

REPORT ON PROCEEDINGS BEFORE

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

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

CORRECTED

**At Biamanga Room, Bega Valley Commemorative Civic Centre, Bega, on
Thursday 2 May 2024**

The Committee met at 14:30.

PRESENT

Ms Sue Higginson (Chair)

The Hon. Mark Buttigieg

The Hon. Scott Farlow

The Hon. Jacqui Munro

The Hon. Peter Primrose

The CHAIR: Welcome to the fourth hearing of the Portfolio Committee No. 7 - Planning and Environment inquiry into the planning system and the impacts of climate change on the environment and communities. I acknowledge the traditional custodians of the lands on which we are meeting today, the communities of the Yuin-Monaro nations. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Sue Higginson, and I am the Chair of the Committee.

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

Mr DAVID DIXON, Board Member, Bega Local Aboriginal Land Council, affirmed and examined

Ms LEANNE ATKINSON, Chief Executive Officer, Bega Local Aboriginal Land Council, affirmed and examined

Cr RUSSELL FITZPATRICK, Mayor, Bega Valley Shire Council, affirmed and examined

Mr ANTHONY McMAHON, Chief Executive Officer, Bega Valley Shire Council, affirmed and examined

Mrs EMILY HARRISON, Director, Community Environment and Planning, Bega Valley Shire Council, affirmed and examined

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

RUSSELL FITZPATRICK: Yes, on behalf of the shire, I'll start by making an opening statement. I thank the Committee and all the senators for their attendance today and their paying of attention to this. We've had numerous problems over the years with planning. We're a shire council that has 80 per cent national parks and State forests. We are very passionate people who want to protect our environment and work with it as well. In the Bega Valley shire we have had 13 natural disasters since the Black Summer bushfires in 2019-20. While the majority have been flooding events, the biggest impact on our people, infrastructure and livelihoods has been the fires by far. Impacts from flooding have been very low impacts on our shire. In the fires we lost 467 homes, over a thousand outbuildings and many hectares of land.

Since the fires, some people haven't been able to rebuild their homes due to bushfire constraints, BAL levels, limited insurance or purely as they are not ready to do so yet. Yet the onus has been placed on council to find solutions. This shouldn't be the responsibility, totally, of local government. Historically, there has been significant development right on our coastal shorelines. With predicted sea level rises, property owners, developers and council now need to increase floor levels, raise roads and implement other solutions, all of which are costly and take time.

We've also had a significant conflict in our shire between biodiversity and the urgent need for affordable housing. Again, local government is expected to solve this issue, yet we have few levers, if any, to do so. Increasing requirements for bushfire protection, BASIX and biodiversity offsets are making housing more and more expensive in our shire. While we need to be proactive in mitigating future impacts and protecting our natural environment, it needs to be proportionate to the risk and balanced with the need for more housing. We have little development land left in the shire.

Finally, the complexity of the planning framework and increasing costs of development have resulted in an increase in illegal and unauthorised development throughout the shire. In some cases, manufacturers are exploiting perceived loopholes, while in others people just cannot afford to comply with the system. We're quite happy to take any questions around that. We didn't actually have a submission to the inquiry but are quite happy to answer questions either by me, the CEO or our director of planning as they come along.

LEANNE ATKINSON: Thank you for the opportunity to attend today. This submission outlines both a serious issue and a potential opportunity. As we know, Aboriginal people are among the most vulnerable when it comes to climate change. Here in the Bega Valley many Aboriginal people are living in old and poorly insulated social housing. This is not a choice. Aboriginal people in this community are living in conditions that no-one should be living in as we transition to hotter summers with more unpredictable weather patterns. Now for a way to take a step forward. What if Aboriginal land councils could be part of the solution and were able to activate land that had been granted through the land claims process to help to create more adaptable housing?

Unfortunately, one barrier to achieving this relates to planning. While there is a lot of Crown land currently under claim that is claimable, in many cases it is in a land use zone that is currently incapable of being developed. It may be in an urban area or on an urban fringe but is not capable of being developed due to a failure to enable rezoning within the current claims assessment process. Right now, Crown Lands runs the land claim process, and no consideration is given to the fact that existing land use zones are often an impediment to development. The only pathway currently is to get a spot rezoning after the land claim has been granted, which is often impossible to achieve. It means that land councils end up with land that they have to manage but they can't activate.

If New South Wales Planning could assist in the process while land claims are under assessment, working hand in hand with Crown Lands, we could identify opportunities for housing development and get the process of rezoning happening prior to it being determined. As we speak, in the Snowy Monaro there are claimable parcels of Crown land in and around towns, and an LEP process is currently underway. But the land under claim is being

ignored in the process, even if it is compatible with neighbouring urban land. The intent of the New South Wales land rights Act is, in part, to empower Aboriginal people economically and socially, yet many people in this community do not feel empowered. We need your help to achieve this by bringing Planning to the table, to enable Aboriginal organisations to become part of the housing solution in the face of a changing climate. Thank you.

The CHAIR: Thank you. We'll have some questions.

The Hon. SCOTT FARLOW: Thank you very much to all of you for being here today, for accommodating the Committee with its late start, and for welcoming us to this beautiful part of the world. Mr Mayor, I want to start off in terms of some of the issues that you raised and the challenges in this area. You outlined that 467 homes were lost in terms of the recent bushfires in the area, but of course those homes need to be replaced. You've had significant growth in this area, as well, in terms of population. Despite these challenges, more and more people are moving here. What areas have you identified for new housing development within the shire?

RUSSELL FITZPATRICK: There are a couple of points there. I'll probably just go back a bit. Out of the 467 homes, we've only had 140 DAs actually rebuilt, so there's quite a shortfall of the housing supply we had pre-fires to what we have now. In saying that, we've had land releases in certain areas where they haven't been taken up. We're currently doing a structure plan around Wolumla and Bega that will release something like 1,200 blocks into the market. But, as Leanne alluded to, some of that doesn't include Crown land and Aboriginal claim land, which it should, because it's in a prime residential place very close to the CBD.

There are a lot of other opportunities, but the biggest problem in our area is the biodiversity offsets and the cost of biodiversity offsets. For example, from a council point of view, we extended our airport and we had to pay \$1.2 million to provide public infrastructure as a biodiversity offset, as a local government area. The ratepayers are actually paying a biodiversity offset for public infrastructure. The CEO might want to elaborate on that. There's a lot more around that, but those are some of the issues we're facing.

As to the land releases, we still have land releases happening in some areas. But then comes the cost of the infrastructure around our services, to put water and sewer onto those. Who pays? It becomes very hard. We live in a wonderful area, but it has its topography challenges. A lot of it is hilly, and to actually work everything through one sewer treatment plant or one water supply is nearly impossible. We run something like eight water supplies and about 10 sewer treatments—he'll correct me when he speaks. It's roughly around those figures. The infrastructure costs to us are enormous around that, and so are the development costs around it, which are a real problem in our area.

The Hon. SCOTT FARLOW: Thank you. Mr McMahon, did you want to elaborate on some of those points?

ANTHONY McMAHON: Yes. Something I will certainly add to that is that when we do look at our available land for housing and residential development and calculate what we think the yield will be, there are a couple of key factors in that. There are broadly two types of development relating to housing. One is the subdivision stage, which is the creation of the lots in the first place to then facilitate a house being built on a parcel of land—or multiple houses—and then there is the actual building construction itself.

One of the challenges that we have here in the Bega Valley, like many regional areas, particularly coastal regional areas, is that at a point in time in the past subdivisions occurred under a legislative framework at a point in time, and then down the track people purchased those already subdivided lots with an expectation that there is a housing entitlement there, which often there is. The issue is that they are missing that the legislation has changed since the point in time that the original subdivision occurred and the cost of housing development, if it can be achieved, has now far outweighed their expectations on an unconstrained lot. One of the typical ones that we are facing here in the Bega Valley are issues around biodiversity constraints and bushfire constraints which are often overlapping on a parcel of land and, certainly, issues around development within coastal areas, as the mayor alluded to, is another big one that affects us here.

We have in the past, in trying to determine what our residential growth needs are, looked at our existing lots within the shire, made some yield assumptions around that and then, time and again, we keep finding that those assumptions from the past have maybe been a bit unrealistic because the lots that we thought could have houses on them no longer can. There is a lot of work in trying to unpick that. As the mayor mentioned, we've identified two priority urban growth areas in Bega and Wolumla, and the main reason that council has identified them is they are relatively clear land, the topography is relatively flat compared to everywhere else in the shire, but there's not much land left like that and there are servicing implications, in particular in Wolumla, and infrastructure costs that are going to drive up the cost of the development, but we see it as having no choice here because of the other constraints on the land that is left in the shire.

The Hon. SCOTT FARLOW: Mr McMahon, to those points, in the identification of those lots and those ones with challenges on them, how far back are we talking about? When were they identified for subdivision and subdivided? Are we talking 30 years back? Are we talking five years back? How quickly is this changing?

ANTHONY McMAHON: There are some of them that are several decades back where there were clear development consents provided. Some of them, particularly around our rural village areas, are original—

RUSSELL FITZPATRICK: Crown lands.

ANTHONY McMAHON: —Crown portion creations that have existed and cannot be activated. One common example that comes up in the Bega Valley is around Bemboka, which is west of Bega. There are certain lots in that village that have changed hands that many times, and new purchasers have come along looking to build a house on a lot, but because of the way the lots were originally created they are unfeasible for people to build a house on. It's potentially possible, but the people that have purchased them have made the assumption that they will be able to afford to build a house, but the constraints make it unaffordable and then we end up with these dormant lots sitting around the shire.

RUSSELL FITZPATRICK: Over a period of time we have had, or we still have, three staged developments: We have Boydtown, which is a staged development in the southern part down towards Eden; we also have Eden Cove at Eden, which is a staged development; and also the Mirador subdivision. They have all been staged developments over a period. They were approved back in the late '80s, early '90s, the whole lot of those, under master plan conditions.

The Hon. SCOTT FARLOW: Those stages have been rolling out since the '80s in some of these cases. Is that correct?

RUSSELL FITZPATRICK: Yes, some have had their own difficulties with finance and other things, and different developers going belly up, so to speak, and mortgagees taking over. There have been complications around them all, and some have sewer and water infrastructure problems that have been unfeasible from the go-ahead with those stages.

The Hon. SCOTT FARLOW: We are getting quite a bit of traffic in what is referred to as the zombie DA, so to speak, but in these instances you have a substantial start on part of the development. Is that correct? That differentiates it from the zombie DA class, so to speak.

RUSSELL FITZPATRICK: Yes, if you want to class it as zombie. I think they are just stages or passes going through and people are unaware of them—I fully appreciate that—from time to time. But, yes, they have been staged and planned originally from the start as different stages, and the release of those land parcels is depending on the developer and when he has the costs and the infrastructure available for him to do it. It becomes an economic statement then as to when they go about it.

The Hon. SCOTT FARLOW: In those developments so far how many properties would be already released as part of the previous stages?

RUSSELL FITZPATRICK: I might have to defer to Ms Harrison. I don't think we could give you that.

ANTHONY McMAHON: We might have to take that one on notice.

RUSSELL FITZPATRICK: We might have to take it on notice.

The Hon. SCOTT FARLOW: But we're talking hundreds, aren't we?

RUSSELL FITZPATRICK: Yes, at Mirador and Tura Beach, that is our latest residential area combined.

The Hon. JACQUI MUNRO: Just as a follow-on, do you have an up-to-date yield assumption at the moment for what's in the pipeline, given they have changed?

ANTHONY McMAHON: We would be able to provide, if asked, what our current yield modelling assumes. What I'm alluding to is based on our land zonings at the moment.

The Hon. JACQUI MUNRO: That would be helpful.

ANTHONY McMAHON: We do crude-ish calculations on land area divided by minimum lot sizes with some factoring in. It needs to be sort of tied up.

RUSSELL FITZPATRICK: It's a flexible situation as well because we have a planning proposal currently with New South Wales planning about lot size in certain villages and things like that. That will actually change the yield quite dramatically, if it's approved.

The Hon. JACQUI MUNRO: Because you're keen to decrease lot sizes?

ANTHONY McMAHON: Densification.

RUSSELL FITZPATRICK: Yes, densification. We're trying to make it as affordable as we can for people.

The Hon. JACQUI MUNRO: Of course.

RUSSELL FITZPATRICK: The more lots supply we can get into the market will try and solve that problem.

The Hon. JACQUI MUNRO: Yes.

EMILY HARRISON: We are looking at that planning proposal, in particular, which looks at infill development within our existing towns and villages—our ones that are already sewered—so that they'll have access to services in that they'll be the most affordable options for infill.

The Hon. SCOTT FARLOW: With respect to those developments, are they pre-sold in terms of those upcoming stages or are they held by developers still?

RUSSELL FITZPATRICK: With the Mirador subdivision, you will see a lot of the people in the gallery who are actually people who have paid their deposits already and who have been waiting since '21, since the blocks first went on the market, to try and get a building approval and move forward. But I can't talk about the complications. Our planning department has been working through three different Acts to try and solve that—to get a way forward. Ms Harrison might like to elaborate on that.

EMILY HARRISON: I think, as we mentioned earlier, Mirador has a valid DA. The consent was issued in 1989 but it was a staged development and has been rolled out over time over many years. This stage, when looking at how that stage is valid, we refer to the original consent; but we have also legally a need to look at the tree preservation order that was in place at the time that the DA was developed. We have looked at, as well, the need for this stage of the development based on what it actually is, not based on previous stages. Some previous stages had really small lot sizes.

This stage has larger lot sizes, so we have taken that into account when we're looking at what vegetation clearing is required for a subdivision work certificate, for example. But from a legal perspective, a legal planning perspective, that DA is valid and we have recently issued a subdivision work certificate to enable that to proceed. My understanding is that there is a Federal process as well, in terms of biodiversity going on between the developer and the Federal Government. But that is not part of our assessment process at all; it's quite separate.

ANTHONY McMAHON: Can I just say that the use and interpretation of the term "zombie developments" in itself is a bit of a concern from a council perspective. The reason I say that is people perceive a development that still has a lot more to do on it as potentially being defined as a zombie development, but from our perspective many of those developments might have actually achieved physical commencement to a different degree over a number of decades. My opinion is you can't pigeonhole them all the same way and assume that some of them should be allowed to go ahead and be done more simply, and others shouldn't.

We were trying to unpick that with people in our community to say, "This development is not the same as that one, even though they look the same to you. They were given different consents at different points in time—for example, with different tree preservation orders in place at a point in time that then affects what can and can't happen 20 years later". I think it's a lot more complicated than what might be playing out in the public domain, which in some ways I think is oversimplification of a complex planning framework that has changed over and over again for a number of decades.

The Hon. SCOTT FARLOW: I take it on this you've got a consent for a subdivision, but then when an individual actually goes to put a home on that property they have to go through a fresh development application process.

EMILY HARRISON: Yes.

ANTHONY McMAHON: That's correct.

The Hon. SCOTT FARLOW: But there would be a new consent, and that's where part of the challenge comes. Is that right?

ANTHONY McMAHON: That's correct at the moment with the ones we're talking about, but certainly over decades we've had developments that have come in for subdivisions that then might have had building envelopes as part of the consent that was provided at a point in time, which is a very different type of consent to

one that might have been given earlier that didn't have building envelopes. So even the requirements on a person purchasing a block with a building envelope created, where it's clear to them what the requirements are going to be when they purchase that to try to lodge a DA to build, are very different to those that might have come five or 10 years earlier. Again, every time you start to think about a scenario, there's always a counter to say, "But it's not always going to be like that."

The CHAIR: Is there any consideration of council of the areas that are no longer appropriate because of the fire risk and the egresses and accesses? Does council have a framework in terms of adaptation, and that things that were appropriate 30 years ago perhaps may no longer be? The language the Government or the current State department has moved to, as I understand it, is "intolerable risk". I think we're all going to start having these new phrases put on us, but is that something that is within your planning scope?

ANTHONY McMAHON: It certainly is. Again, we receive guidance from the State Government on that, particularly through the RFS and their guidance on planning for bushfire risk. We regularly have examples here in the Bega Valley where State development mapping might indicate an area has a high bushfire hazard risk. Practically, it gets inspected and everyone involved says this doesn't make sense, and then there's a process that potential developers have to go through to get that reversed. On the flip side, we will occasionally see developments come to council where the mapping doesn't indicate there's a risk but, when it's inspected, there's clearly a risk and we do the reverse.

We are constantly monitoring the adequacy of the framework in place to see if changes are needed, but we do take the guidance from the experts, which essentially are the RFS, on bushfire risk. Bushfire risk is another example of where we get questioned sometimes on why we aren't retrospectively applying current standards to previous development. Certainly around the Tura area that we're alluding to here, it's an example of an area where we've now had people that have built houses in previous stages of subdivisions saying, "The 2019 planning for bushfire risk guidelines mean that we're in an unsafe place. Council needs to fix it." We're saying, "Well, we don't retrospectively now apply a new standard to past development." If we were to do that on all development, then it's just not feasible.

RUSSELL FITZPATRICK: And the curveball around that is that most of our villages and towns are totally surrounded by national parks. So whichever ratio we take or whichever BAL rating we take, we're going to be very high.

The Hon. PETER PRIMROSE: Could I ask Ms Atkinson and Mr Dixon to comment on and elucidate the issue of the blocks that you have been talking about to the development of the sites that you'd mentioned?

LEANNE ATKINSON: What I'll do is I'll give you a little example of what I mean. Where you have claimable land which is currently in the hands of Crown Lands, it's often in a land use zone like a recreational zone or potentially an E zone. But it may be surrounded by urban parcels of land and therefore may be capable of being rezoned. But because of the land claim process handled by Crown Lands, Planning is almost at arm's length from that process. The claim is determined in the land use zone that it originally occupied, so it's not then handed over and therefore we are issued with a certificate of title and then we can somehow develop it. We either have to go through a land use rezoning process, which is incredibly difficult, or we have to sit on it and manage it and, of course, deal with all of the bushfires and weeds and waste and all of that sort of stuff.

What I'm suggesting—and with the support of the board—is that what we do is we have a process where Planning is at the table with Crown Lands, working with land councils to determine what the land could be capable of being rezoned to, and that, during the process of the claim being determined, Planning can also undertake a review of the land use zone with a view that, by the time the claim has been granted, it is in a land use zone that can be activated. In my initial submission, I indicated that Snowy Monaro is a case in point. There are parcels of land there that are not being considered at all through the LEP process because the department of planning appears to be blind to a land claim on foot. Therefore, they perceive that land as remaining in the status in which it is when they're looking at it initially. They see a parcel of Crown land that is no longer going to be used for whatever original purpose it had, but they don't think about what it might be capable of being used for.

Therefore, if you had a look at the special activation precinct in Jindabyne or any of that area around those towns that are under review by the LEP, you will see that the land surrounding it is being reviewed and considered for development by virtue of land use zone changes, but you'll see that doughnut phenomena where you see the pockets of Crown land being ignored. If the two departments were working together in this process and Planning was not blind to what is on foot as a claim and they could see the value, potentially, in working with Aboriginal organisations such as ours—you imagine land councils across New South Wales, the number of claims that are currently on foot and, of those claims, the number that are claimable. Imagine activating them along with other land that you're trying to release to deal with the housing issue and that Aboriginal organisations then become

part of the conversation. They are a player and they therefore can contribute to looking at adaptable housing that can meet the climate change needs. It also empowers Aboriginal people to make those decisions.

At the moment, I have land claims that are granted and that become a liability because, until we can activate them, I have to pay for weed, pest, dumping, fencing, bushfire mitigation—all of that sort of stuff. So that's where I'm saying, "Bring us to the table, allow us to be part of the conversation and not a bystander, and not continue to have Aboriginal people in substandard housing as we move towards a changing climate." Instead, allow Aboriginal organisations and Aboriginal people to be part of the housing conversation.

The CHAIR: Ms Atkinson, can I ask for your view. If a land claim is likely to be a successful claim, and therefore grant, and if that land is highly constrained land and of very significant biodiversity value, have you considered—I would like to know your thoughts—that at that point there should be consideration with Crown lands, Planning et cetera that alternative lands for activation could be provided? If there was other—

LEANNE ATKINSON: Yes, you could have a trade-off. Let me just explain the process: When a claim is granted, regardless of the land use zone, if it is capable of being activated the process that I, as the CEO of the organisation, have to take is to go to the board, get the consent of the board to start a process of doing something about that land and it goes then to the membership. Even if it's within a land use zone that might be compatible with development, if there are other factors or if there are significant financial impediments, it might be that that particular parcel of land is not considered or it's considered for other purposes. The point is that, of all the claimable lots across the State, there would be a portion of that land—and I can demonstrate that—that is not only claimable but also that is capable of being developed almost immediately if it were in a land use zone that enables that activity—in other words, that activation—because it is not heavily forested.

It may have been originally deemed to be a bit of a playground, but because of the way there's been a change in that community over generations, that little parcel of land is basically a dead piece in amongst an urban area that is not suitable for parkland or a playground any further. Why not have that land be rezoned to be compatible with the land around it and therefore activate it so that Aboriginal people can make a choice about what they want to do with it? I can't speak for you, David, but it might be that you want to own it and then develop it. You might want to put a house on it. You might not want to put a house on it. Is that true?

DAVID DIXON: Yes, so we can have some real power to be able to plan and to make decisions within our community. The land rights Act has been there since 1983, and I was born here. My family goes back to first contact in this township. We're still to see the benefits of the land that we have to our community, so that we can build resources within our community, so we can adapt, so we can build resilience for climate change catastrophe. I've seen that in the 2019-20 bushfires down here, where the Aboriginal community were very vulnerable—even myself. I had nowhere to go with my partner and my children. We come in; it was all overcrowded in the evacuation zones and it was all overcrowded. It caused a lot of—how can I put it?—between families and the stress that was put on family relationships. It was very terrifying. It's traumatising just talking about it now.

But I think within our land there's a gap there that needs to be filled. I support what Leanne is saying, because I don't think this has been looked at. I think that maybe the Parliament, our leaders, local government and those who this is of interest to should be looking at this as well. There should be further investigation into what that gap is. Why, since 1983, have we not seen the benefits of our assets through not being able to be a party to the planning? Why are we overlooked in the rezoning when zoning goes on around our parcels of land? I know we speak about Mirador. Mirador is a built-up area. We have parcels of land in Mirador. It's the same thing. It's been built up around our parcels of land. If we had access to resources, we would be a much more resilient community and have the ability to be able to resolve our own social issues rather than just being reliant upon government funding.

The CHAIR: Mr Dixon, does the land council work with the council? Do you have a relationship where you can discuss the claims and the council-owned or council-managed Crown lands?

DAVID DIXON: Yes, we do.

LEANNE ATKINSON: We've got the BEM—which is the Bega Eden Merrimans—MOU between us and the council. The difficulty is—and I don't want to speak for council, except that often this is not a local government issue to solve. The issue around this land activation is at that State level where planning has not got a seat at the table, through whatever means, to be able to have visibility of what claim is on foot. This is not a Treasury impost. If you have a couple of planning department people in with the claims assessment team looking at high-value opportunities within each region, there could be land that could be activated. As David says, it empowers Aboriginal people, but it's actually a win-win for everybody because if you activate land for housing, everybody gains, firstly. Secondly, because we're not talking about a huge Treasury impost, the only barrier is

that within the various government departments that are not participating in this using a whole-of-government approach.

RUSSELL FITZPATRICK: I'll just get the CEO to explain.

ANTHONY McMAHON: Yes, could I add to that? Leanne has just made a key point that I wanted to raise in this: the issue of either conflicting or duplicative legislation in place that is stopping what seem like really good solutions from happening. The point Leanne hasn't quite made relates back to the question you asked. What if it's high-value environmental land? Is there a way to deal with that? At the moment, if a parcel of Crown land within our shire that's under claim has a reserve purpose of environmental conservation, or if it is zoned under our LEP 4—environmental conservation—it means that it won't be eligible to be used within the biodiversity offset market as an economic way to get a return for a land council, if that land was granted to them, to then reinvest back in what you were alluding to before, which is alternative land to do the development on.

It's almost like a double whack that the land councils are getting. Most of the land in our shire that is Crown land that is under claim—at least, large percentages of it—are high biodiversity value or high bushfire risk, which is going to be really hard to ever activate. But the land councils, when they're granted it, can't economically do anything with the land. Like Leanne said, it's a liability because the protection is already there but it still needs management, but with no financial resource to do it. Whereas, if I'm a private property owner at the moment and I've got a parcel of land that doesn't have environmental conservation zoning over the top of it, then I can put it into the biodiversity offset market, get a financial return and reinvest those funds. In my opinion, the land councils are doubly disadvantaged compared to non-government-owned land owners because of the rules.

The CHAIR: Is your understanding that the Aboriginal Land SEPP doesn't assist with that at all?

ANTHONY McMAHON: I don't believe it does, no.

The CHAIR: No, I don't think it does either.

LEANNE ATKINSON: And so we find ourselves in a state of conflict because what happens is that the council is obliged to remind us when we need to manage land.

The CHAIR: That's a very diplomatic way of putting it.

ANTHONY McMAHON: Not our rules.

LEANNE ATKINSON: I was very naive when I first got this role. I thought that when land was handed back, with it might be a little bit of funding to help us remediate it if there were sediment control issues or other issues that were on the land prior to our accessing it. But, no, Crown Lands tells us that we get it in the condition that it's in and that it's our responsibility to fence it, to manage it, to remediate it, and that if we want any assistance in doing that, we could potentially apply for a grant. When you're an organisation that is seen through a deficit lens by government and forced into a grant dependency situation, as opposed to looked at through a strengths-based model, then you can't ever quite get ahead. But I honestly see that there are clear ways forward, and it's just about looking at Aboriginal organisations through that strengths-based lens and not continuing to just hand over cash and continuing to feed that dependency. It goes back to that land issue. If land claims are handed over with tradable value, then Aboriginal people can make decisions about what they want to do with it and make decisions about whether they develop it or not.

The Hon. JACQUI MUNRO: Do you have an idea of how large these parcels of land are that you're managing at the moment and also that you might potentially manage, depending on how land claims are determined?

LEANNE ATKINSON: I actually have a very concise GIS map and I have identified every single parcel of land both under claim and currently in our hands. Through that process—I'm getting a dashboard built at the moment—I will be able to switch on and off layers. We will very easily be able to work out what is possible. But I've tried to work both with Bega Valley and Snowy Monaro about this.

The Hon. JACQUI MUNRO: Would you be able to provide the square meterage or the square kilometre size of each of those?

LEANNE ATKINSON: Yes, 100 per cent. I can take that on notice.

The Hon. JACQUI MUNRO: That would be fabulous.

LEANNE ATKINSON: And, with a request, I could provide whatever you need as a case study, and I can also give you examples in and around the Snowy where we have a slightly different set of circumstances but the same opportunities. I can identify exactly where those claims are and what the size of those claims are and what is going on around that land so you can see what could be possible.

The Hon. JACQUI MUNRO: That would be excellent, if you can take that on notice.

RUSSELL FITZPATRICK: Also, if the Committee needs, we actually have three land councils within the Bega Valley shire.

The Hon. SCOTT FARLOW: Just briefly, in the ballpark, how many claims do you currently have in place that are under consideration?

LEANNE ATKINSON: It would be in the hundreds.

The Hon. SCOTT FARLOW: I imagine they are for a very long period of time as well?

LEANNE ATKINSON: In the 40 years of the land rights Act being in effect, my understanding from recent advice from Aboriginal Affairs—or it might have been the department of Crown Lands—was that something like 4,000 over 40 years have been determined and there is a backlog of in the—

The Hon. SCOTT FARLOW: Over 200,000.

The CHAIR: Yes.

LEANNE ATKINSON: Yes, and they have gone from six staff to now something like 20 to work on them, but you're talking about an organisation that is siloed. So Crown Lands is working in isolation on those parcels with no sight of what could be possible.

The Hon. JACQUI MUNRO: Councillor Fitzpatrick, I was curious about the social licence that you have at the moment to build more houses. Do you feel like there is a fairly comfortable level of support to increase dwelling capacity?

RUSSELL FITZPATRICK: We've had a housing crisis since even probably prior to the bushfires. It has just been exacerbated and it continues to get worse. We have a homeless situation and low social housing, but also our affordable housing—our land prices have gone up over 100 per cent. The RG's valuations alone were all rateable increases of over 100 per cent in valuations. Unless we get more supply into the market, we are still going to have that problem, and we need to free up these lots. We have very limited greenfield space within the shire, and we will come across more and more of these where there will be biodiversity offsets and biodiversity problems that will stifle our development to actually provide housing for our residents and to actually grow the shire.

The Hon. PETER PRIMROSE: To Ms Atkinson and Mr Dixon, could you take on notice supplying the Committee with any correspondence you may have with any government agency where you've sought to rectify this matter and the responses you've received? If you don't have that, what would be specifically the responses you would have liked to have received to such? I'm trying to zero in on what specific requests you'd be making of whoever is in government back at whatever time that may help overcome this problem.

LEANNE ATKINSON: I have more than 12 months worth of correspondence and various meeting file notes, hence why I am developing our own GIS tool. I am more than happy, if it helps the Committee, to provide a bit of a snapshot of what actions we have tried to take ourselves to move this ahead and what roadblocks we have had along the way and why we had to find ourselves here asking for support from the Committee.

The Hon. PETER PRIMROSE: I would certainly appreciate if that could happen.

The Hon. SCOTT FARLOW: Chair, if I could just add one on notice as well.

The CHAIR: We're a demanding mob.

The Hon. SCOTT FARLOW: Yes. In terms of the master-planned communities you were talking about, if you could take on notice how many residential lots are in the pipeline for those within the Bega Valley shire, it would be appreciated as well.

ANTHONY McMAHON: We can certainly do that, and I'd just like to reinforce that the State has been supportive in recent times in providing the funding we need to actually do that strategic planning work. And if there is one thing we would ask the State to continue to do, it's provide the resources to get the framework in place for the development to occur because that's been a barrier in the past for us. Our council certainly appreciates that support.

The CHAIR: Can I just ask—particularly you, Mayor Fitzpatrick—about the concept that biodiversity is this problem? What do you see? Are you suggesting, therefore, that we have to get rid of biodiversity? I am kind of contemplating now that—

RUSSELL FITZPATRICK: No, not at all. There are ways to work through it that allow partial clearing. We need to keep more trees. We realise that. We need the shade. We've got a heating environment, so

we need to beat that. We need to work with it. But at the present time we just don't have land available for subdivision and releasing to bring our house prices down to a level that our young people can afford to build. Already here we've got 31 people who have been sitting since 2021 with a deposit paid that can't move. In their life, they're out renting and holding up a rent market. We need them cleared off the rent market so they can move on, but we need to find them property. If it's not these properties, there needs to be urgent action to have an offset where the developer and these people can purchase similar type land of similar value to what they've purchased at the present time.

The CHAIR: And these specific 31, are these the coastal development you were referring to?

RUSSELL FITZPATRICK: Yes, the Mirador development. Most of them are in the room, or some of them are in the room here today because they've been waiting for so long—just waiting for a developer and a planning outcome to actually go ahead. They'd love to get in and lodge a building application and a DA application, but they're hamstrung at the present time.

The CHAIR: Thank you. Just one final one, although I know we are out of time. This is what happens when you wait to ask your questions: You forget them. In terms of the mix of housing, I know you were talking about infill to existing housing. What are the different densities and mix of housing? Where are you at the moment in terms of looking into that as an issue?

EMILY HARRISON: We have an affordable housing strategy that did look at that—what style or size of development do we need for our community and for growth into the future. At the moment we have a mismatch between our housing stock and what the community needs. We do need smaller dwellings and that's why things like infill are really important for a number of reasons: One, it's a bit easier when we look at biodiversity and things, but it's actually the type of housing stock that our community needs, with an ageing population, more single or smaller couple families. At the moment, a lot of those people are currently living in larger properties that our families need, so they are often in the rental market or looking for properties, but we don't have the smaller dwellings for people to shift to, to free up some of those larger ones.

The CHAIR: I think that's an issue across all of regional New South Wales at the moment.

EMILY HARRISON: Yes.

The CHAIR: Finally, have you an identifiable issue in terms of housing with the short-term rental accommodation issue? Is that taking up housing that could or should potentially be available?

ANTHONY McMAHON: The answer to that is yes. It is highly topical in our community at the moment. The extent of the actual issue and what the potential solutions are is something that our council is very interested in and watching closely. We've been monitoring what's been happening on the North Coast to see whether what's been occurring there is something that might make a difference here. We've also been considering whether we do look at some of the sort of broader socio-economic study work that needs to be done to understand the impacts if change is made.

We would love it if the State stepped up and did that work and it wasn't up to individual local government areas to look at what the impact on things like tourism is. For us, the tourism sector is the largest employer within our community, both indirectly but particularly through hospitality and retail. The numbers are really important to us. The last thing we want to do is prevent short-term accommodation supply that means our local economy suffers, but at the same time we've got the housing issue. We don't know enough yet about what the impact would be of a change, so we'd love the State to pick that up and drive that sort of research better.

EMILY HARRISON: And we are very grateful to have seen the discussion paper looking at that issue, and we did contribute to that. Yes, we are very keen for that to be fast-tracked, if at all possible. And like Anthony said, it's one thing we're really keen on looking at is at that State level but, obviously, with the recognition as well that there needs to be localised solutions. A "one size fits all", when you look at STRA, is not necessarily going to apply across the State or even, potentially, within a shire. Our STRA split between different towns and villages is very different if it's a rural village or if it's a coastal village.

The CHAIR: I'm afraid we've run out of time. Thank you very much for your time and your evidence. The secretariat will be in contact with you about matters taken on notice.

(The witnesses withdrew.)

GILLIAN McNAMARA, Committee Member, Friends of Coila, affirmed and examined

NICK SUMMERS, Convenor and Committee Member, Friends of Coila, affirmed and examined

SAM TIERNEY, Solicitor, Friends of CRUNCH Inc., affirmed and examined

The CHAIR: Thank you very much for being here today, and welcome. Would any of you like to start by making an opening statement?

NICK SUMMERS: Yes, I'll do that. First of all, thank you very much for the opportunity to have a bit of a spiel here. Secondly, I'd like to pay my respects to the traditional owners of this land. Emotionally, I'm torn at the moment because, on one side, I'm very proud to represent the Friends of Coila, which is a small group of people that are very committed to trying to preserve the environment of Lake Coila, Tuross Head, the surrounding wetlands and the associated environment. I'm very proud but, on the other hand, I'm really quite sad today. This morning I went to see the site that we've been opposing—the development that we've been opposing. The development comes in two parcels. In one of those parcels, the bulk of it—about eight hectares—has been flattened and the dirt has been piled up into mounds of dirt. That was only probably a month ago or two months ago. That was a paddock with trees in it. It wasn't great, high-quality land, but it was the home for 70 kangaroos, numerous birds, echidnas, lots of different reptiles—very diverse. For what doesn't look like great land, it's surprising.

The reason why it's so diverse—if I can just quickly show you this map, you'll see the two parcels of land, which are in the yellowish colour there. The big parcel of land is about eight hectares or 8½ hectares; the little parcel of land is about 1½ hectares. The little parcel hasn't been touched as yet, and we're still hopeful that maybe—just maybe—that won't be developed. But they're very different parcels. The big parcel, which has been hammered really hard and is now just flat dirt, apart from mountains of dirt—that's been done in two months. They're going at it hammer and tongs, and we've tried to save that land. But it seems like, even though we can mount really good arguments for why this is really important land—because it butts against the wetland; it's right on it. It's low-lying land; it's fire-prone land. It's got everything. When I read through the terms of reference, if you look at number (a), we fit all of those. It's fire and flood-prone, and that is acknowledged. That bit has been destroyed.

They've done an AHIP survey and have looked into the Aboriginal heritage of that piece of land, and they've come up with thousands of artifacts. Apparently, those artifacts will be boxed and, at some stage, reburied. So apparently that doesn't matter. This piece of land is the beginnings of the Bingi Dreaming Track which starts at Tuross and goes all the way up the coast to Bingi. It's an advertised and signposted track that people walk along, but the very beginning of it has been bulldozed. Part of the land is actually considered flood-prone, but all that land next to it—the wetlands that are next to it where the creek comes in—that's all flood-prone. According to the plans of the developer, they're going to whack a road across the top of that creek to join the two sections up.

The other section is at the bottom of the golf club in Tuross. That section has groves of casuarina trees, all of which are meant to be chopped down and turned into housing. We now know that some of those groves were burial grounds for Aboriginal people for the last 10,000 years. That is a common thing they did at Coila Lake, bury their people next to casuarina groves, and there's casuarina groves all along the foreshore there. There's three EECs abutting these two bits of land and, in fact, encroaching these two bits of land. There's swamp oak forest, there's grasslands, there's seagrass and there's wetlands. There's also remnants of rainforests and some beautiful fig trees and stuff. Apparently, those remnants aren't big enough to call rainforest even though they look like rainforest to me.

For about eight years I worked in all those adjacent areas, so I know the area really well. I worked there as a bush regenerator. Council paid our team to weed and plant all along that foreshore, and paid a lot of money out to have that all done, and it's looking really beautiful. You can imagine my disappointment when the big buffer zone between the housing and these beautiful wetlands and foreshores has been removed, and is now just bare earth and there's going to be 60 or so houses on that section. One of our objections was that this is a 1984 DA—so-called zombie development. Some people call it land banking.

In 1984 they were operating under 1979 environmental law. Things have changed since 1984. First of all, this clear block was covered with 40-year-old trees and lots and lots of stuff growing on it from that 40 years because it was originally clear. But council, apparently, consider it still clear even though it had trees on it. They're all gone now. It had multiple trees on it and habitat. That's considered clear because once, 40 years ago, it was clear. You've got the old environmental guidelines; there was no EIS done for this development. We were requesting that, but apparently you don't have to have that.

What happened was—in 2021 I think it was—finally it got activated. The new owners asked for a modification. That modification was to go from 60 houses plus one commercial development to 72 houses. The block sizes got smaller, of course. We argued that that was a substantial change to the development—it's an extra 20 per cent more housing for starters, 20 per cent more pollution, 20 per cent more run-off, 20 per cent more dogs and cats, 20 per cent more people. In Eurobodalla shire and in the area, Tuross is already pretty stretched for services. We're already kind of crowded. There wasn't enough room in our evacuation centres for even a quarter of our population. Not even a quarter of our population could be actually evacuated to somewhere safe. In fact, the evacuation centre was only enough for 200 people, not 2,000. It was only because the club donated another 200 spaces that they got it up, in numbers.

Tuross has one road in and out, and when the fires were approaching from every angle it was pretty scary. We had no power, no communications for two weeks. But, nevertheless, this middle section in between the two lots is really important to us because it's a little wetland and it's got amazing birdlife, amazing fish and crustaceans, and all sorts of things. There are unique crustaceans and it's just in that one lake, which is an opening and closing natural lake. One of the last on the New South Wales coastline, so we consider this area really important.

The type of housing they want to build is "boutique housing", so we're not talking about affordable housing here. We're talking about millionaires buying million-dollar homes or more. It's posh housing. Basically my disappointment is that they flattened that big section. But every attempt we've made to try to get some common sense into this has been rejected, and we've made many attempts. It's been rejected because, apparently, it's legal. It may be legal but to my way of thinking it's not right. It's actually stupid, because there's plenty of land near Tuross, plenty of damaged farmland that would be perfectly good for housing. In fact, it'd probably be better, considering that this is very low lying. Some of the blocks are only three metres above sea level.

GILLIAN McNAMARA: Can I just interrupt, Nick? We've got a map. You might like to have a look at that. That's the flood-prone—

NICK SUMMERS: That's the floods land. You can see the blocks there. You can see that that's the wetland. When it rains, it goes a bit bigger. When the weather's high, it goes a bit bigger, and then it contracts. It breathes. The wetland breathes.

GILLIAN McNAMARA: Sorry to interrupt—it's also a fairly conservative estimate of flood levels. I don't think it's based on the most recent figures from AdaptNSW.

NICK SUMMERS: Yes. When we looked into it, AdaptNSW figures only go down as far as, I think, Nowra. Eurobodalla shire hasn't been included in the new figures. Council uses the old figures, and even those AdaptNSW figures are the most conservative figures for sea level rise. If they're wrong and it's actually going to be more than what they say, this is obviously going to be a serious issue. Council can spend its money building seawalls in 20 years time to stop these blocks being flooded, but of course that's not a good environmental option.

The other thing I'm really concerned about is these houses have been built right next to the casuarina groves, which is apparently going to happen. But as soon as there's somebody living in a house there, they're going to be complaining about those casuarinas because they're highly fire prone. And then it's not council who gets to decide that, it's the RFS. They make a decision purely based on going in later and going, "That's too close to a house so we could chop those trees down. By the way, it will improve your view by a few hundred thousand dollars as well. That's just a little bonus of it, but it's all because of the fire prone." We're trying to say to council don't build that bottom row of houses next to those casuarinas because people will want those casuarinas gone because it will be a fire hazard. But, of course, council says, "That's not up to us. That's up to the RFS."

We have approached State Government, local government and Federal Government on numerous occasions with numerous submissions. We've attempted legal action. We've attempted protest action. We've gone as much as we could. We're a little hodgepodge group of volunteers. We're not being paid to do this and we have no vested interest in this. None of us live next to it. None of us want to buy land there or anything. We're just trying to say, "This is environmental madness and isn't it time we changed this stuff?"

In 1984—it was probably a stupid idea then, but it's an even worse idea now. Things have changed since then. We now know a lot more about environment, about habitat, about wetlands and their importance. Wetlands are threatened worldwide because of development. Housing development is the biggest threat to wetlands. Here we have this little mini wetland. It's a beautiful little wetland that looks fabulous after rain and not so good when there's been drought for a couple of years, but this little mini wetland is really important. There are birds that use that wetland, that come to that wetland every year from places as far away as North America.

GILLIAN McNAMARA: Alaska.

NICK SUMMERS: Alaska. This is a crucial, critical little bit of land. Whilst it doesn't look like much to the untrained eye, those of us who have a bit of environmental background and a bit of environmental knowledge can see what a gem it is, what a beautiful part of Tuross it is. To build a development on both sides of this little wetland, both of which actually encroach the wetland—the wetland actually goes on to the development in both corners—and to trash this Aboriginal heritage of the Bingi Dreaming track, to me, just seems like madness.

The planning system has failed us in the sense that we've tried to jump through all the hoops. We've been given misinformation by various different government authorities. We've been given what I call the royal run-around. This department can't help us, so we go and see that department. That department doesn't know about it, so we'd better see a State department. That department says, "Oh, no, it belongs to the first department," and round and round the circle you go. To me, as an average punter, this system is not working for what it's meant to be doing, which is providing affordable, quality housing for people in a regional area and respecting the environment at the same time.

What we're seeing is a cash grab. A big developer comes in, buys up this old DA that they found while sneaking around the back room somewhere, splashes a bit of money around and, all of a sudden, they going to make millions out of it. That's the whole reason for it. We're saying, "We'd rather it wasn't being done there." If they want to do some development, how about they do a bit of a deal with council, do a land swap and build some affordable housing, not multimillion-dollar places? Build some affordable housing. That's kind of where I'm coming from. On one hand, I'm very proud to be here. On the other hand, I'm very, very sad about what's going on.

The CHAIR: Thank you. Please, did anyone else want to make a statement before we go into questions?

GILLIAN McNAMARA: Yes. For me, it's extremely hard to come out of this process without feeling incredibly cynical. Three levels of government—I had this really naive idea that we paid local councillors, the State Government, the Federal Government. We actually employ you guys. What do we get out of this? I was hoping for a bit of transparency, a bit of information to come our way when we asked for it, even some consideration of the—what was it?—93 objections to the modification of the consent in 2020.

NICK SUMMERS: Ninety-seven objections, three in favour.

GILLIAN McNAMARA: We have been just dealing with obfuscation. I don't know. Sometimes it's hard to tell whether it's incompetence or something more. This is all in the submission, but we've been given incorrect information about whether it's legal or not to revoke a consent. A person from the planning department in the shire council told us that they could not legally revoke a consent. Apparently they haven't read the Act that states that you can. It has been an extremely trying process.

It's very sad to see a great pile of mud where there used to be trees. It was particularly sad to watch them clearing the site during the nesting season, when presumably quite a lot of nestlings went into the mulcher. It's just horrific. Some people have said, "You're being nimbys." It's not actually my backyard. It belongs to the non-human animals that have no voice and have no choice. They can't move somewhere else because their mudflats have just been built on, and they can't come along here and say, "Hey, guys. What are you doing?"

NICK SUMMERS: Briefly, the other point I'd like to make is that amongst our team of citizen scientists and ecologists—people that are really interested in the environment—most of us are by no means experts. We've had to learn about SEPPs, about GIPAAAs. What are the other ones?

GILLIAN McNAMARA: The EPBC Act, which we're still waiting to hear about.

NICK SUMMERS: The EPBC Act, which we haven't had any reply to after months and months of asking for answers—"When are you going to make a determination?" "Oh, keep an eye on the website." We check it every day. It is just this slow process. LEPs—there are numerous different acronyms for all these different processes that we've had to find out about. It shouldn't be our job to do that. Shouldn't somebody be being paid to point out to council, to government, to developers, to banks, to people involved in all this sort of stuff, to insurance companies—shouldn't there be somebody that is actually paid to look into this stuff? All we initially asked for was an EIS. That is what we wanted: an environmental impact statement. In the end we commissioned our own, which was quite damning.

GILLIAN McNAMARA: I should give you that. Would somebody like to pick that up from us? We have two copies of it.

NICK SUMMERS: It's a desktop one. It wasn't done onsite, completely to the highest standard, because we couldn't afford to pay for something like that. But shouldn't there be a system where somebody else is actually checking these things out and saying, "No, that's not good enough"? In 2024, 1,984 ideas have reached their use-by date. It's called a zombie development. We happen to be in touch with maybe 20 other groups up and down the

coast who have different conditions, slightly different legal situations, different councils, but they have the same problem: They are seeing beautiful areas being decimated for the quick buck, and that's what we are objecting to.

We need your help because for three years we've been working on this and we are all exhausted. We are all a lot more informed but we seem to be getting nowhere. Everybody keeps saying, "No, you haven't got a chance", "You haven't got a case", "You haven't got this", "You haven't got that". Why should it be up to us, a little group of concerned people? But if we don't do it, who's going to do it? I would suggest that government should be doing this.

SAM TIERNEY: I think, in the interest of brevity, I'll leave it there and proceed to your questions. I would just at the start like to thank you for coming all the way down here. I appreciate that, on the far South Coast, quite often, as is the way with living this far from Sydney, it's difficult to get here, as you've experienced this morning. We do appreciate the effort. But the issues that we face on the South Coast are as real as any in Rozelle or wherever in Sydney where these things might be happening. But it is important to us as a community that you have come here to speak to the people, so thank you.

The CHAIR: We heard earlier from the mayor and the council staff. They seem to be of that view that these areas should be developed—that's what it sounds like they are saying—for various reasons, and that these are housing blocks and we need housing blocks. I'm just wondering how you reconcile that. I hear what you're saying.

GILLIAN McNAMARA: I think, depending on which particular housing blocks we are talking about, this is just a really stupid place to build. If you want to build affordable housing, it should be close to services. We have one road in, one road out, no public transport, a part-time medical centre. Since the fires the RFS have had their resources increased. We still don't have a bushfire haven, we don't have a heatwave haven. The fires—we were so lucky that they passed us by and we didn't burn, but it was a horrendous time with no communication, the local shop beginning to run out of food, and you couldn't get out to the highway. There are areas of bush on the way out from Tuross to the main road. It would have been pointless going out anyway because the whole area was just about—

NICK SUMMERS: It was locked down.

GILLIAN McNAMARA: It was locked down. Sure, I'm totally in favour of affordable housing. I notice that the developer has actually changed his website now and is calling it something different, but it was being advertised as a boutique development with ocean views and various other expressions that indicate, as Nick has said, very expensive housing blocks. Our area is quite a low socio-economic area. The people who need housing can't afford those blocks. There are people who are looking for rentals and they can't find them. In our town—I'm not even sure how many, what percentage it is, but I can certainly find out—a high proportion of them are holiday homes.

The mayor did attempt to get more houses available for rental by writing to all of the people who owned holiday homes, and I think he got an extra 18 houses available for rental. But I mean, building mansions on the edge of a lake is doing absolutely nothing to fix the affordable housing problem. Housing could be built on the outskirts of Moruya and Narooma, where you can walk to shops or cycle to shops and to a doctor's surgery. We've got virtually nothing where we are, yet we're encouraging an extra 72 householders.

NICK SUMMERS: Yes, and if I could just point out that in 2018 we had a housing shortage and then we had the bushfires. We lost a thousand houses in the Eurobodalla shire, mostly up at Batemans Bay—a thousand houses. There have been people living at the caravan park. It was closed for two years because it was full of people that were living there, in tents and caravans, because they'd had their houses burnt down. I personally know a dozen people that had their houses burnt down. I lost a lot of my storage because it was burnt down, so it's affected all of us. We already had a housing shortage.

Now they're planning on building a hospital at Moruya and they're going to build a thousand houses. Those thousand houses that they're going to build at Moruya—if and when they do it, and if and when they do the hospital that's all sort of being mooted—those thousand houses will only cover the new people coming into the shire to start that hospital. They won't add to our housing supply, and this development won't add to our housing supply, except at the very top end of our housing supply. We already have quite a lot of luxury houses and mansions. What we don't have much of is the middle and lower level of housing. We already had the problem. The fires and COVID just made it worse. Now, it seems like it's business as usual.

SAM TIERNEY: Can I just speak to the Mirador development and your question on that? The mayor mentioned the 31 blocks proposed in that stage of the development. I think it's important that that is put in the context of exactly what Nick and Gillian have just told you. We're talking about 31, 2,000-plus square metre blocks. These are not affordable housing solutions. These are blocks which were approved back in 1989 and they

are blocks which were approved with the environmental standards and the planning standards, importantly, such as they were 30-plus years ago. The suggestion that those 31 houses are necessary for addressing the housing crisis in this part of the world is, with all due respect, misleading.

It is clear from a review of the council's own housing plans extending out to 2030 that these 31 blocks in Mirador are not even considered as part of their proposed plan to take this forward to 2030. In that respect, it has to be kept in mind precisely what we're dealing with when we talk about these types of developments. It is not as simple as saying, "This adds more housing stock to the market. Therefore, it's a good idea because it addresses affordability." To approach it in that way means that anything should go on that rationale, and that's clearly not the case. It has to also be borne in mind that each of these sites must be considered on its own merits, and I'm talking not just about biodiversity necessarily, but affordability, access to services, bushfire risk, and Aboriginal heritage impacts. All of these things need to be factored in.

The problem with these consents at their absolute heart is that we're dealing with something that was assessed 30-plus years ago. Automatically, that means approvals being given for something which climate change, I think, was not even a concept discussed, let alone in existence back in 1989, so there's been no consideration of that as an issue. Secondly, the nature of these communities has changed. It's very important that it's borne in mind that when these consents were given 30-plus years ago, we're dealing with a community that looks very different to what it did in 1989. In that respect, certainly for the Mirador development, I can say because I was living here in 1989 that the community as it was then is not the community that lives here now. These are the factors that are currently not being considered and talked about as to why these developments are no longer appropriate.

The other issue which we've seen—and I'm very concerned to hear from the CEO today that they're aware of a bushfire issue in the Mirador development, for example—is that, as with the Tuross Lake developments, we're talking about a development which was approved allowing one access road in and out. That road in the Mirador setting is bounded by, on the southern side, Crown land and, on the northern side, land held by the local Aboriginal council. That is heavily forested land, and that is land that, if a bushfire occurred in that space, would leave the residents on this already-existing development stuck in a situation where the access road out is not viable. There is an alternative road down into Merimbula, which I understand at the moment is currently gated. I don't know whether council is looking at that as an option going forward.

But these are just examples of the types of issues that the community has identified that it seems the council is wringing its hands and saying it's not willing to exercise its powers under the environmental planning Act to actually revoke, modify or vary these types of consents. In that respect, it seems to me that the underlying issue in all of this—let's get real about it—is money. We have in this area, anyway, a local council who is financially in a very difficult position. There have been substantial rate increases in the last several years to try to address some of those financial difficulties. But at the end of the day, because of the way the planning Act operates at the moment, if these consents are modified, varied or revoked entirely, it then immediately opens up the decision-making authority to be liable to compensation being payable to a developer at the back end of this.

The difficulty in that, obviously, is that you then have a local council having to pick up the tab for a developer who has valuable property rights and valuable rights, where in some cases, such as the Tuross case, there'd actually been substantial work done to put in a sewerage system already back in the late '80s. It seems to me that one of the issues that this Committee should look at very closely is how do you address that particular exposure and how do you ensure that local councils aren't left holding the baby, as it were, when it comes to acting on the community's wishes to deal with these decades-old consents. It's something I would flag very much for the Committee to look at. I think it's an important consideration.

The CHAIR: On that, this Committee questioned the planning Minister in budget estimates, because there are councils up and down the coast that have actually said, "This development is dangerous; it's no longer a good development." They've defended that position in a court and lost, and the Minister has said, "Well, they have the power to revoke it." But, as you say, no body and no council has had the capacity or courage to exercise that power because we don't know what it would look like. Nobody has ever done that in law in New South Wales lightly.

GILLIAN McNAMARA: And in our case, our council being a different one from Bega—Eurobodalla Shire Council—I think they're currently operating with an \$11 million deficit. They've just managed to pull it back from \$14 million. Mr McCloy of the McCloy Group has spent \$13.2 million on the site and has been spending, apparently, \$20,000 a day on the work that's being done there now. So you'd be asking a council with minus \$11 million in the bank to compensate a developer, presumably, for more than \$13.2 million.

The CHAIR: In terms of Tuross, is it your proposition or vision there that, because of the constraints, that area has reached its maximum development capacity, or is it just this specific site? I'm just curious as to what—

GILLIAN McNAMARA: It's done and dusted now, so we'll see what happens when the 72 houses are there. I think there's probably room for a few more houses, but that depends also on other resources. I know that one of the local organisations, the Southcoast Health and Sustainability Alliance, are looking at grants to build bushfire havens. That's finding money from goodness knows where—grants—and they've been looking at putting in some bushfire havens. Council doesn't have the money to do that, and it's not interested in doing it. As Nick said before, when we had the fires there was room for a very small number of people in the hastily accessed golf club. We couldn't all fit in there. The other safety places were a field and, I think, a tennis court or something.

NICK SUMMERS: Yes, the oval.

GILLIAN McNAMARA: If you're going to add housing—this is what, to me, is completely mad about this system—a developer is going to make millions and walk away. Then a cash-strapped council is going to hear ratepayers saying, "Where are we meant to go the next time there's a fire? Where are we meant to go the next time there's a flood?" Well, nowhere; there is nowhere. Where does the money come from to provide the infrastructure that isn't there for these residents?

NICK SUMMERS: I think Tuross is pretty much at full capacity now. Given that it's a unique place which has a large parcel of community land which was donated to the Tuross community—it's actually owned by the Tuross community, not by council. This land was donated to the Tuross community back in the '40s by the original developer, who did a lot of work on that bit of land. That's why we have some unique patches of rainforest in Tuross—Chatham Park and Hector McWilliam Park are examples of that—but also along some of the foreshore of Tuross Lake.

That is community land and, as you drive into Tuross, you've got the big views. It's cattle grazing land. That is all community land. The community is very proud of that land and wants to protect that land, and it is leased to a cattle grazer to keep the grass down. At different stages over the years, they've tried to develop that land, but the community has always said no to that. I'm in favour of leaving that land as it is, but there is that land there. But there's also other little bits and pieces of land where you could probably find 72 houses if you had to compensate.

GILLIAN McNAMARA: There'd be a certain amount of infill.

The Hon. JACQUI MUNRO: Whereabouts is that? I heard you mention that before, sort of alternative housing areas. Where are they physically located? Whereabouts are you thinking?

NICK SUMMERS: From my way of thinking—and this is just me talking personally, not representing Friends of Coila because there could be some argument about this—I think that the land that is north of the tennis courts. There's a big block there that would take about, probably, 40 or 50 houses. There's another block actually just near that, to the south of the tennis courts, which could take—these are just grass blocks. They don't have any trees on them or anything, and they're right on the main drag. They would become part of the normal suburb of Tuross, those bits, but they're certainly not flood-prone.

GILLIAN McNAMARA: The other thing about all of that, as I said before, is that that's lovely if we've got some additional infrastructure to support these houses. The absolutely sensible thing to do, bearing in mind climate change—if we want to go to a large shop, it's a 20-kilometre drive to Moruya. Far more sensible to be building on the outskirts of Moruya and providing accommodation there which is within cooe of shops. What on earth is the point of building in little communities where you've then got to drive—in your petrol car, presumably, unless you can afford an EV—20 kays to go and do your shopping? It just does not make any sense.

The Hon. SCOTT FARLOW: I'll just ask in terms of the two developments. Cognisant of what the general manager said previously in terms of all of these are different and have their own different unique perspectives, I take it with Tuross you're looking at something that is—even though approved 40 years ago, so to speak—a new development. This is not staged, as is the case in Mirador. Is that correct?

GILLIAN McNAMARA: No, and it comes under a completely different council. It's Eurobodalla—

The Hon. SCOTT FARLOW: And Eurobodalla as well.

NICK SUMMERS: Yes, and if I could just—

The Hon. SCOTT FARLOW: To that point, is it completely owned by the developer in Tuross, or have there been pre-sales as well that have occurred?

NICK SUMMERS: In terms of staging, we don't know. We know that this big section of land has been flattened. It is just dirt now. There is no grass on it. There is nothing on it. It is dirt and piles of dirt. Up until a week ago we believed that, according to the modified consent, they would be bringing in filling to fill the low-lying sections, which you saw on that map of the flooded land. They were bringing in filling for that and, presumably,

thousand of tonnes of fill. We find out now, out of the blue, that they're not bringing in fill, and this has been one of our big arguments. We don't want all of this dubious fill coming in—all the truckloads and everything. Suddenly, they're not bringing in fill. What they're going to do is take all of the dirt from the top of the land and push it down to the bottom and fill up the low-lying land with this soil that they've currently got in mountains there. Apparently, that's what they're doing.

But, again, we've had problems with this sort of thing, getting the information. How do we know if they're going to stage the actual sale of the houses? It doesn't seem like they've started on the smaller patch yet, which is quite a different type of environment, but they're both right next to three EECs. In fact, the EECs encroach onto both of these blocks, and that's the main problem. I can think of lots of other places across the highway from Hector McWilliam, which is the main road into Tuross, across the highway there at Turlinjah. There's plenty of farmland that could be housing. I'm not saying that's where you'd go, but I can sort of see that there's plenty of farmland that's not being used, and they're not really productive farms as we know, dairy and that sort of stuff that's taking a bit of a nosedive in our area. They may have some sort of farming value, but I reckon there'd be a lot of farmers that would flog off 10 hectares for \$13.2 million at the drop of a hat.

The other thing is that these blocks, this development, has changed hands several times over the years. There have been several different proposals. A former owner of this land was fined by the Land and Environment Court for clearing illegally. It has a history to it, and that history shouldn't be ignored. Just because we have a new council, a new modification and a new owner, it's like, "Let's all start fresh again and it's all good." No, it's not. This has got a history. This has got a 10,000-year-old history. Tuross is actually a cultural gem. With that block of land, you could do so much more than stick a few houses on it.

The CHAIR: Can I ask one thing of you, Mr Tierney? I note in your submission on page 12 there is an image of a lot of vegetated land there. Is it your understanding the intention at this stage is that will all be cleared?

SAM TIERNEY: Yes. The image depicted there—and it's a little difficult to see in black and white, I appreciate—is forested land. That has trees on there which have been identified as hollow-bearing trees, for example. It also contains a wide variety of flora and fauna, which is set out in the submission. Principal, perhaps, to some of those points, is that the Merimbula star-hair, which grows only in two locations in New South Wales, is a listed species. I should say, it's probably relevant to you as well that in 1989, it wasn't even known to science. It grows heavily on that site. It's been documented through BioNet extensively. The elimination of the vegetation on that site, which will flow from the work certificate which would authorise the removal of everything except, I think from memory, perhaps four trees on that entire site, is going to lead to the obliteration of the star-hair and every other piece of vegetation on there.

The CHAIR: Is there a biodiversity offset arrangement for that? Not that you can offset something—actually, under the current system you can. You can offset something even if you're going to drive it out of existence. You can pay money for it. But is that an arrangement that you're aware of for this particular site, or it doesn't come under it?

SAM TIERNEY: My understanding is—perhaps this is a question more for the council, because we're experiencing the same transparency issues that Coila have—that it's not because of the timing of the consent.

The CHAIR: Yes, so it didn't apply.

SAM TIERNEY: Yes, so that gives rise to yet another issue. Again, perhaps the council is the person to direct this question to. There's a commercial site located fairly nearby which was consented to, subject to some biodiversity constraints involving the star hair, and that particular development met significant difficulties trying to offset star hair on that site. Perhaps it just gives you an example of the fact that when these biodiversity issues come into play, it becomes much more difficult to justify these types of developments going ahead.

The second thing I should say for the Committee's information is that the private developer who has taken ownership of this site and who has been developing these stages, in my opinion, should be to some extent recognised as being a sensible, proper developer. He, of his own volition, has taken the site to the EPBC authority and is going through that process at the moment. I just wanted to recognise that because I do think it's important that we can say, in the case of some developers, there is a genuine wish to develop ethically and sensibly. I think that's something which, quite frankly, should be encouraged. Where it doesn't happen—and perhaps Coila might be a good example of that—it should be discouraged.

NICK SUMMERS: Yes. There are other issues too. For example, for council we put in a GIPAA application—a freedom of information application, as I know them from the old days—and that GIPAA application was given an end date. If they don't have that information for us by that date, they then don't bother with getting that information. That's then voided. We can ask for whatever information we want. They can either look for it and find it or they can say it's too hard to find. Because, of course, 1984—a lot of those records are

paper records, historical records. They can't find it or they don't want to supply it, so they say, "Your date's up, so we don't have to supply it." Shouldn't there be some sort of ruling that says that if you can't supply it by the due date, you then have to give another date that you'll supply it by?

GILLIAN McNAMARA: In summary, obfuscation has been the order of the day, really. Whether it's incompetence or something else, who knows? The subdivision work certificate was issued for this work, and the council was unable to tell us that it had been issued. We found out about it because the engineer dropped around flyers on the Friday afternoon that work was going to start on the Monday. Council still had not publicised the subdivision work certificate. That's just one example of many. A failed GIPAA, the Federal Government aware that there should be a referral under the EPBC Act—

NICK SUMMERS: We're still waiting on that.

GILLIAN McNAMARA: They say that they can't tell us anything about it because it's under investigation.

The CHAIR: We're coming to an end. Please, final questions.

The Hon. SCOTT FARLOW: Mr Tierney, your submission outlines three alternatives and they're all focused on the developer. In terms of those 31 individuals that have purchased properties there or paid that deposit, what would you perceive for them as a viable option for their future accommodation needs?

SAM TIERNEY: It's a good question and it's a difficult question. It should be noted that the vast majority of the 31 blocks, as we understand it, have been sold with sunset clauses; that is, if the development doesn't proceed by a certain date, then the contract sunsets. I don't know what the precise arrangements are—it's obviously between the private individuals—but it's entirely possible that those contracts will simply sunset, such that the deposits are returned and those individuals aren't left out of pocket.

To the broader question of where those people ultimately might live, that really goes back to the earlier discussion about housing density, types of housing, affordable housing—things of that nature. But I think the question probably needs to be more—in a 2,000 square metre block, are we seriously dealing with affordable housing solutions where people are not going to be able to get into the market somewhere else, or are these investment homes? I think that's probably the more important question.

The Hon. JACQUI MUNRO: I had a question about this document that you've tabled. I wanted to clarify the author of this.

GILLIAN McNAMARA: Which one is that?

The Hon. JACQUI MUNRO: This is the one dated 15 February 2023.

GILLIAN McNAMARA: Is that the desktop ecological assessment?

The Hon. JACQUI MUNRO: Yes.

GILLIAN McNAMARA: Her name is not on there?

The Hon. JACQUI MUNRO: It is, but I just wanted to understand how she fits into this.

GILLIAN McNAMARA: She was asked to do this work for us by our public officer.

NICK SUMMERS: She is a senior ecologist. She has done this off her own bat for nothing. As it says, it's a desktop assessment that, as you can see, is her opinion. That's not a proper EIS. We would like a proper EIS done with stringent standards, to modern standards.

The Hon. JACQUI MUNRO: That's fair.

The CHAIR: I'm afraid we are out of time. I want to thank you very much for coming, for your time and for giving evidence. For things taken on notice, the secretariat will get back to you. Thank you very much for all of the material you have provided to us.

NICK SUMMERS: Please feel free to read our submission because I think it's a very good submission and Gillian is responsible for a large part of that. I had to give her credit.

GILLIAN McNAMARA: We are very sorry that you won't be able to have your site visit, but it will be dark by the time you drive past.

The CHAIR: We are so sorry about that.

NICK SUMMERS: We would love to be able to show you, or we would hate to be able to show you, but the photos don't do justice to what's gone on there. You have to see it to believe it. It is a moonscape at the moment.

The CHAIR: Thank you.

(The witnesses withdrew.)

The Committee adjourned at 16:15.