenge. Often those State minimums have come in after the fact, as well, so you've got local communities who are comfortable with the standard and have thought of that as a standard, and come to a council expecting us to uphold that standard for their neighbours and for themselves, and they get frustrated when they see that inconsistency.

The CHAIR: I'm just being a bit granular here and I do apologise. I understand that point—the later, perhaps more minimal State standards. But I've heard evidence that it can even be where the State has said in a specific strategic plan—we heard this from the regions—"You must mitigate things with climate; you must do all of these", and then you try to do that at the local level but the State has then set these inconsistent standards. That's where councils and local communities are often—do you think that that happens as well?

DYALAN GOVENDER: Certainly I'd agree that happens as well, and then there's also the challenge of negotiating standards versus targets as well. The 40 per cent target is a good example. We all agree, and many councils have set their own targets that are consistent with that, but it is merely a target. When you see the standards that we can impose to try to hit that target, they're not going to. We're all well aware of that, yet no-one has the capacity—certainly at the local level—to increase that standard. As the SEPPs and other things come forward, they're not setting higher standards either.

The CHAIR: If something is in the DCP and you've tried very hard but you've got a determined applicant, let's say, is both of your councils' approach that you would surrender that territory early, or would you defend that in a court, or have you stopped doing that? I'm just curious about where you're at in navigating that space.

MARK BRISBY: At Lane Cove we hold the line through our DA assessment, but that does lead to a lot of time in court and a lot of frustration to residents, as well as the financial burden.

The CHAIR: I've asked this consistently: What's your average case load in a given year, if you have one, or how many cases would you have at the moment before—

MARK BRISBY: In the court?

The CHAIR: Yes.

MARK BRISBY: We've got six, and five are major developments, built primarily around DCP controls being challenged.

The Hon. SCOTT FARLOW: To that point, you hold the line throughout the DA assessment, as you said, then you hold the line to the Land and Environment Court. What's the Land and Environment Court's position there—effectively to dispense with the DCP and just follow the provisions under the LEP and nothing else?

MARK BRISBY: I could nearly repeat off the top of my head the opening statement from every opposing lawyer. As the Chair just mentioned, the hierarchy is SEPP, LEP, DCP. Then they quote the clause in the EP&A Act that says the court takes the position of council and must apply the DCP flexibly. That's the opening statement in all the cases. The court generally doesn't give it great weight.

The Hon. SCOTT FARLOW: To that point, then, what is Lane Cove's success in the court as a percentage?

MARK BRISBY: Pretty strong, pretty good, but at great financial cost.

The Hon. SCOTT FARLOW: You are still being successful in the Land and Environment Court, despite those challenges?

MARK BRISBY: Yes.

The Hon. JACQUI MUNRO: What are the arguments made to grant that success?

MARK BRISBY: The principle we work on is that our planning controls, being the DCP, are what we call well made. They're supported by good strategic studies and background information. A key component that wins us good faith in the court is that, before they're adopted by council, there's a strong amount of community consultation, so we're able to demonstrate that we're responding to what the community are asking. The other key thing which our lawyers always hit home to us—we need to be consistent. Where you do get in trouble with the DCP is where the applicants can demonstrate that around the corner you varied it and across the road you varied it, but you're not varying it here. So that well-made DCP—strong community consultation and consistently applied.

The CHAIR: I must say I'm yet to—20 years planning lawyer—see a bad DCP. They always seem to be really good instruments. Sorry, Mr Govender. You were going to—

DYALAN GOVENDER: The Willoughby experience is very similar. Higher case load, though. Off the top of my head, I couldn't give you the exact figure. Happy to take that on notice. But it is closer to 30, I would say, for this year. And the reason it's so high is we do have that new LEP and new DCP. And, as that comes into effect with new, more stringent controls, there are more challenges, seeking, "Is there a compromise to be made here?" and testing them. Success rate is still high. But, obviously, a number of those are still ongoing. So it remains to be seen. But again I'd echo the exact-same experience in that regard. I'd say the other challenge is DCPs take a long time to do very well. That's the other challenge. As a State policy may come into place, it takes time to then filter that down to a well-made DCP that can stand up in court. That's the other thing that, I think, the system struggles with.

The Hon. SCOTT FARLOW: It's a good point you make there. I've got to say we heard this evidence on the South Coast, that, effectively, in terms of—forget about the DCPs, but the LEP-making is a very long process—how you get around having an iterative process, so to speak. And some had advocated, potentially, that being done through some sort of SEPP provision, but I think the better one that we heard was perhaps from Shellharbour around actually linking it to maps that could be updated more easily. Is that something that your councils have used at all in terms of maps that might be updated more frequently than what LEPs are, that are perhaps more realistic of the current concerns and challenges your community face?

DYALAN GOVENDER: I do think, in some areas, there are real opportunities to use the mapping better, particularly around exemptions to minimum requirements or standards that won't be appropriate due to environmental sensitivity and perhaps the opportunity for relevant environmental studies to be mapped. And then a process by which that could be assessed for exemption to inappropriate SEPP provisions, I think, is a mechanism that could help the current system.

The CHAIR: What's your LEP—the new one?

DYALAN GOVENDER: Willoughby LEP 2023.

The CHAIR: Has that actually been made?

DYALAN GOVENDER: Yes. That was made on 30 June last year.

The CHAIR: Interesting. I'm still only seeing the 2012 one. It's my search. I probably haven't done it properly. Is the LEP still a good local government instrument, a planning tool?

MARK BRISBY: Yes. It's 15 years old, the standard instrument. The "one size fits all" is a bit difficult, but, with the revisit and time for review, along with the revamping of the Act, it is a positive and good document that we utilise. But the standard instrument is being pretty rigidly applied by the department and doesn't allow us to include things such as sustainability, and it's time for that to evolve.

The CHAIR: Is it your view as well?

DYALAN GOVENDER: Yes, I'd generally agree, although I would say, reflecting our mayor's comments, I do think it's over time for us to do a far more root-and-branch review of the whole system, and the LEP is a product of the Act, and the Act is now—at the time, it was cutting edge, but that time was 50 years ago. And, while LEPs work well enough within the current system to a point, that point does fall short of our environmental requirements and needs. I do think it's time that we take a bigger look at the system as a whole.

The CHAIR: In terms of your climate challenges at the moment, what do you see as your biggest? Obviously, each LGA, over whether it's fire, flood, heat et cetera—what are you identifying? All? Some?

DAVID ROBERTS: Most of the ramifications will be around urban heat island effect. I know the North Shore is quite often seen as a very leafy suburb, and it is. But, as the Mayor said, with 13 hectares of loss since 2011, we are seeing changes in our heat—we are starting to map that. We're working with the University of Western Sydney at the moment and Sebastian Pfautsch, undertaking a comprehensive study of that area. Although we don't have the results yet, we have seen the practical loss of trees to a scale which will lead to hotter areas and it will take time. But that loss is within the private areas. We have, obviously, quite a lot of land. We have increased our tree canopy in that area—but we've run out of space. We quite literally have filled up the spaces that we have available. It's really up to that private sector to pull the weight from now on.

The CHAIR: In terms of that private land and DAs and conditioning, are you experiencing constraints to the extent that you can properly impose or plan for and then implement those mitigation strategies, such as greater tree cover, deep soil et cetera? Is that something you're experiencing?

DYALAN GOVENDER: Certainly, yes. Enforcing minimum requirements for deep soil zones, requiring tree replacements, and also the nature of development. This is not unique to the North Shore or Willoughby; infill councils across metropolitan Sydney have this issue. As we densify, there's a mix of high density around transit nodes and some of these impacts are less there. These are areas that already have a lot of impervious areas. Where we also need to work is more medium density across Sydney. As we get duplexes, in particular, in our area, that's another driveway. That's an increased footprint. That's less space for a street tree on the front and also less space for private trees in front and rear yards. That's perhaps the biggest impact for a lot of infill councils.

The CHAIR: Mr Govender, would your DCP provide what's required to successfully move forward but the State controls won't let you do that?

DYALAN GOVENDER: Yes, there's an element of that. In regards to the SEPP that's been proposed and is, as we're advised, imminent, the tree canopy targets are 15 per cent to 30 per cent. But again, those are targets; they're not requirements. If you go down to the tree-planting requirements and the rates, one or two small to medium trees, depending on the size—that won't achieve those targets, and those are 15 per cent to 30 per cent. They're not the 40 per cent that we're seeking and know that we're going to need to manage heat island effects. Those will supersede any council controls.

The Hon. SCOTT FARLOW: What's Willoughby's tree canopy at present?

DAVID ROBERTS: Our canopy is at 36 per cent and falling.

The Hon. SCOTT FARLOW: Okay. For Lane Cove?

MARK BRISBY: Some 42 per cent. We have to work hard to keep it at that, I think.

The CHAIR: Mayor Taylor, in terms of your position and your interactions with the community, you said "green, liveable, resilient". What happens when you're getting developmental pushback in terms of this? Is that something that you receive calls about from proponents, landowners et cetera? What mechanisms and tools do you have to have those discussions around the planning system?

TANYA TAYLOR: Very good question. I do often get questions around our controls and how we're working with the community to ensure that the environment is considered as part of the developments. Obviously, just recently with all the rain there are concerns about the wash-off with hard surface areas. I go back and say, "Our LEP allows for this but the State Government's new proposed reforms are going to allow development, so we are concerned about that." Of course, a hard surface means that there are less trees, as Mr Govender just mentioned, and less deep soil to allow for the growth of trees. Yes, I do say that we could go back to our LEP, but there is concern that that can be overwritten.

The CHAIR: So being a councillor in your position—a mayor—it's, "I can do so much but the State Government will ultimately prevent us from what that local community vision actually is"?

TANYA TAYLOR: That's right, and I can do so much, but it is because we have consulted with the community as well in the first place. Our community strategic plan and our LEP are done with years of consultation with the community, and we got to a point with our LEP being made last year that I would say 90 per cent of our community—95 per cent even—were very appreciative of the work we'd done and were very happy with the outcome.

The CHAIR: This morning we have been hearing from other neighbouring councils, and their view is that the greatest potential threat to their capacity to plan for climate change, biodiversity loss and community

resilience are housing pressures, and they have all said they want to be part of a solution. It is not a politicised thing; it is an agnostic planning issue about how to navigate this. What are both of your councils doing? What are your views and what is your capacity in terms of the housing figures that you will end up with at some point and the extent to which you anticipate that will impact on your capacity to deal with biodiversity and climate?

MARK BRISBY: As I mentioned in the opening statement, the one-size-fits-all approach for the reforms just doesn't work. They've said that it's planning, but it's not. They've just imposed it. For example, at Lane Cove, we've met our housing targets for the next 20 years—

The Hon. SCOTT FARLOW: They've exceeded them now.

MARK BRISBY: —have responded positively to the department and the Government over the last decade and haven't been rewarded in the new reforms. Notwithstanding that, we think we can deliver the housing required in more appropriate areas than are imposed by the reforms.

The Hon. MARK BUTTIGIEG: On that point—because this is a consistent theme that comes out—there has obviously been a misalignment between the urgency to provide affordable housing for people who want to stay and live in the Sydney Basin. It is a political miscalculation of the extent of the crisis. Obviously, the previous planning trajectory was based on different expectations to what this Government has been elected on, so obviously there is going to be a change in expectations. But since that has been out there in the public domain and since the Minister's office has given those edicts, what has been your experience of the dialogue on how to navigate that trajectory towards those demands? Has there been open dialogue and good feedback, or has it been, "We just want you to do this, and you're going to have to wear it"? Or is it somewhere between?

MARK BRISBY: The communication has been a bit quiet since the reforms were on exhibition but I will say we've got our meeting next week where we are expecting a response. We're hoping our offer of, "Give us the chance to provide the dwellings and we will," in appropriate areas and responding to our community—

The Hon. MARK BUTTIGIEG: Have you done modelling with measurable metrics that you can go in and say, "This is where we reckon we can do it and we think it will satisfy what you're after"? Is it at that stage yet?

MARK BRISBY: We've done work since February on modelling. We have highlighted particular areas where we can accommodate the dwellings, and we've modelled what the reforms would do. For example, for those who know Lane Cove Village, it's a highly sought after value to our community and would be impacted by the reforms. We've modelled what the reforms would do to that village and can provide that housing elsewhere, more appropriate to our community.

The Hon. MARK BUTTIGIEG: And the analogous question for Willoughby.

DYALAN GOVENDER: A couple of points I would make—we're broadly similar feedback. I would say the dialogue, while it has been quiet—these are substantial reforms. I'd say they're the largest I've seen in my planning career. This is very significant housing reform.

The Hon. MARK BUTTIGIEG: The electorate would say justifiably so.

DYALAN GOVENDER: Agreed. The point I'm getting to though is—

The Hon. SCOTT FARLOW: That is quite the assumption.

The Hon. JACQUI MUNRO: That is a pretty big claim.

DYALAN GOVENDER: It takes resources to do them. Consulting effectively and in a fulsome manner with the number of local governments we have and the number of communities affected will take time. That's ongoing and I just make that point. I'm seeing a lot of really, really hardworking, tired people in the department of planning doing their best to consult with us. I really do feel for my colleagues there. This is a lot to put on in a very difficult time. They're doing a lot. I just make that point. In regard to figures and so on, where Willoughby is in a slightly unique position is we've literally implemented an LEP to increase the capacity of housing—6,700 additional. That's not just 6,700. That's an addition to the capacity we already had to meet and exceed our housing targets in well-located areas in close consultation with the community and with agencies—with Transport for NSW and others.

We are very lucky in Willoughby to have a metro station and be well connected. With increasing connectivity with Western Sydney airport and additional metro coming online, we acknowledge and accept that Chatswood, in particular, is going to have a significant and important role in the additional housing we need for our city. We're being as proactive as you can ask in updating our LEP to release that capacity despite legitimate and ongoing concerns around congestion on Pacific Highway and bus services connecting Chatswood to

surrounding suburbs. But we are pushing ahead and we are doing our best to continue to work with Transport for NSW and others to manage this as sustainable growth. Yet now we have these reforms coming in on top of that and it's unclear to us—we've not seen updated housing targets yet. We don't know what has changed. The population projections that we're working to—

The Hon. MARK BUTTIGIEG: Have you had your meeting with the Minister's office?

DYALAN GOVENDER: We have our meeting with the department within the next fortnight, I believe.

The Hon. SCOTT FARLOW: Willoughby is in a particularly unique position in the sense that you've gone through this LEP process. That process has been undertaken with certain expectations as what the meaning of an R2 zone is, what the meaning of an R3 zone is, where they're located. You've done the planning on that basis. On top of that, you've got the changes to low- and mid-rise housing, which will effectively shred everything you've done and change those assumptions. Mayor Taylor, to your point, this is a journey you've been on for some time with your community. Your community has bought into it and been happy about it. Those assumptions are out the window. What does that mean for you? When you get the housing targets—you've gone through this LEP process. You've now got a low- and mid-rise SEPP. What else can Willoughby do effectively? You've done that master planning. You've got a low- and mid-rise SEPP. What are the other levers you can pull?

TANYA TAYLOR: We can work to targets if they're given to us. That's what we can do. To your point, the community will be confused. This is also another issue. The community is now on board with us. With these new planning reforms, they're a bit confused.

The CHAIR: So your position is to the Minister, to the Government, "Hey, give us the numbers and we'll do it. Let us do it as planners and do it well"?

DYALAN GOVENDER: Precisely. We want to understand—

The CHAIR: And you're nodding there too, Lane Cove.

MARK BRISBY: Yes, we've given a commitment.

DYALAN GOVENDER: I guess, for us, to your point—what do we do now? I guess our concern is, should these come into effect—and I will also say in that feedback we've had to date, so far we have seen a willingness to work with us. There have been, from what I've seen to date, more around the TOD program, which we're affected by both in—

The Hon. SCOTT FARLOW: You and Lane Cove both have interaction with that tier one program of TOD around Crows Nest, correct?

DYALAN GOVENDER: Correct, in Crows Nest.

MARK BRISBY: The Crows Nest metro, yes.

DYALAN GOVENDER: So far in that process, the department has been very willing to work with the local governments in my experience so far to understand that local impact better and understand what has been done to date and what that means needs to be done going forward, if anything. There is a willingness to get into that detail around the TOD programs. I'm hoping to see the same around the wider SEPP reforms. If not and if the SEPP does come in as proposed, I think the other big challenge that perhaps is getting a little lost in this is the constructability of all this and what that means for local communities. The capacity we released in that last LEP was, admittedly, predominantly high density around transit nodes. It doesn't tackle or solve the medium density issue that we also have, which would have been the key focus of the next tranche of changes we would have undertaken as a council.

The Hon. SCOTT FARLOW: Partly to your point of what you can do next, that would be what you could do next?

DYALAN GOVENDER: Yes, and do that in a more strategic manner, around transit corridors, around areas that are, in fact, well serviced. It's all well and good to have a station or to have a bus stop. How well serviced is that and what is it connected to? That is crucial. Also crucial for medium density in particular is it's not just transit. What about open space? What about community services? And open space especially, as I mentioned before, the controls are such that the amount of private open space for medium-density developments is very limited. It's a transformative change for how people expect to live in Sydney. That's going to produce a huge amount of pressure on public open space. If we want our kids to be able to play soccer, to play football, to play cricket, we are already over-subscribed on most of our active formal recreation spaces. If we're adding medium density—

The Hon. MARK BUTTIGIEG: Does that imply that one solution could be in the centres around the transport nodes just going up higher, à la Parramatta?

DYALAN GOVENDER: Around the right nodes, potentially, yes. And that would, potentially, also be more efficient from a delivery perspective, where you've got more focused construction delivering more houses per construction effort versus distributed construction happening to deliver, one, two, three, four—you know, a manor home of four dwellings. Having lost one, okay, that's three. How efficient is that going to be—

The Hon. SCOTT FARLOW: And that, effectively, has been your experience in both Chatswood and Crows Nest, hasn't it?

DYALAN GOVENDER: Precisely, yes.

The Hon. SCOTT FARLOW: Some very high-density, high-quality properties have been developed around there, which have obviously been bought up by the community, but you've had subsequent community infrastructure that has been delivered as part of that as well?

TANYA TAYLOR: Absolutely. Artarmon is another node as well.

DYALAN GOVENDER: Yes, and those LEP provisions did include increases to our affordable housing rates as well, so that we can continue to build an affordable housing stock in perpetuity in community hands, which is another issue with the current SEPs and the reforms. The affordable housing provisions are really trailing behind. I think the industry would be better served having stronger, consistent targets upfront, so that can be worked into feasibility going forward, rather than variation and uncertainty. And then, on top of that, the 15-year temporary provisions is not a real solution to what is an ongoing challenge and crisis.

The CHAIR: Yes. And just going to that proposition that my colleague, Mr Buttigieg, put about that means high here, however that works, and what you've done, your premise is you are best placed to determine that, at that site-specific and social, as well as environmental, scale?

DYALAN GOVENDER: Yes—and, to be clear, in close collaboration with the relevant State agencies. That, I think, also helps the State agencies understand what those local challenges are as well.

TANYA TAYLOR: And, I would just say, also in collaboration with our community as well. And they're willing to have that conversation with us. They appreciate there is a missing middle as well.

The Hon. JACQUI MUNRO: Mr Brisby, you mentioned in your opening statement that a review of the Apartment Design Guide would be necessary. Could you elaborate on that a little, please?

MARK BRISBY: I think it could use an overhaul, but it's a little unclear where it sits in the hierarchy. I think, from the pure planning person who sits down with the DA, it's given heavy weight. But it actually isn't. It needs to evolve with the other documents and be a bit more aggressive around solar sustainability initiatives. It just needs an overhaul, and to find a real fit to where it sits. Is it a planning control? Is it a guide? I think that uncertainty creates problems for both sides—for developers who aren't sure what they need to follow.

The Hon. JACQUI MUNRO: Especially if we're looking at increasing density, this is an obvious way to do it. Did you want to make any additional comment?

DYALAN GOVENDER: I agree. In particular, there are a whole range of specific provisions in that Apartment Design Guide that could be stronger: waste provisions, building separations, solar access into apartments. I think we'd all be aware of areas of Sydney of high density that have been delivered under that guide, where we'd all stand and look and question the level of amenity being delivered. And in many cases those areas have been delivered consistent with that guide. That should be concerning.

The Hon. SCOTT FARLOW: I was just going to ask Mr Brisby one quick question on that point and go back, effectively, to the DCP discussion as well. In the Land and Environment Court, what has been their perspective at all? The department does the design guidelines and how enforceable are any of those provisions?

MARK BRISBY: They give it very heavy weight.

The Hon. SCOTT FARLOW: Okay.

MARK BRISBY: Again, we try to argue the balance of their DCP. Our DCP, particularly around sustainability, is quite aggressive but in response to community and science. We think the solution is the revamp of the LEP and the department to allow some of those clauses to go into LEPs so they're stronger.

The Hon. SCOTT FARLOW: Thank you. Good to understand.

DYALAN GOVENDER: Perhaps to that previous question around the efficacy of LEPs, the other is—and I would advocate for a stepped-back consideration—that it may not be through the LEP that local provisions need to be enforced. A number of the SEPPs do have local exemptions. An alternative may be—and I hesitate to add a new process to a system already overburdened by process—a way by which local provisions could be assessed for inclusion in SEPPs. But, again, I would be very hesitant to do something like that in a system where you already have a lot of process and a lot of applications going backwards and forwards between local and State governments. There are a number of ways that might help in the short term, but I would argue they should only be short-term bandaid solutions while a more permanent solution is put in place.

The CHAIR: At the end of the day, we are lawmakers. We write words on paper, and then everybody has to go out and do what they say.

The Hon. MARK BUTTIGIEG: In theory.

The CHAIR: And then we have the compliance. That's a whole different issue. In terms of the proposition, though, that the DCP does become an enforceable instrument, is there any unanticipated, perverse consequence of something like that?

DYALAN GOVENDER: If it was as simple a change as giving it more weight in its current form, then, yes, I would expect that to be a significant challenge to implement, given that councils across Sydney have DCP controls that would be inconsistent with other statutory provisions in other statutory elements of the system, which would create real challenges for assessment planners and courts.

The CHAIR: Because of the nature of which they have been drafted at the outset, because they were these flexible and unenforceable instruments?

DYALAN GOVENDER: Flexible instruments, enforceable to a point, but often drafted before subsequent instruments that are no longer consistent and are now in place have come into effect.

The CHAIR: But the premise remains that good local provisions need to be enforceable?

DYALAN GOVENDER: Precisely. What I am getting to is that point we made in the opening remarks. What we are grappling with is a system that has evolved over 50-plus years, and that sort of ball of bandaids that the planning system has become is as much the problem.

The CHAIR: One final point on BASIX. You've consistently said BASIX is just not cutting it, and, in fact, it's undermining your capacity to do the planning job you need to do at the moment. Was that the premise?

MARK BRISBY: Yes, that's correct.

DYALAN GOVENDER: Yes, I would agree.

The CHAIR: Are there any final things you would like to add?

MARK BRISBY: I think what we would just add, from Lane Cove's point of view, is for the Government to put greater trust in local government to deliver because, as I'm sure Mayor Taylor will say, the community is capable at our level of delivering housing sustainability initiatives and the like.

DYALAN GOVENDER: I would just reiterate the point that I really think we need a holistic look at the system. That's not just the planning provisions we've spoken about today; that's also the contributions component of this. A lot of what we need does affect feasibility. In order to accommodate what we need, we do need to look more closely at the whole system to ensure development remains deliverable and practical. I do think it can be done but not under the current system as we have it.

The CHAIR: In terms of contribution—and we haven't dived particularly deep in it—is the basic premise that we're not requiring enough or it's not commensurate to the challenges?

DYALAN GOVENDER: I appreciate the time, so as briefly as possible I would add that it's not structured in a way to capture the value and the changes in value that occur over the development cycle and so it's inefficient. The value changes that occur are being lost and left in a small segment rather than distributed fairly across the whole area of the sector.

The Hon. SCOTT FARLOW: Mr Govender, rather than a last-minute precis on that, would you mind taking that question on notice and perhaps giving us some of your thoughts on it?

DYALAN GOVENDER: Happy to.

The CHAIR: Sorry, we're making you do more. Thank you very much for your time and giving evidence here. It's incredibly helpful. The secretariat will be in contact about questions on notice and the process for dealing with that.

(The witnesses withdrew.)

Ms BRON HANNA, Member, Friends of Lane Cove National Park Inc, sworn and examined

Ms JILL STEVERSON, Member, Friends of Lane Cove National Park Inc, sworn and examined

Mrs KATHY COWLEY, President, Friends of Ku-ring-gai Environment Inc, affirmed and examined

Ms JANINE KITSON, Vice-President, Friends of Ku-ring-gai Environment Inc, affirmed and examined

The CHAIR: Thank you very much for being here and giving your time to give evidence today. Thank you for your submissions. They're very helpful. Would anyone like to start by making an opening statement?

BRON HANNA: Friends of Lane Cove National Park pay our respects to Elders past, present and emerging on the land on which we meet. Lane Cove National Park is in a river valley and is under serious pressure from urban run-off and flooding. Our submission highlights how the current planning system is supporting developments that exacerbate climate change. It has permitted six non-recyclable synthetic fields to be built along the borders of the park. While marketed as environmentally beneficial and as solutions to climate change, these fields are, in fact, fire hazards that replace spongy carbon sinks with urban heat islands. They increase run-off and release chemical leachates and microplastics into the Lane Cove River, which flows into Sydney Harbour. Their cumulative impacts affect aquatic life and enter the food chain.

Our case study on the development of the Norman Griffiths synthetic oval, which is currently being constructed by Ku-ring-gai Council and is surrounded by a critically endangered plant community above a creek that runs into the national park, shows clear shortcomings in the way projects are assessed and monitored. It is also in a flood detention basin—a place the chief scientist said they should not be permitted—but no comprehensive flood study nor probable maximum flood modelling was undertaken for the development. Repeated concerns from NSW National Parks—and I'm happy to give you the letters here—were ignored and there were serious conflicts of interest for those undertaking and approving the assessments. There was no accountability for incomplete or misleading assessments. It was assessed under the same planning pathway used for portable lifeguard towers and pedestrian pathways, despite involving major excavation and changes to hydrology.

New-generation natural turf fields can provide increased usage to support growing demand but government grants for oval upgrades remain tied to synthetic fields, skewing the planning process. As the EU is banning rubber crumb ovals, the New South Wales planning system permits them to be built with no traps for microplastics on them. Our planning system needs to enforce robust buffer zones around national parks. The chief scientist's recommendations for synthetic fields should be given effect through Das or through a type of Design and Place SEPP or their own SEPP. It is time to take climate change seriously.

JANINE KITSON: Thank you for the opportunity for Friends of Ku-ring-gai Environment or FOKE, as we are known, to comment on the Portfolio Committee No. 7 inquiry into the New South Wales planning system and the impact of climate change on the environment and communities. In speaking about Ku-ring-gai, FOKE wishes to acknowledge the traditional owners of Ku-ring-gai and that they are on the land of Gammeragal, Darramuragal and Guringai country.

FOKE is a community group, run by volunteers. It celebrates its thirtieth anniversary this year. During these three decades, FOKE has advocated for the protection of Ku-ring-gai's natural, built and cultural heritage. FOKE is deeply alarmed at the state of the current planning system and takes the view that it endangers the lives of residents from the accelerating impacts of climate change. Ku-ring-gai, being surrounded by three national parks, is in a high bushfire-prone area, with properties exposed to flood hazard. With escalating climate change, Ku-ring-gai will face more frequent, intense and life-threatening bushfires and flooding. FOKE unreservedly opposes a New South Wales planning system that weakens environmental protection. Stronger environmental protection at the State and Federal levels are urgently needed to stem the crisis of biodiversity extinction and the climate emergency. The increasingly one-size-fits-all New South Wales planning system needs to be overhauled to ensure planning decisions prioritise resilience, climate safety and biodiversity conservation. In their current form, they offer little protection.

Central to FOKE's submission is the view that there has been, and continues to be, a public policy failure with successive Governments' urban consolidation policies that drive a dangerous climate by escalating the environmental crisis through land clearing, deforestation, habitat destruction, loss of canopy and seed bank. FOKE is deeply concerned that the current New South Wales planning system and poor controls exerted by planning instruments continue to profoundly change the landscape of Ku-ring-gai and is critically endangering ecological communities, particularly its remnant blue gum high forest and Sydney Turpentine-Ironbark Forest as well as the capacity to regenerate into the future. It will also destroy Ku-ring-gai's natural beauty and its urban villages, many of which are located within or adjacent to heritage conservation areas or national parks.

Over 70 per cent of Ku-ring-gai's endangered ecological communities are located on private land. FOKE takes the view that the survival of these endangered ecological communities is key to the survival of Ku-ring-gai's tree canopy, yet these endangered ecological communities are under threat due to the decades of local government powers being weakened. Since the introduction of external planning panels and the deregulation and privatisation of compliance and enforcement regulators, local governments no longer have the regulatory and enforcement powers to refuse most development applications and ensure the ongoing conservation of its natural environment. Compliance developments, SEPPs and substantially weakened legislation have fuelled tree removals on private land, replacing small houses with oversized McMansion-type houses and apartment buildings. They have replaced trees and gardens with hard surfaces and reduced the property's capacity for deep soil landscaping. Without adequate deep soil landscaping provisions on private property, Ku-ring-gai's endangered ecological communities and canopy cannot survive into the future.

Deeply alarming is that there is less than 1 per cent of blue gum high forest in the world. FOKE is concerned that current development proposals are assessed in isolation, without consideration of the cumulative impact of previous planning and development decisions and their impacts on the environment. FOKE calls on the New South Wales Government to implement a new fit-for-purpose climate planning system based on ecologically sustainable development that upholds the highest standards of biodiversity conservation and climate resilience. Thank you.

The CHAIR: I will ask a series of questions. I'm going to jump in first. I've got two really pressing ones. One is about the REFs. This is not something that we've had before this inquiry as a proposition. You have outlined very well the assessment pathway, the review of environmental factors, as a case study. For the purpose of disclosure, I know we've had some interaction in my other role as an MP—not here on the Committee—in relation to that particular proposal. You say that that was not an adequate assessment pathway for the purpose of that development. Can you explain that a bit more? I heard both what you perceived as a conflict process but also that the level and standard of assessment that applies was not fit. Could you explain to the Committee what that means a little bit more?

BRON HANNA: Sure. The REF, a lot of people would agree, is not an adequate system to assess such a massive development like a synthetic field. One of the big issues with the whole REF system is that they don't have to be made publicly available. We have got fields all around New South Wales doing serious damage to our environment, and they were all signed off in REFs that aren't publicly available and aren't subject to consultation. Not only do the assessments not have to be as robust, but my biggest issue with the REF system, in my experience here, is the lack of accountability for it. We only got the REF because we forced the council to make it public. Then when the REF came down, the construction was meant to start a week later. We had a week to look at an assessment for what is now looking at a \$5.5 million project with massive construction and massive changes to hydrology in the middle of our critically endangered plant community above a national park.

We had National Parks writing letters saying, "Can you please stop and give us time to look at this?" They were meant to be a stakeholder as part of the whole assessment process. There was no ability for them. In two weeks, it went ahead. We saw serious issues in that REF—that was that the council had not looked at a whole regulation, section 171A, which, ironically, is a regulation that has been brought in by the Government to deal with flooding, to take into account climate change and to take into account impact on waterways and the harbour. They're really good regulations. The REF was completely missing that. The only way that we could get that fixed was we wrote letters to the Government. One of our members, in the end, wrote to you, Ms Higginson, about that, and you wrote a letter to the Government. We thought that the council would stop construction, but they kept going.

In Lane Cove, what happened when they realised there were gaps in the REF was they wrote to the council and the council stopped. This kept going, so we ended up having to go to court for this. To spend \$80,000, as a very start, to get a REF to be made full is a ridiculous system. That's what we're looking at in terms of getting accountability through that REF system. There is no oversight. On the first day of the court case, the new REF was brought down and, lo and behold, all of the missing regulations were there. So we're paying our own ratepayers' money to get the council to do a proper assessment, which actually, for all intents and purposes, was unlawful. That is a major issue with the REF system. It's just not a robust enough system for some of these developments.

The CHAIR: The other question I have for either of you, in terms of your organisations, is this less than 1 per cent of blue gum high forest and the STIF forest. Could you just tell us a little bit about that? What are those areas? Are they fragmented? Are they in different areas? Are they cared for? Are they under threat? What does that look like in your areas?

KATHY COWLEY: As Janine explained, most of the remnant trees that belong to these ecological communities, particularly blue gum high forest, there is less than 1 per cent left and it is critically endangered. It is listed both on the Commonwealth register and also New South Wales. It has suffered enormously because the majority of the development that we have been experiencing is on residential land and in the areas where the urban consolidation has mostly occurred, along the ridgeline. Ku-ring-gai probably has the two largest remaining parcels contained in nature reserves, such as the Dalrymple-Hay forest in St Ives and the Sheldon Forest, which is adjacent to the railway line in Turramurra. Again, the blue gum high forest is particularly contained along that ridgeline, and that's where all the urban consolidation has been focused predominantly, and within St Ives, along what is ridgeline. Do you want to add anything there?

JANINE KITSON: I would just like to add that the geology of Ku-ring-gai is on ridgeland and it has shale. Most of Sydney's bushland is on sandstone, as in the Blue Mountains. It did originally go right from Sydney Harbour up the total ridge. The blue gum has basically gone from northern Sydney and closer in. There are very small, isolated patches. But it is still a coherent remnant forest because of the shale that is still there, and the shale is located on the ridgeline, which is where most densification has been targeted. It has been a constant conflict of environmental versus housing. The problem is that we need to implement recovery plans for these critically endangered forests. They are ecological communities. This is unsatisfactory at the moment—direly unsatisfactory. We need to have land purchases to really extend and create more buffer zones.

FOKE was very involved in a campaign nearly 20 years ago to make sure we publicly acquired private land within the Dalrymple-Hay Nature Reserve and Browns Forest, which is national park, which was a huge campaign that involved Federal, State and local governments. That really reiterated another generation in the 1930s when you have the founder of the National Trust, Annie Wyatt, who also worked so hard to preserve that forest. In the 1920s, when the Dalrymple-Hay Nature Reserve was established, it was established because they understood back then the rarity of it. The issue with the blue gum high forest, which is distinct from any other area across Sydney, is these towering, majestic, giant canopy trees. This is something that Sydney should be really, absolutely cognisant of when we are having increasing temperatures: how these trees are so significant to cooling temperatures, cleaning air and carbon capture. These giants, which are predominantly on private land as well as these very small pockets which we've mentioned—the Dalrymple-Hay and Sheldon forests—need additional protection, and that's what FOKE has really been very concerned about and articulated.

KATHY COWLEY: Yes, I suppose the urban consolidation is far more detrimental to these ecological communities because soil is removed—the seed bank is removed—by the deep excavation that's required for car parking underneath these buildings. We're losing seed bank, so it's not being regenerated, and new developments are not required to replace these trees. They're replaced with other indigenous trees, but not the blue gums that are so important to the biodiversity, to ongoing ecological conservation, because of all the species that exist because of this forest. Therefore, we've got threatened species that we are likely to lose in the next few years because of this continual loss of trees. Of course, with new estate policies on the horizon, this will even be further—it's like death by a thousand cuts.

JILL STEVERSON: I just wanted to add from a bush-caring point of view that, yes, they're not necessarily linkages, and some are cared for and some are not. They are biodiversity hotspots, which are very essential in terms of the whole area in the park.

BRON HANNA: Can I add two points very quickly about that? On the assessment of impacts of CECs, a lot of the assessment is "We're not going to cut down the trees so there'll be no impact". In our case, on page 14 you can see where the critically endangered Sydney Turpentine-Ironbark Forest is. One of the big issues with that development was hydrological changes. Roger Lambert, who is an excellent ecologist—in his report, at the back, he talks about the changes to hydrology on turpentine and the fact that they're really impacted by changes to that. When we're assessing these, it's not just about cutting them down; it's about really looking at the impacts adequately, because these communities are on the verge of extinction and our future depends on them.

The other thing is the monitoring of the impacts on CECs. At the North Turramurra Recreation Area, below the synthetic field there, it's Duffys Forest, and there's some serious tree death happening below that field. That's probably because of chemical leachates and excess water, but nobody is monitoring that. That CEC—sorry, that's an EEC—is being really impacted by that, but the system is not looking after it and it should be. So I'd completely agree with what you're saying.

The Hon. SCOTT FARLOW: Mrs Cowley, just going back to the point that you raised in your discussion there, we've heard already from some of the councils in terms of the changes to the low- and mid-rise SEPP and the impacts that they will have on their communities, but we've also had discussion about the TOD SEPP. The three councils we've had discuss it previously were all involved in tier 1, where there is more of an iterative process with councils and they're able to actually plan it. But when it comes to Ku-ring-gai, of course,

you've already had the TOD SEPP enacted with the four locations around Roseville, Killara, Lindfield and Gordon. What's the impact going to be in Ku-ring-gai as a result of both that SEPP and the low- and mid-rise SEPP in terms of some of those critically endangered species?

KATHY COWLEY: Well, not only those four station areas—and we've been allocated more TODs than most other areas of Sydney, and also we've still got to learn about the low- and mid-rise. But we consider probably up to 90 per cent of Ku-ring-gai is going to be impacted by various types of development. It will be the six-storey, plus affordable increase for the four TODs, and there'll be no master planning, basically non-refusal standards, one size fits all. Council has not been given an extension of time in which to even try and provide the Government with perhaps a different—what's the word I'm trying to say—plan in terms of how that density would be managed.

Then, of course, we've got dual occupancy in the R2 areas proposed, and then, within the 800 metres around every village or centre, we will then have what's more the lower and mid-rise, which will be townhouses, manor houses and so on. So we will not only lose trees, but we'll lose gardens, back gardens, which create the environment that we need for a resilient climate, and it's devastating. The thought of it is just devastating. Ku-ring-gai will be changed. It's already been changed quite considerably, but this will be unimaginable, what it will do, especially to our tree canopy.

The Hon. SCOTT FARLOW: Mrs Cowley, you were mentioning before, in terms of the amount of these species that are on private property, it's not just held, so to speak, in national parks and the like. Do you see these changes having a significant impact into the tree canopy there and, particularly with the changes of the Government's proposal, the Apartment Design Guide as well?

KATHY COWLEY: Absolutely. It will be wall-to-wall development, basically, with deep cavities for car parking. From the examples we've been shown by the Government, you might have a tree on the footpath, and that's all it will be. There won't be gardens. There won't be enough deep soil or sufficient deep soil for the type of trees that we are used to growing or seeing in Ku-ring-gai.

The Hon. SCOTT FARLOW: We've heard through this inquiry but particularly at the initial stages that, when it comes to deep soil planting requirements, effectively, it's a tick-and-flick exercise, that something's planted there but there's no monitoring, so to speak, of what happens to it in 12 months, and you might have something that's planted but, come back 12 months, it's gone. But they ticked the box, in terms of the certifiers, that it went there in the first place.

KATHY COWLEY: Exactly. There's no accountability now in terms of monitoring a lot of this development. A lot of development, of course, is conducted or assessed by private certification. So it's out of councils' hands—or the planning panels'. And we find that often it's the developers' proposals that seem to have more recognition than those of the council policies and standards. So, as we said, we're very concerned about the weakening of planning legislation, which has gone on now for several years, and these latest SEPPs are really going to be of greatest impact of all we have experienced in the last 30 years.

The Hon. MARK BUTTIGIEG: I am just trying to get a handle on this sort of chasm, if you like, between what seems to be an urgent and pressing social blight that is a lack of appropriate housing, particularly for our young people, who haven't the privilege that perhaps our generation have, of being able to buy into quite well-to-do suburbs with affordable housing, and they're looking to stay in the Sydney Basin. Obviously, that demand, that crisis in terms of equity and access to housing has to somehow be addressed. But we've obviously got to try and balance it with environmental concerns.

Where do you think the Government is going wrong in that? Obviously if you're coming from a perspective of living in one of these nicer suburbs where there is a lot more environmental preservation and a lot more land, if you like, you're coming from a certain perspective that wants to maintain that—and I totally understand it; I lived in one of those areas myself in the Sutherland shire—versus this sort of constraint the Government's under to try and satisfy housing uplift. I'm just interested to know what the alternatives might be to that balance, if you like. Or are you saying, "We do want to satisfy that but there's a better way to do it"? If so, where is the Government—in your view, at the moment, what would you like to see done?

KATHY COWLEY: I think there is a better way to do it than what the Government is proposing currently, because it is a top-down, one-size-fits-all, non-refusal standard. It's not allowing consideration of council's constraints, which have been well consulted over the years in the preparation of local environmental plans that plan appropriately for the area, taking into account environment, heritage and so on. Ku-ring-gai Council has met and exceeded its housing targets over the last 30 years and is continuing to do so with a range of housing. Unfortunately the housing is not really affordable because of the high cost of land in Ku-ring-gai, because of the amenity it provides people. We know that what's being proposed for Ku-ring-gai will still not be affordable for

the people that you're hoping to plan for, unfortunately. We'd love to think that we could provide affordable housing for our residents, but with continual population increase, demand for land keeps prices high. Ms Steverson, do you want to add something there?

JILL STEVERSON: I could add something. My speciality is biodiversity, but I will just say that personally I think there should be much more investment into alternative housing—co-ops, collective housing and the models we've got in Europe—rather than more private housing, because the young folk are never going to be able to afford it anyway.

The CHAIR: Yes. It's probably good to note that Ku-ring-gai Council just took a decision to take legal action against the State Government. I think that was yesterday.

The Hon. MARK BUTTIGIEG: Yes.

KATHY COWLEY: Yes, on Wednesday.

The CHAIR: Clearly your council has a very strong view as well—consistent with your views, perhaps.

The Hon. JACQUI MUNRO: I wanted to ask about the synthetic fields and the understanding that you have of why these are approved or why they're necessary in the first place?

BRON HANNA: Yes, that's the reason why they're going everywhere. I would argue they're completely unnecessary, but the marketing—which has been very effective—about synthetic fields is that we need them when it's raining: The kids can't play; they're staying at home going insane because they can't get on these fields. That's true for a lot of ovals. Our ovals have been whacked on flood plains. No-one has improved the soils. My kids played on Norm Griffith Oval. That was a mud bath—we all wanted an upgrade there. But there is a viable alternative and that is these new-generation natural fields. They rely on developments in soil sites and developments in turf cultivars. Lane Cove Council's putting one in at Bob Campbell Oval at the moment, but there was a massive fight to get that, because the planning system just assumes that if you want more usage, you need to go synthetic. It's just not true.

I'll also say that they're marketed as all-weather fields, which is why the councils are putting them in. About four weeks ago a friend of mine whose kids are at the local soccer club, West Pymble soccer club, got a text saying, "Soccer's cancelled today. We can't play on the synthetic field: It's too hot." So this idea that they are all-weather fields is ridiculous. If you look at Sebastian Pfautsch's research which is in the chief scientist's report, he's saying you don't put urban heat islands—especially in Western Sydney, which is already an urban heat island. Cork is incredibly hot as well. So that is not an answer to urban heat, and it's not an all-weather field. We need to start untying our grant system to these incredibly expensive, unnecessary fields when we've got viable alternatives which can keep everyone happy.

The Hon. JACQUI MUNRO: Campbell Oval—is that right?

BRON HANNA: Bob Campbell. That was natural grass at Bob Campbell. It was a massive campaign.

The Hon. JACQUI MUNRO: I remember it. I do know of it.

BRON HANNA: The planning Minister untied the grant from synthetic to natural grass there. That's what should be happening.

The CHAIR: But only for that particular one.

BRON HANNA: Just for that field, ironically.

The CHAIR: Your premise is that they should be untied no matter what.

BRON HANNA: Yes, absolutely.

The CHAIR: I am afraid our time has come to an end. Are there any final things you would like to add?

JANINE KITSON: You talked about ecological communities, but I want to say that there's wildlife, there are marsupials and there are beautiful birds, and those trees that are so big are old trees—going over 100 years old—and they're going to be removed. That birdlife will disappear, and that is a loss for any future generation not to have. Local extinction and biodiversity conservation are the absolute other side of the climate challenge. Our urgency is that when we are saying these things, we know that Ku-ring-gai is a wildlife corridor for Greater Sydney. It connects to the Hawkesbury. It connects to Sydney Harbour. It connects Western Sydney and the greater Blue Mountains. It is not just a view of one; it is a view for the whole of Greater Sydney's environment.

JILL STEVERSON: I just had one final thing, as a bush carer—when we are planning, often we don't think about follow-up. As bush carers, we're in their working, and we're all getting older. We are not getting any younger volunteers. If we don't get follow-up of the money—sometimes a developer has been asked to plant, but if you don't get follow-up money you just get weeds, and then you get in a worse situation. I just say that the park is—I've seen it degrade for the last 15 years, as a paid bush regenerator and a volunteer, because of the weeds. If you let a moth vine get away, you've got 25 years of misery. So we've really got to invest more on conservation and less in recreation. That balance has changed a bit with the national parks. In the last Government they changed it more to recreation, barbecues and cleaning and waived conservation. So we've really got to look carefully because we're just going to be degrading the parks if we don't really look after them with the turf fields and protections.

BRON HANNA: I'll just say one last thing. The whole proposition that it's either biodiversity or development—the planning system has to be bigger than that statement. We've got to have the flexibility to do both.

The CHAIR: We have got to get rid of the idea that it's a binary, one-or-the-other proposition.

BRON HANNA: That's the big issue, yes.

KATHY COWLEY: Yes. Unfortunately, development has focused on economic development and not ecological conservation, and if we can't combine the two we are going to have very big losses to our beautiful area of Sydney. It's not just Ku-ring-gai; it's all over Greater Sydney.

The CHAIR: You are in the good company of Ken Henry, who said in the recent review of the biodiversity legislation, "It's time to get nature positive if we want to do right."

KATHY COWLEY: We have to live with both, yes.

The CHAIR: Thank you. I am sorry our time has come to an end. Thank you very much for your time, your evidence and your submissions.

(The witnesses withdrew.)

Mr BRENDAN DONOHOE, President, Surfrider Foundation Australia, Northern Beaches Branch, sworn and examined

Mr TERRY FITZGERALD, National Director, Surfrider Foundation Australia, sworn and examined

The CHAIR: Welcome and thank you very much for making the time to come and give evidence today. Would either of you like start by making an opening statement?

TERRY FITZGERALD: I would like to do that. A little about Surfrider: it is a not-for-profit funded by donations and grants. We have seven employees campaigning on behalf of our Australia-wide members. Surfrider has branches from Noosa to Perth. Our branches bring together volunteers and activists all looking to protect the public asset that is our Australian coastline. Our branches are the strength of Surfrider. Branches represent local communities and are the focal point of our campaigns ranging from stopping the PEP leases, seismic blasting in southern sea country through to community beach cleans. New South Wales has branches from Byron Bay to Yuin country on the south coast—again, community based and volunteer driven, all working to manage the mistakes of the twentieth century and prevent greater mistakes in the twenty-first.

I have lived and surfed in the Collaroy-Narrabeen embayment for close to 60 years. Management of the embayment often seems piecemeal, with flow-on effects of council works not assigned consideration or, in the seawall matter, sadly ignored. I'm a member of the management committee of the North Narrabeen National Surfing Reserve. North Narrabeen is a world-class wave that has produced arguably Australia's number one boardriders club and a litany of Australian and world champion surfers. Yet the reserve has not been consulted until very recently regarding any works undertaken by council. For example, the lake mouth that directly influences the wave quality at North Narrabeen is dredged regularly with sand, then trucked to Collaroy, where it is used for beach nourishment, dare I say, to put the beach back in front of private property and currently to hide a vertical seawall. I would add: At whose cost?

Surfrider does not disagree with beach nourishment. However, vertical seawalls will hasten the degradation at Collaroy. Longshore drift will move sands north at a faster rate, blocking the lake entrance, requiring even more dredging—an ever-accelerating cycle. Surfrider produces a list of the top 10 endangered waves and beaches on our national coastline. Northern Beaches Council has under management two of the current top 10—in fact numbers one and two, which are Collaroy and North Narrabeen. Northern Beaches Council may well have the trifecta if its proposed wall at Newport Beach is built. Surfrider advocates the forming of a coastal commission, with a qualified coastal commissioner to whom coastal councils can go for guidance, assistance and solutions in the face of rising sea levels. It is paramount the amenity that is our beaches be protected. I will pass to Brendan, who is president of the Northern Beaches branch, for more information.

BRENDAN DONOHOE: Thank you, Madam Chair. Before I start, if I could table some documents, just so you can see the issue that I'll be concentrating on, which is the seawall of Collaroy-Narrabeen. Thank you all for being here and for your interest in this matter. It's an extremely complex task in front of you, trying to get a planning system that can adapt to climate change. As a town planner myself, the myriad of problems that are going to be caused by the change of climate are immense. The pressures on the coast are very obvious and they're increasing. It is where most of us live and play; 80 per cent of Australians live within 50 kilometres of the coast, as I'm sure you're aware. I have 25-plus years of experience with the Northern Beaches Surfrider branch and I am proud to say that I am by no means the longest-serving member. We meet on a monthly basis to discuss issues that surround the coast between Manly and Palm Beach, and we've done so for over 30 years.

Make no mistake, we've hit a crisis point in terms of coastal management and that crisis point, I believe, was made much worse by the introduction of the Coastal Management Act 2016. We can see what this crisis is at Collaroy-Narrabeen, and I believe we are going there this afternoon. We have been thoroughly involved with Collaroy-Narrabeen Beach since 1991. I can't tell you how many hours I feel I've wasted dealing with State, Federal and local government about this issue. What has resulted down there is a tragedy, and it is a tragedy that cannot be allowed to spread. We also now know, through our Wamberal branch, that this is very much on the cards up there: same consultants, same idea. This has only ever been made possible since the changes in the Act.

There are lots of good parts to the Act. I am not suggesting that there aren't. But one major problem with the Act was the removal of the requirement of a specialised expert panel, the coastal panel, to review such developments as we've seen at Collaroy-Narrabeen. There is no shortage of reports and motherhood statements, and any reasonable person when reading the plethora of these things would get the impression that we're well across coastal management. Climate change factors, particularly, add to the problem, but there is now no room for wiggle room.

It requires a clear, effective, unambiguous, strong and enforceable policy to mitigate the accelerated stresses affecting our coast. Terms like "must consider" or "should avoid" no longer cut the mustard. There can be no wiggle room. Hard decisions need to be made. We need an adult in this space. Unfortunately for the New South Wales State Government, like every State government, it's your responsibility. It is no good using the Bart Simpson excuse, "It was like that when I got here." I have, as I said, fought for this over 25 years and I think we've come up with the worst possible solution. This wasn't like that when I got here. It's been made much worse in the past couple of years.

The coastal panel of experts has to be reinstated. Any development, particularly on any surf beach, must go before them. The Coastal Management Act simply doesn't mesh with the SEP, let alone the LEPs, the DCPs and the coastal management plans that are being developed. Over the past couple of years, I've honestly thought I've lost the ability to read English. I look at the objects Coastal Management Act, and I look at what has happened to this once beautiful beach, and I just cannot reconcile how the first object is:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience ...

That is the opposite of that. One of the other objects is:

- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions ...

As I say, we have met for hundreds of hours with this council over many years. We had no idea that this was even being proposed until it was well and truly being built. We helped them develop a coastal zone management plan that, to the best of all our knowledge—and there would have been eight of my members at the last meeting and the draft plan—this was absolutely impossible. Yet I'm told by council staff, "Oh no, this was always in the mix."

This wall was developed as though they were carports. There were notices this big on the front of these houses—not all at the same time. There should have been a billboard across Pittwater Road. They closed off Stuart Street for over two years while they constructed this thing. We had the developer absent while the Christmas king tides were on. We lost a bund, we lost boulders, we lost a whole block of sediment protection material. Plastic, basically, got washed into the Tasman Sea. None of the EPA, any government department I've been to—there has not been one cent in fines. There has been no apology. It was a debacle, a disgrace. But it's a wall that I've met as thick as that concrete as soon you start to protest these things.

The suggestion of a specialised climate change SEPP, raised by the EDO, seems like a very good possibility for us. It does require the reinstatement of, if not a coastal panel, a coastal commissioner similar to what the State Government introduced after the building collapses and things like that. There are not a lot of people with the deep knowledge required to understand what this wall will cause, and there are plenty of consultants that will propose this. There is no new technology in this, you'll understand. We've been doing this for hundreds, if not thousands, of years to ill effect around the world. For Australia to be embarking on this in 2024 is an international disgrace.

We need a plan for the future exposure, and we need to manage known risks. There is no point—like the Federal Government seems to be doing now with the bleaching of the coral reef—pretending it is not happening. We need to face up to these facts because the cost to the community in terms of loss of beaches, loss of public open space, loss of amenity and coastal ecology will be triggered by this sort of development. We'll also just be battered by insurance claims. This is not going to help. This is never going to help. You're not going to stop the ocean. We need to work with it. Such things as serious investigation of sand nourishment—I hate to say it, but Queensland kicks the hell out of New South Wales these days in terms of coastal management. It really breaks my heart. We all know that New South Wales spends more money supplying sand to Queensland beaches through the pumping system there—

TERRY FITZGERALD: Than it does to its own.

BRENDAN DONOHOE: —than it spends in New South Wales. We need to get smart with this. There is not one person that I know of that is at all involved in looking at potential sand nourishment programs. Sand nourishment has great potential use, but you don't want to be doing sand nourishment unless you know you can manage it. This is not going to Mars. Countries have been doing this for years. Australia pretends to love its coast. It's time now to show people that we do love our coast. Thank you.

The Hon. MARK BUTTIGIEG: That wall, where is that?

BRENDAN DONOHOE: We'll be looking at that this afternoon.

The Hon. MARK BUTTIGIEG: We're going there this afternoon—Collaroy.

BRENDAN DONOHOE: It doesn't look like that at the moment, which is why I brought this down.

The Hon. MARK BUTTIGIEG: Can you outline the timelines and the decision-making points?

BRENDAN DONOHOE: I had many discussions with Rob Stokes—he was a local member—and as town planners we had talked about his Act a lot. He just neglected to mention that the coastal panel could be—it's still there but it's at the Minister's discretion. It used to be compulsory. All that has led to is a real estate rush. If you look at this image, you can see this was what we did in 2002. That's the line in the sand. We got about 3,000 people on that beach protesting a rock revetment wall, not a vertical sea wall. This was the beach in 2019, and this is the beach now. You can see there is a little bit of a land grab that has gone on there.

Having the discussions with the new CEO of Northern Beaches Council—I would say that in Northern Beaches Council's own submission to this Committee, they have identified that there's ambiguity in the Act and they need more direction. Bloody oath, they need more direction; they need to be convicted. But I've suggested that I would have thought the two blocks that they've done so far has added roughly \$30 million in property values to those private properties, and he said, "I couldn't disagree with that figure." This is disgusting and extraordinary.

The Hon. MARK BUTTIGIEG: What brought about those decisions? Is that tension between, what, the Planning department and the department of environment? Would this body have served as a bulwark between that—

BRENDAN DONOHOE: Absolutely it would've. There's no doubt that similar, lesser I would imagine, proposals of vertical walls and things have been proposed in the past. In fact, I know that has been the case, and they've always just been summarily knocked back. But when the current consultant saw the change in the Act and the potential for not having to go before a committee of peers, I guess, that's exactly what happened. He drove a truck through it, and this to me seems to be a business plan that will be pursued by similar consultants, and it's not a coastline that we can consider seriously.

TERRY FITZGERALD: That's right.

BRENDAN DONOHOE: It has only been possible since the dissolution of the expert panel, and when I'm talking to the northern beaches officers that I've dealt with for many years, they just say, "No, this is all de rigueur. This all meets the requirements under the Act. This is all fine. We agreed on this in the coastal zone management plan." I've double checked with my committee and no-one that was there—it wasn't just me; I'm not making this up. No-one knew this was at all possible because it wasn't possible. There was a tiny little vertical wall down the beach in front of a block of units that was in a much less hazardous part of the beach anyway, a much less open part of the beach, that had been there and they used that through the consultant's arguments to say, "Vertical seawalls exist. We could continue this."

The Hon. MARK BUTTIGIEG: What's the analogy with what has been proposed at Wamberal?

TERRY FITZGERALD: The same.

BRENDAN DONOHOE: The same. It's a stepped wall, to be fair. It does go back a little bit but it's a vertical wall and you'll know that the problems with vertical walls is it's just pure reflection. Rock revetment is not ideal but at least it breaks up the wave energy. It goes up, down, in, out et cetera. We know that the beach will be more damaged in big swells by this. It will take longer to recover, and we know with climate change and expected sea level rise, this beach, the longest beach of the northern beaches, the jewel in the crown in many ways, as Terry has suggested—and for those of you who don't know Terry, he was one of the best surfers on earth for a number of years—

The Hon. MARK BUTTIGIEG: I know that name very well.

BRENDAN DONOHOE: —and is a world-renowned board manufacturer—this beach has created the thruster, the three-finned board. These are the sorts of developments. This is not just a nice pretty beach; it's a serious part of surfing culture. For this council, if they took "beaches" out of their name, I'd be happier. Just call it "Northern Sydney Council" or whatever. But to have its name with "beaches" in it, to do that to it and set the precedent that could spread—unless it's stopped, it will go up and down the coast. I can think five or six hotspots that have previously been identified.

The Hon. MARK BUTTIGIEG: What does the council say to the view that you stick up a seawall, you get this reflection, the sand denudes anyway—you're actually making the situation worse is presumably the argument. What do they say to that?

BRENDAN DONOHOE: They say, "That's an inexact science, and we're not sure. It seems to us that this will recover just as well."

The Hon. MARK BUTTIGIEG: But they haven't done any modelling to—

BRENDAN DONOHOE: They point to modelling as though it has endorsed this wall. I've read the modelling and the executive summary on the third page. It's doing anything but endorsing it. But you can't argue with that mental attitude. Anything I've ever suggested—the discussion for the Coastal Zone Management Plan went on over a couple of years. This was never a proposition because vertical walls were known to be damaging to beaches. Then, when it's done, they tell us that it was always discussed and that it will work beautifully. This is the nominal property extent. Never before have these houses had bowling-green flat lawns. Never before were they allowed to develop beyond their building line. Now we've got plunge pools going in here.

They've all bitched and complained about having to pay 300,000 contribution to build this wall that's added probably well over a million dollars to their property value. That's not real because anywhere we've got government land we're doing rock revetment. The Government's more than happy—down the southern end of Collaroy beach, which is the closest to Pittwater Road, that was another excuse for this: "We've got to protect Pittwater Road." Where the ocean is closest to Pittwater Road, there's a rock revetment wall. These walls work as well—much better, in terms of damaging a beach—than any of this. This works very well if you want a flat front yard and every square inch of your property—or perceived property. It's still a moot point whether or not, once the ocean takes your property, it's ever been yours. So council has, for me, gone the way many councils will. These beachfront owners have employed a slick consultant engineer. That consultant engineer has gotten into the ears of—

The Hon. MARK BUTTIGIEG: Is this the same one that's doing Wamberal?

BRENDAN DONOHOE: Absolutely, and it would appear to us that this is his business model. Unless stopped, we can expect that he will get jobs up and down the coast. He's got a very good clientele base here. These people have got dough. It's up to the Government to stop this. The fact that this is fronting public open space that is highly loved, used and historical in essence and the public were not involved in any way in the development of that wall is a total disgrace. Yet again, they said, "We consulted with you." I said, "When was the last time?" "It was 2016." This was built in 2021.

The Hon. MARK BUTTIGIEG: Is part of this the fear of litigation?

BRENDAN DONOHOE: There's absolutely no basis for that fear. I'm sure the consultant's telling him that there's fear of litigation. There's absolutely no basis for it. We've got great legal advice. The State Government, the local government have never had to pay out for a house that's fallen into the ocean. It's not a thing. But it's much better to have your full 600 square metres than to—and no-one was suggesting that what was there was right, but that's the council's comparison: "This is better than it was. There used to be rocks that went out to here." And you go, "They were never legal." It's like I build an eight-storey cardboard house and they tell me to pull it down, so I just make it six and say that's better. It just blew everyone's mind when this thing went up. Truly, we didn't have a clue.

The CHAIR: Did you want to ask something, Ms Munro?

The Hon. JACQUI MUNRO: No, that was very comprehensive.

TERRY FITZGERALD: Brendan, did you want to mention the buyback?

The CHAIR: I was just going to ask, what have the discussions been around planned retreat buybacks and that sort of thing? Was there ever any discussion?

TERRY FITZGERALD: Yes. If we go back to 1990, there was actually a beach management committee that was formed by Manly, Warringah and Pittwater. Both of us sat on that committee—Brendan after I, with our mentor, Tom Kirsop, and Angus Gordon. At that time this was raising its head because that was the time that really became the pinch point as far as each degradation. At the time council passed a motion that there would be no further development of the properties in the stretch—54 properties—and that they would proceed to a buyback option, of which two properties were bought at the time. Unfortunately, the beach management committee was soon thereafter disbanded and, 15 years later, here we are.

BRENDAN DONOHOE: There's also the issue of buyback. Obviously, with these properties, this has been a problem here forever and they've become increasingly and exponentially more expensive.

TERRY FITZGERALD: At the time, in 1990 I think, the estimated value was—I think it was 54 properties and \$84 million. Don't quote me. I have a fuzzy memory but that's the kind of numbers we're talking about. That property these days would be in the hundreds of millions and beyond.

BRENDAN DONOHOE: There was, I believe, a dollar-for-dollar subsidy from State Government and local government. The local government would use its section 94 development things for public open space and one of the crazy aspects of this is that there've been so many ways, with the stroke of a pen, that we could have

made this better. As soon as you acquired that property through those funds, you had to demolish the property. There's no reason to have had to do that except that's what the law said. You change the law on beachfront properties. You buy the property. You rent it, you rent it, you rent it. You get Airbnb—exorbitant cost. People will pay over the odds because they're helping. But as soon as there's a storm and there's a threat to it, you demolish it and you let it go.

One thing I've always thought is we need to tunnel through Pittwater Road and all these houses could just sit on top of it—you know, just move them back—but these houses are really set there now, and they will be the gold standard for property owners up and down the coast. If they can get away with this, you bet they will. We will be told by the consultant engineers that there is absolutely no proof; yet, nowhere else I know is at all considering this type of brutal rubbish. Lying in front of that wall, if you fall asleep and wake up, you think you're in Katingal. I mean, it's not pretty. It's not nice. It's not safe.

If you're walking along there—and, you know, I've seen it while they were variously developing it and through storms—people are walking along and then a set comes in, they've got to run. There are steps going up to private property, but they're actually clinging onto that. You can't just run up some rocks, which you could have before. It was never ideal. It's never been handled, but we've got to stop this now. That's what I'm pleading that this Committee does. We can't keep hoping this is not happening.

The CHAIR: Just on that—and I just want to note we're running over time now—this has been very good and I know we're going to the site. But in terms of that going forward, your premise is: This is a lesson badly learnt.

BRENDAN DONOHOE: Yes.

The CHAIR: And that, going forward, we need to do anything that is not this that involves protecting the coast for the public purpose, which is a healthy coast.

BRENDAN DONOHOE: Yes, exactly. This beach is critically endangered now. For what? For the sake of a few property owners.

The CHAIR: Is the argument that at times it doesn't even exist now?

BRENDAN DONOHOE: It absolutely doesn't. The other thing that is easily possible—and, again, a missed opportunity—is this wall could have been back here, if you were going to build it. I mean, the idea that you can put it on your property's "boundary"—you can see the difference. It was back there. We had that beach. Now it's out here. It's disgraceful.

The CHAIR: You know how you said there's a proposition that, perhaps when you've lost your land, it wasn't, you know—

BRENDAN DONOHOE: Yes.

The CHAIR: You're referring there to that legal doctrine of accretion and erosion.

BRENDAN DONOHOE: Absolutely. There's legal precedent in this. There is also the opportunity of value capture, which has never been explored. If you're going to allow anything that approximates this, whether it's a rock revetment wall or anything else, the value of the property will go up because there is a better protection there than if there's no protection. No matter what the contribution of the owner is, the government authority and the State have a right to share in the obvious increased value. When we get to this site inspection this afternoon, you'll see that south of this wall is a rock revetment wall. You'll also see that the beach is operating in a much better condition. But, again, these people would've paid less. This is the problem. The rock revetment wall cost less, is less damaging and is far better for the public. All of this opportunity, the trifecta of that opportunity, was just blown.

The CHAIR: Thank you very much for coming. It was strong, compelling evidence today. We will now close this session.

(The witnesses withdrew.)

(Luncheon adjournment)

Ms ROWENA WELSH-JARRETT, Senior Cultural Heritage Officer, Metropolitan Local Aboriginal Land Council, affirmed and examined

The CHAIR: Welcome back. Thank you very much for making time and coming to give evidence today. Could you please state your name and position title?

ROWENA WELSH-JARRETT: My name is Rowena Welsh-Jarrett. I'm a proud Dharawal and Gumbaynggirr woman. I'm a descendant of multiple coastal Sydney clan groups. I wear, like a lot of Indigenous women in this space, multiple hats. I'm senior heritage officer for Metropolitan Local Aboriginal Land Council. I am also a committee member for the Aboriginal Cultural Heritage Advisory Committee. We are the peak advisory to State heritage. I think we currently fall under Minister Sharpe's portfolio. We're leading cultural heritage reform.

I also come here representing my coastal communities and my cultural connections as an elected applicant of the South Coast native title claim that is responsible for a claim that goes all the way down to the Victorian border from southern Sydney. There are going to be further negotiations or exploration around the northern boundary. I come here wearing all of those hats in hope to represent my people, my constituents that I've been elected and entrusted to represent within the roles that I play within cultural heritage and environment but I also represent my ancestors. I want to be representative and reflective of my continuous connection to country as a coastal Sydney woman.

The CHAIR: Would you like to start by providing an opening statement about the planning system, climate change et cetera?

ROWENA WELSH-JARRETT: Yes. I think my major concerns at the moment—just reflecting upon my experiences and something that I really wanted to flag here—are the lack of legislative parameters for Aboriginal participation in the environment and how legislation and governance have siloed environment separate to cultural heritage. It's been a massive issue that has really impacted Aboriginal participation. I think it has created more of a deficit for Aboriginal people to be able to respond to environmental needs or be able to work towards our self-determination and aspirations and what we want for country and being able to achieve holistic outcomes based on the health of our country and health of our communities.

There are legislative parameters that operate within the cultural heritage sector. I think that's within the National Parks and Wildlife Act, and that was instated in 1974—I think I'm correct on that one. That allowed Aboriginal participation in the cultural heritage sector in a very Eurocentric conservation model. That created opportunities for participation. Looking back, we are about 50 years on. Working in that space, from cultural land and from community land, we are really unsure why there is an acknowledgement within cultural heritage legislation that acknowledges our tangible cultural heritage, but then that sits outside of the environment. It completely makes no sense to us and literally disempowers Aboriginal people, like I said, to make decisions about country, to be able to participate in environmental management of country and to be able to really embed our unique cultural knowledge.

I would also like to have it noted that it's cultural data and it's cultural practice. Some conservation legislation has locked us out of a continuation of our cultural practices. We are only able to operate through the cultural heritage frameworks as they stand. That's a major concern. That's a natural segue into presenting about one of my major concerns as a coastal Sydney woman, as a Dharawal woman, and also working within the Metropolitan Local Aboriginal Land Council leading our cultural heritage team. We see directly the impacts of climate change in the fact that there is the erosion of our sand dunes. There has been a lack of sharing data or information that may be in the cultural heritage sector, like the AHIMS system. It's not without its issues, but it was some way for us to have data around our cultural heritage and places that we thought needed to be protected.

The erosion of sand dunes is causing—I know for a lot of coastal communities—our ancestors to be washed up or our ancestors to be impacted. We know that coastal Sydney people—I only feel comfortable speaking for my own cultural group. Basically our traditional burial practices were that we buried our dead in the sand dunes. Other than AHIP legislation and cultural legislation, we've had no opportunities to go out and be able to contribute to surveying our sand dunes or contributing to the protection of our ancestral burial places.

I'm trying to the best of my ability within the cultural heritage legislative parameters to have them protected, whether it be under Aboriginal Places or State heritage legislation, so that we can have the same sort of legislative protection as any other cemetery or sacred place of burial. At the moment that's not the case. I could speak on metro land council's behalf of the incidents that occurred at Little Manly, where there was an upgrade of a seawall. That impacted a site that was—there was an acknowledgement of burials being impacted there. For some reason there was no proposal or processes to get an AHIP permit to acknowledge it.

To date, further research that we've done—we've been able to further do studies. We were alerted to, obviously, the impact on in situ burial due to the upgrading of the seawall. But with further study and working with studies that have been done before, and looking at archival evidence and also tangible evidence held in various museums, there have been somewhere between 10 to 20 ancestral remains removed from this place. That is a major concern for us. Also, in my role as a native title applicant, I was called upon by my community to Gerroa Beach, where another instance of sand dune erosion and massive changes in tides and the depths of tide have impacted another ancestral burial.

We were able to do post—once the ancestor was exposed and was taken into the care of the department, there were further studies and analysis done of the skeletal remains. This burial was a female and she was a 3,000-year-old ancestor buried in the sand dunes. We were able to have a cultural Dharawal women's gathering around that so that we could then reconvene as a community and have an opportunity to talk about what's happening with our sacred burial places and our cultural heritage. We know a lot of our tangible cultural heritage is within coastal areas or estuarine areas, or close to water. Our lack of ability or lack of opportunity to participate in environmental cultural management, therefore the lack of cultural practices, therefore the lack of cultural data—like I said, it's got us operating from a deficit. We're unable to have any sort of data to back up, or we have no opportunity to produce or provide data in, specifically, the environmental sector.

Even though we know the interface between cultural heritage and the environment, it's just been ignored. I just think it's been a massive—there's been so much environmental degradation. It's been a direct impact, especially for coastal Sydney people, of the advancement of colonisation and invasion. It's really disrupted our sense—we're now having conversations around sustainability and food security. What does that mean for Aboriginal people? This is the threat that climate change is having on our people. We're all aware of the stats and Close the Gap and the various different legislations. But there's a genuine lack, or there has been a lack, of Aboriginal participation in these conversations or wanting to hear about our aspirations or how we feel it's best to culturally manage an area.

I think they're the key subjects that I wanted to touch on and the things that I've been able to, from my own experience of working in there. We're working to the best of our ability as a community to increase participation in marine sciences and also coastal management to address these issues. But, as I said, because of the lack of legislative parameters or legislative triggers within environmental law, there's no legal way for us to make sure that we're engaged or we're consulted with on these matters. Until that's the case, there's not going to be a budget or a scope or any financial support for us to participate in caring for country, as we see. But also we see it as a continuation of our cultural practices and our right also to food, our food security and stuff like that, because we can see, through generations, that certain species are depleting, certain species that, for up to a hundred years within the colony, were still sufficient, as Aboriginal people. My four times great-grandmother helped establish the fishing village that is known as Larpa, the La Perouse community—proud Timbery woman, proud coastal Sydney woman.

There's minimal research that's been done historically by people like Dr Michael Bennett, who works within native title, that looked at Aboriginal people and their sustainability and our ability to be sustainable because we were still fishing. There was government rowboats and petitions and stuff, and then you see, under protectionism and when we were locked out, there were all these legislations that did not have First Nations people in mind, like conservation legislations. Although we do appreciate the layers of protection, they legislatively locked Aboriginal people out of the continuation of cultural practice and an ability to be on country and make decisions for country, like I said, and then there's that real disconnect of us being able to forecast and for our aspirations for our population growth, for our food security, for things like that and also the ability to protect our sacred places, our burial places within sand dune.

We really hope and have aspirations, as an Aboriginal community, that we're able to participate more in sustainability and in environmental country, making decisions so that we as communities can start to establish our own real-time research and data about country and the impacts that it has for us holistically and how we can help to use these opportunities to support Closing the Gap. I think there's a lot of research and data that have been done in other sectors to address this. But if we're not able to address the health of our country and our connection to country and sustainability of our businesses but also our cultural practices, we're going to be further disadvantaged, I'm afraid.

The CHAIR: My colleagues and I might have some questions, if you're happy to take those.

ROWENA WELSH-JARRETT: Yes.

The CHAIR: Thank you. One thing I'd love to have your views on is, at the moment, development that is proposed under the planning laws, on private lands, freehold lands—I'm trying to think through, but the

interaction for First Nations' views and rights comes only if there are objects of cultural heritage. That's your understanding?

ROWENA WELSH-JARRETT: That's what I'm trying to say, that there's no other ways. It's only if there are tangible—and it's placed within that sort of cultural heritage investigative process, where they've got to produce HRs or stuff like that.

The CHAIR: And so it comes down to that: It's got to be the stones, the bones, the objects, whereas the intangible and the connection and the landscape—we see that more—

ROWENA WELSH-JARRETT: There's no consideration, especially within New South Wales. I'm not sure about other people's legislation.

The CHAIR: I know the current Government is committed to this, and you said you're involved in the new cultural heritage laws, and we're hoping for some better changes. What are some of the ideas, if you've had some, about where opportunities for and where and when—

ROWENA WELSH-JARRETT: I'm an advocate for this Connecting with Country framework. The Government Architect, I think, released that. We just celebrated five years of that. This has been, probably, one of the only segues that has allowed Aboriginal people to come back into that conversation around sustainability and the built environment. It's a welcome change. It's very new, or relatively new, so there's not too much data on the scope of impact that this is making to our communities, but I've seen it as a positive. I think there could be a lot more, though.

The CHAIR: That's through the architect, you were saying?

ROWENA WELSH-JARRETT: Through New South Wales Government Architect—the Connecting with Country framework.

The CHAIR: Is there an intersection I'm not aware of? Is there an interaction with the Caring for Country framework through the development of State environmental planning policies, strategic plans? Do you get—

ROWENA WELSH-JARRETT: No, because people will only do what they're allowed to do. In the Aboriginal community we call it "tick-a-boxes". If there is no legislative pressure for them to involve Aboriginal people in the environmental surveying processes—like I said, how can we come up with a solution if we're not even required? There's no consent or processes for Aboriginal people to be in those spaces. Like I said, with cultural heritage there's a legislative trigger—

The CHAIR: But in the rest there's nothing in the planning Act?

ROWENA WELSH-JARRETT: There's none in environment, so do you think any massive corporation is going to go outside just to involve Aboriginal people when there's no policy that requires them to?

The Hon. MARK BUTTIGIEG: Is the planning department required to cross-reference with the cultural heritage Act, though, and provisions in there?

ROWENA WELSH-JARRETT: No, it's quite weak.

The CHAIR: It's up to the corporate—

ROWENA WELSH-JARRETT: It is. Especially for State significant developments and all that, there are different requirements. Especially for State significant, they're quite minimal.

The CHAIR: And it's based on that due diligence framework, isn't it?

ROWENA WELSH-JARRETT: It is.

The CHAIR: So it's up to the proponent—

ROWENA WELSH-JARRETT: And it's basically consent to destroy. They're not focused on the cultural rights of Aboriginal people. It's all about obtaining AHI permits so that you have consent to remove the cultural heritage from the area.

The CHAIR: So the intersection at the moment is that when it's State significant development, then it is a requirement on a proponent to prepare a cultural heritage assessment and that's—

ROWENA WELSH-JARRETT: Yes, and all of the onus is put on that.

The CHAIR: Yes, and that's it.

ROWENA WELSH-JARRETT: To be able to describe, like you spoke about, the intangible—but how is that? We've said we've got issues with trying to articulate our intangible and environmental connections through cultural heritage, which is heavily reliant on a discipline, the discipline of archaeology. These surveys are constantly done by archaeologists and it is only based on, like we said, bones and stones. There is no way in those opportunities to be able to articulate the intangible connections.

The CHAIR: Are you aware of any work that might be happening at the local government council level in relation to opportunity for access and decision-making around—

ROWENA WELSH-JARRETT: It's been a very interesting conversation, like I said, because of the lack of policy or legislation. Often within land council structures and other Aboriginal organisation structures, we have built capacity with Aboriginal people qualified in land conservation and environment management. But like I said, where we're completely left out of the conversation—for example, there's a local government within our land council boundaries. We've had to have bit of back and forth because they're trying to transition into supporting Aboriginal people participating in environmental coastal management, but then they also come back with us and say that there is no scope—it's not been legislated before because it was all voluntary opportunities and there's no budget for Aboriginal participation. So we're required to come out and there's a lack of acknowledgement of what our cultural heritage or our cultural information or our cultural data contributes to these spaces.

Even within the mainstream system there are no metric systems to understand or to quantify impacts to country. They're issues that they're addressing in mainstream level, so you can just imagine how Aboriginal people have just been totally ignored and left out of this. We're trying our best to be able to create this data or create this dialogue around metric systems that speak to that—or the social impacts of what environmental degradation has caused for Aboriginal people.

The Hon. MARK BUTTIGIEG: Have you got a practical example of where you've come up against this brick wall, for want of a better word, where you've gone with an issue, like tangible cultural heritage, and just trying to get—

ROWENA WELSH-JARRETT: There's an example right now, currently, where we're trying to negotiate and work with Northern Beaches Council. Like I said, they were aware of Little Manly. They were aware there was a complete stuff-up and a complete impact of things that is, I would say, the most extreme level of impact to our cultural heritage and to our burial places. They're aware of that. They've got enough information through the cultural heritage practices and stuff that we've been participating in with them in terms of the repatriations and all that stuff. They've got enough data to know that we do sand dune burial and that all of our tangible cultural heritage is within their coastal areas and waterways. There are multiple examples of that, but there is still this back and forth dialogue about how they're trying to do best practice but they don't know how to engage the Aboriginal community on their coastal management plans. And they're not forced to. There is no—

The Hon. MARK BUTTIGIEG: Are there any alternative routes, like direct to the Minister's office or the department or anything like that?

ROWENA WELSH-JARRETT: There is no legislation or policy. There is no pressure. They're not forced to or they don't have to think to. As much as we'd like to think everyone is moving forward and everyone wants to find the roof on best practice, if there is no pressure—or if they're under pressure there are time constraints, and there are budget constraints for everyone—it's quite often the Aboriginal participation that will be the first thing to go or that will not be considered.

The CHAIR: It's like, "We'd like to have your views," but you volunteer and there are actually no steps and no regulation around how the authority is meant to do it.

ROWENA WELSH-JARRETT: But there is data around our socio-economic situations and our desires for sustainability and to support sustainability. But, at the moment, without the pressure of legislation or policy, I feel that there are a lot of communities that won't be able to contribute. So I'm hoping that by coming here and having this conversation—like I said, I didn't come prepared. I'm not a full legal expert. I'm just speaking from my own experiences and what we've experienced within our community.

The CHAIR: That is very valuable to hear. Ms Munro has some questions too.

The Hon. JACQUI MUNRO: Thank you so much for coming today. Earlier you mentioned increasing participation in coastal management matters, and I was wondering how that is playing out and what that looks like. Is it successful?

ROWENA WELSH-JARRETT: Like I said, it's relatively quite new, because there are all of these conversations around sustainability at a really high, strategic level. There have not been many opportunities for our communities prior to this but, through my role at Metropolitan Local Aboriginal Land Council, we have been

reaching out. Within our area there are something like 26 LGAs. It's a massive area. There are budget constraints with how much our land councils are funded to do cultural management or environmental management. We just were able to have a really honest dialogue. It took a lot of unpaid time from myself and some commitment from our community to have dialogue with people like the Sydney Institute of Marine Science, which we know has just got Federal budget, and their big key stakeholders within the harbour restore efforts. They came to us and were really keen and honest as to how they can best support Aboriginal people and increase Indigenous participation in marine science management. I was brutally honest with them and said we have no budget and we have no technical capability or capacity because it hasn't been a priority or something that's been funded in our community before.

We were able to move forward. I did a series of talks to their stakeholders and stuff like that, and they were committed to wanting to support. Financially, it was through philanthropic funds that were obtained to support the training of 15 Aboriginal people from Metropolitan Local Aboriginal Land Council. We are also including the Kamay ranges from the La Perouse area because, as I said, we believe in cultural management of the areas and, through our cultural lands, we understand the connectivity of rivers and waterways. Obviously, we were trying to work from that premise where the two main key stakeholders or two main Aboriginal communities connected to the harbour and working collaboratively with them to train 15 Aboriginal people in cert III in marine maritime conservation and habitat restoration.

It is through the commitment of Sydney Institute of Marine Science and some really amazing individuals that really understand and have been able to see the importance of Indigenous participation in how we manage the environment. I spent the morning at the Women for the Environment Breakfast that was put on by Bush Heritage this morning and there's some really shocking data about the sustainability of all of us. I think they forecasted something like nine billion people to occupy the planet but the planet only has enough resources to sustainably secure one billion. So you can imagine the insecurities, like I said, about food security, all of this stuff, resource security. And then imagine Aboriginal people not being able to participate in those conversations or being disadvantaged or not contributing to the sectors or industries. I think I answered your question. It's quite a roundabout—it's really hard for me to house it into one—

The Hon. JACQUI MUNRO: No, it's great. It's really good context and congratulations on the program.

ROWENA WELSH-JARRETT: Thank you. I hope it succeeds. I'm hoping to roll it out. We had a lot of conversations. Also, we had the Sea Country Alliance. Last year was the first ever New South Wales wide conference where Aboriginal women got to speak about water and how that's associated with the health of their communities. I think there's been some comprehensive studies done around the Murray-Darling and the Baaka River and the impacts that's having on the health of our communities. I think everyone is pretty well aware of the M3 situation, how that directly impacted the Wreck Bay community. There's quite a bit of information there if we're willing to dig and be real about these changes.

The CHAIR: It's interesting because one of the objects of the Coastal Management Act, which intersects with the planning Act to the extent that it does, is "to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone".

ROWENA WELSH-JARRETT: But there's no strategic blueprint to incorporate us into the surveys or anything.

The CHAIR: Yes. It's just an object.

ROWENA WELSH-JARRETT: That's right.

The CHAIR: There's not that implementation in relation to that coastal stuff. In the planning legislation, there isn't even an object around. So it's—

ROWENA WELSH-JARRETT: Difficult.

The CHAIR: There is nothing other than, as you say, the stones and bones and that cultural heritage crossover.

ROWENA WELSH-JARRETT: That's one of the most Eurocentric disciplines ever, archaeology. To try to articulate our aspirations and our connections to country and our intangible truths of how we interact with the country and environment is just a nightmare.

The Hon. JOHN RUDDICK: Where do we get these intangible truths from?

ROWENA WELSH-JARRETT: Being able to go out and survey and contribute to the environmental studies that are done on our country. Because then we're allowed to talk about the interrelationships between—in

the Government they're using the term now "non-human kin". But ecological systems and how we interact or how we're actually dependent on ecological systems—

The Hon. JOHN RUDDICK: I think it's unfair to be so dismissive of archaeology. Archaeology is an important science.

ROWENA WELSH-JARRETT: I love archaeology. I'm not completely dismissive of archaeology. But I don't feel that it can articulate our intangibles. I think opportunity given to us to participate in environmental or other disciplines would be much more beneficial to articulate.

The Hon. MARK BUTTIGIEG: What sort of information or intellectual infrastructure, if you like, has the Government provided? Because there needs to be a framework that, for want of a better word, measures intangible cultural value, right?

ROWENA WELSH-JARRETT: Yes, so this is an issue that is not just for Aboriginal people. As I said, I spent the morning at the Women for the Environment Breakfast at Bush Heritage, where they're finding it difficult to have the data so that the data does speak specifically to business case scenarios and stuff like that.

The Hon. MARK BUTTIGIEG: Because the Heritage Act under Minister Sharpe's portfolio does contain quite a bit of dialogue about this subject. But the question is whether or not we've got a handle on actually valuing it and then interacting with the community to bring it into relief. It is there enough information on how to package this up as a—

ROWENA WELSH-JARRETT: I think we, like the wider community, are trying to create these metric or data systems so that it can feed in real-time back into the environment so we can then speak of the environmental impacts and the social impacts they're having on our communities, and stuff like that.

The Hon. MARK BUTTIGIEG: But your evidence is basically that, because there is no legislative coercion, or parameters, it's nice to say but—

ROWENA WELSH-JARRETT: That's right. That's absolutely it. We want some high-level strategy or high-level policy that supports us.

The CHAIR: The planning system has all the layers that it has, but we don't even have a State environmental planning policy that says the First Nations knowledge comes—

ROWENA WELSH-JARRETT: The only mechanism—

The CHAIR: We have nothing.

ROWENA WELSH-JARRETT: That's it. So that's all I'm here to talk about. We want that participation.

The CHAIR: It's fair to put out there now that the current Minister for Aboriginal Affairs and Treaty is working very hard at the moment in the background on developing data sovereignty systems and things through that treaty framework.

ROWENA WELSH-JARRETT: Absolutely, and the commitment from our community and the ACHAC—

The CHAIR: Are part of that?

ROWENA WELSH-JARRETT: Are part of that. And, like I said, how we can position this standalone legislation to be encompassing of the intangibles and stuff like that and how we incorporate environmental study into that space or the knowledge in the interface. These are all going on in the background at the moment, I understand that, but to date we have been pretty much locked out of it, and there's a lot of red tape that exists because of conservation legislation that was not thought through or does not empower Aboriginal people.

The CHAIR: One instance as well would be when we are doing those threatened species assessments under the Environmental Planning and Assessment Act and we're assessing whether we're likely to have a significant impact. There is no place to talk about the impact on the local Aboriginal community—their totem animals, what the connection is into the traditional knowledge. There's none of that right now, I'm just realising.

ROWENA WELSH-JARRETT: At all. So, yes, we have a lot of concerns. But, like I said, I took the time out of my very high-demand schedule and am trying to build capacity within my community and do all that we're doing in the hopes that we can come up with some solutions.

The CHAIR: This is very valuable to hear, and how we go away and work out what will go into our final report here. It may actually be that there are things happening across government at the moment that need to feed into this process here.

ROWENA WELSH-JARRETT: I think that's a great opportunity, especially while we're looking at this cultural heritage standalone legislation. From my understanding, there's a commitment for it to be a standalone—I think Minister Penny Sharpe's very public about that. There's a commitment to that.

The CHAIR: I think the first tranche is coming very soon, so it might be something that this Committee has to take note of.

ROWENA WELSH-JARRETT: Because we just want that acknowledgement of the interface between environment and that's where our tangible and intangible cultural heritage is.

The Hon. MARK BUTTIGIEG: Is there a peak organisation that everyone respects that can put that case to government?

ROWENA WELSH-JARRETT: I think there's an opportunity to look at what DAA is doing, the Department of Aboriginal Affairs. They've got a lot of data about Close the Gap and all that kind of stuff, but I think it's very important that we watch this whole cultural heritage reform. Like I said, within State Government, there's the ACHAC, which is the Aboriginal Cultural Heritage and Advisory Committee.

The CHAIR: From what you're saying and the terms of reference of this inquiry, it is whatever is happening with the cultural heritage reforms, but there needs to be something in the planning Act that will be speaking or hearing and taking that into it as we go forward.

ROWENA WELSH-JARRETT: Specifically to environmental legislation.

The CHAIR: Yes. You've raised something that hadn't been raised before.

The Hon. MARK BUTTIGIEG: We did look at that when we were in opposition, when Ben was the Minister, and that was a clear tension—sorry, that was a clear problem, that lack of transmission mechanism from planning through to the environment.

ROWENA WELSH-JARRETT: I think, while we are reviewing cultural heritage, this is an opportunity to see the alignment or how we can get that clear line of sight so that environment and cultural heritage can feed the necessary information into development and planning.

The CHAIR: Finally, you mentioned the Connecting with Country framework.

ROWENA WELSH-JARRETT: Yes.

The CHAIR: When you were referring to that, were you referring to that in all of its encompassing terms or were you referring to something specific?

ROWENA WELSH-JARRETT: It had come from the government architect. It has given an opportunity in the last five years for Aboriginal people to participate in conversations about the built environment and sustainability, which has been quite useful. If we could have a look at some of the impacts of that industry or the impacts of that advice or policy, that would be good.

The CHAIR: Excellent. I'm sure it's resulting in much better design and much better plans, I have no doubt.

ROWENA WELSH-JARRETT: Yes.

The CHAIR: Our time has come to an end. Are there any final things you would like to say?

ROWENA WELSH-JARRETT: No, that was just my key point, basically, that we need participation in environmental legislation as well as cultural heritage and acknowledgement and knowledge of the interface.

The CHAIR: Thank you for your time.

(The witness withdrew.)

The Committee adjourned at 14:40.