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REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON STATE DEVELOPMENT

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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At Sydney on Monday 15 June 2009

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The Committee met at 10.30 a.m.

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PRESENT

The Hon. A. Catanzariti (Chair)

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

FRANK ERNEST SARTOR, Member for Rockdale, examined:

CHAIR: Welcome to the eighth public hearing of the Standing Committee on State Development's inquiry into the New South Wales planning framework. Before we commence I will make some comments on procedural matters. In accordance with the Legislative Council guidelines for the broadcast of proceedings, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish and what interpretation is placed on anything said before the Committee. The guidelines for the broadcast of proceedings are available on the table by the door. Any messages for Committee members or witnesses must be delivered through the committee Clerks. I remind everyone to turn off their mobile phone as they interfere with Hansard's recording of proceedings.

I welcome our first witness, the Hon. Frank Sartor. Thank you for coming in, Frank. If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate it if the response to those questions could be sent to be Committee secretariat within 21 days of the date on which the questions are forwarded to you. Before the Committee commences with questions, would you like to make a short opening statement?

Mr FRANK SARTOR: Yes, thank you, Mr Chairman. Thank you for the opportunity to come along today. You might recall that when the planning legislation that was being enacted last June was being considered I had discussions with you about issuing a reference to the Committee as planning Minister to look at the long term. Reverend Nile, I think you will recall some of the robust discussions I had with you about the planning bill. There was a view amongst some members of the planning profession that we actually needed a new Act. I agree with that view. The reforms we were doing last year were really reforms that had to be done in the short to medium term because there were just too many—the development, assessment and planning process was moving in some directions that were making the system clog up, particularly the proliferation of very small applications and the doubling of development applications since the mid 1990s. The system was basically logjammed and the Government felt, and as planning Minister I genuinely felt, that we had to do some things quite quickly.

The preparation of a new Act is not something that one does in a year; it is probably a three-year to four-year exercise, because typically you would go through a green paper, a white paper, and a draft bill sort of approach and you would involve a whole lot of stakeholders. I think that is what we need to do. There is time for a new Act. One of the reasons is the current agenda at national level, which I have summarised in my submission. If you look at the history of planning in this State, the Environmental Planning and Assessment Act, which has been placed on a huge pedestal, was introduced in 1978 largely as a response to the cultural issues of the time, which included a growing awareness of environmental issues and heritage issues—the Heritage Act was passed at the same time—and of course the green bans and the growth pressures on Sydney and some of the experiences citizens believed they had with development in Sydney during the Askin era and afterwards.

So quite an innovative Act was introduced, which created some very clear processes for dealing with these issues. It has been a successful Act in many ways but, as I have indicated in my submission, it got itself sidetracked and there were significant unintended consequences such as the fact that building matters became planning matters when they were never intended to in the Act. In my submission I have cited a case in the Land and Environment Court where Justice Talbot found that planning merit considerations could be considered at building stage. I have also pointed out in the submission the fact that the Victorians have always kept those two things very separate. I have listed a whole range of reasons why it is time now for a new planning Act. The good thing about the timing is that the national Government is moving to common principles across all States for the whole country.

I think the reforms we have made have been good. They are being implemented; I think they are probably half implemented. There is a batch being proclaimed on 1 July. We will see how they all go. Not all reforms are perfect but I think they make some big gains and improvements. Clearly, when an Act keeps on growing and keeps being amended there comes a time when it is important to start again. I think we do need to start again. What I have tried to do in the submission is focus on what I think the key elements are that need to be addressed in a new Act. One of the things I have found in my experience as a mayor and as a Minister is that the planning instruments have been captured by the politics, particularly of local government but probably at all levels.

One found that not only were the objectives of the Act very general and vague but whenever one looked at a local environment plan [LEP] there were usually 10 objectives and some of them were internally contradictory. People would interpret rules to suit themselves because there were enough weasel words in all these documents to let people do what they wanted. As a result I think the utility of local environment plans and development control plans [DCPs] diminished and they were not a good guide at all. That meant that increasingly councils and the Land and Environment Court relied on State policy No.1, which is the exception rule that allows you to exceed development standards.

I think that in any new planning Act we need to be clear about the purpose of the Act. There is some debate about that but I think it needs to be clarified. I do not pretend in this submission to lay out in great detail all the things we should do. That is not what I have tried to do. I have simply tried to say there needs to be a new Act and these are the fundamental things we need to fix; this is what the structure should look like. Of course, there will be a lot of debate around the issues and it should be a very inclusive process. One of the key issues that have to be addressed in a new Act, apart from the clarity of purpose and clarity of objectives, are what I call the land use plans. In this State we have a number of regional strategies for the Hunter, Illawarra, South Coast, Sydney—the metropolitan strategy—Central Coast, mid North Coast, far North Coast and so on. They have no statutory basis; they are simply Government policy statements. I think that regional strategies need a statutory framework.

In my submission I talk about how we should rationalise other plans and make sure they are not contradictory. One of the difficulties we have, and I know that Barry O'Farrell will rail at this but privately in his honest moments he will agree, is that the problem in Ku-ring-gai was not that their LEP was not going to achieve 10,000 lots; the problem was that they introduced a DCP that would subvert what the LEP was doing. They were trying to have their cake and eat it. They would support the metropolitan targets but they were introducing instruments that were totally contradictory. After three years of resisting intervention the department prevailed upon me to intervene and try to set up a process to deal with it. Whether it is dealing with it fantastically or not I do not know; I am not involved. However, there is an issue with different planning instruments being used against each other. There needs to be a very clear hierarchy so that what we are trying to do is totally transparent to everybody. I think there needs to be a statutory basis for strategic land use planning.

In the next section I talk about infrastructure planning. Rather than have a strategy here, an LEP there and a section 94 plan over here, I think that land use plans and infrastructure plans should be all in one. I suppose they really should be land use capacity plans, which talk about what infrastructure you would need if you created a certain level of population. It should include infrastructure funded by developers as well as infrastructure that would otherwise be funded by local government or by the State Government. I am arguing for much more of a regional perspective on strategic planning in which you look at regions and their needs at local and regional level and factor in the requirements before the greenfield areas are bulldozed and work starts. In that way we can see where we are going.

Rather than having a situation in which you say that when the population reaches X they will need another community facility or when the population reaches Y they will need to provide something else, there needs to be more recognition that growth patterns in different parts of the State will change. You cannot say that all this infrastructure should be provided now because sometimes the market will not move that fast in an area. Alternatively, it might move faster than you predict, so you need to set up the plans so they are flexible. If you get more people or development in a certain area you can move quickly to provide more infrastructure. Of course, some infrastructure has to lead land use, particularly transport infrastructure.

I argue that one of the big moves has to be the idea of a statutory basis for strategic planning, but land-use planning should be tied to infrastructure rather than have separate section 94 plans, which are debated enthusiastically by a council in its own way whether it be for a dog massage service or whatever. Local councils have all sorts of enthusiasms and you love them for it. I am just sorry I do not have much spare time these days to go to council meetings because I think it would be very interesting and entertaining to watch the passion and enthusiasm just gushing forth every Monday, Tuesday or Wednesday night as they set about solving the world's problems. Some councils are so intrepid that they do not just solve the problems of Leichhardt, they try to solve the problems of East Timor and the Middle East and just about every other part of the country. I totally admire their bravery.

The Hon. MELINDA PAVEY: Are we going to have time for questions?

Mr FRANK SARTOR: Could I just finish? There are a couple more things, if you give me leave, please? On development control you will see I have argued very strongly about the separation of decision making about development from policy making. I refer you to the British Barker review. They have an independent infrastructure planning commission, which approves major infrastructure projects in the United Kingdom, and they argued very strongly and have set it up so that the infrastructure planning commission, which approves major projects, is quite separate from what they call the national policy statements which the government releases. They have separated the implementation of policy, that is the decisions on development, from the policy making. That is a key principle recommended by Barker in the United Kingdom and that is what I am getting at here—that in fact they who make the policy should not be they who implement the policy.

We did the same with the national electricity market. I remember when I was the energy Minister we created the Australian Energy Regulator, which is an adjunct to the Australian Competition and Consumer Commission [ACCC] and we created the Australian Energy Market Commission, which is the policy maker, which is actually based in Sydney. It makes energy market policies, whereas the Australian Energy Regulator working with the Australian Competition and Consumer Commission enforces the regulations. That division between the doer and the policy maker is an important one in modern governance, in modern thinking, and that is why I argue with development control that there needs to be a shift. By nature, we elected people are advocates. People catch you in aisle 3 of a Coles supermarket and get in your ear about things, which is not a very transparent process, or developers catch you at a social function. People catch you and they are always lobbying us. As politicians, as elected people, we have to listen to them; we have no choice. We cannot say, "No, this is not the proper process, go away." We listen to them. I think it is very important to separate decision making from policy making and from politics and I have argued that here. I also point out that it is quite consistent with what the United Kingdom has done.

I have also argued that part 3A should be abolished, and parts 4 and 5 should be abolished and replaced by a single provision for development assessment, which is flexible enough to deal with things differently if they are more complex. For example, one of the problems with part 3A—which, contrary to what was said, was not introduced by me; it was introduced by my predecessor, the former Minister for Planning—is that it has the difficulty that it applies the same rules to coalmines as it might to a $15 million State-significant medical research facility. I think part 3A is too cumbersome for some developments and I think it is too inflexible for some development. It is very transparent, it is a very public process and it is particularly good for very difficult designated development—the sort of development that might be described as "designated development". It is good for coalmines, but I think it is cumbersome and difficult and confusing for smaller applications that may still be State significant.

The other point I might make on part 3A is that there has been a lot of debate about its use. However, in 2006 there were 74 part 3A determinations; in 2007 there were 143; and in 2008 there were 147. I think perhaps that the reach of part 3A was wider than the community would have expected and that probably caused some of the pushback. In any event, in any new planning Act I think that there should be one process tailored to the complexity of the application. Finally, I have had a lot to say about appeals and reviews, and I have quoted some court cases. I think that they need to be drastically changed so that people can exercise their appeal rights much more easily. That would allow an expansion of appeal rights, depending on the case. I also think we should make more use of government agencies. I think that skims through and elaborates on a couple of the points. I am sorry I might have taken more time to make an introductory statement than you might have liked me to.

CHAIR: Thank you. I note that it is stated at page 7 of your submission that often practices continued unchanged despite legislation change. How should a new Act address this problem?

Mr FRANK SARTOR: I think a lot of planning is about community expectations and the expectations of property owners. There are a lot of cultural issues involved. I think people get into a habit of doing things. Part of the difficulty with any reform in planning is that we have to shift the paradigm a bit to a different way of doing things that will actually protect the community at least as much or more, but there is always this apprehension about it. Change invariably attracts criticism. One classic case was in 1997 when construction certificates were introduced. The idea was that the development application deals with planning matters and then someone can certify that the actual design of the building conforms with the Building Code of Australia, but because of that councils then started to deal with a whole lot of building detail at the development application stage because the culture had emerged in the early 1990s that they should be involved in everything. Victoria has not done that and they are a lot better off for it.

The idea of complying codes is a way of saying, "Let's pull back the balance." If things are fully complying and they follow the rules, then they should be able to get a much quicker consent. We doubled the number of development applications we had in the space of about 10 years. They went from I think about 60,000-odd in the early 1990s to 120,000 approximately. I cannot remember the exact numbers, but we actually doubled the number of development applications we were dealing with. The effect of that was that it was clogging the system. When we did an analysis it showed that 95 per cent of all development applications were valued below a million—we are not talking about developers, we are talking about mums and dads. What I am saying is that we developed this culture of everyone wanting to be involved in everyone else's neighbourhood restorations. I am glad I do not live in Paddington because I suspect that if I wanted to change my fireplace I would have a lot of people coming through my house to have a look.

CHAIR: New South Wales has already taken reasonable steps towards the nine leading practices articulated by the Development Assessment Forum. Do we really need a new Act when the current Act with amendment has allowed these steps to be taken?

Mr FRANK SARTOR: If you look at my assessment of how much we have done in each case, for example, independent expert assessment—we have not done that, except to an extent with the Planning Assessment Commission. We have only gone a little bit of the way towards that. We have not totally separated development decisions from policy making like the British are doing, like other States are doing and like I believe we need to do. If you look, for example, at the eighth principle or leading practice, we have not really done that. We have one size fits all and we have three different sections of the Act that deal with it. It is very confusing. I think that we are headed in the right direction, we are certainly consistent with other States, but given that now we are coming up with national principles that are being worked on as we speak I think by next year it would be good to start a process to develop a new Act in New South Wales that ties it in with what other States are doing.

Queensland's thinking has changed and I have been there to see what they have been doing. Victoria's thinking has been evolving as well. I think there is developing a common understanding across all the States and the more we can be consistent with other States the more we can depoliticise the whole process. I think planning has suffered from excessive politicisation. There are issues that are really non-issues that become great ideological contests and emphasis should be on issues that genuinely affect local communities or the environment.

The Hon. MELINDA PAVEY: Thank you for agreeing to come before this Committee today. It is quite a unique situation that we have a former Minister for Planning—a Minister for Planning for three years, one month and 38 days—giving evidence before this inquiry.

Mr FRANK SARTOR: You counted.

The Hon. MELINDA PAVEY: On the idea that we need a new Act, the evidence to the Committee from all across New South Wales certainly concurs with your statement. You introduced the changes in November 2008. I have gone through your second reading speech and there is no reference to the need for a fundamental reform. I wonder why you did not mention that during your second reading speech. Or is it just that, being liberated from Cabinet, you can actually speak your mind and now be honest with the people of New South Wales?

Mr FRANK SARTOR: No, I actually gave a reference and had discussions with this Committee while the matter was being debated in Parliament for a parliamentary inquiry into a new Act.

The Hon. MELINDA PAVEY: As I understand it from Reverend the Hon. Fred Nile, the negotiations to get the bill through the upper House were dependent on you establishing this Committee. It was a deal for a deal, as I understand it.

Mr FRANK SARTOR: Yes, but I have no difficulty with that. The fact that Reverend the Hon. Fred Nile focuses my attention on these things a bit more rapidly than I might have is a good thing. I said in many forums, in many discussions at the time, that I thought there should eventually be a new Act—I said that—but a new Act is a three-year to four-year exercise. Anyone that tries to do a new Act in one year would, I think, be rightly accused of rushing, being ham-fisted and railroading people. A new Act needs a lot of public engagement and the changes made with complying development and a few other things just could not wait four

or five years. We are almost one year on from when that legislation was passed, so I think the two positions are perfectly consistent.

The Hon. MELINDA PAVEY: I note your criticism of part 3A during your introduction—an Act introduced in 2005 by Craig Knowles. It was very much a public perception that there were dollars for deals going on in the New South Wales Labor Party, and I think that was a fair assessment that was made at the time.

The Hon. CHRISTINE ROBERTSON: Point of order—

CHAIR: I think we had better stick to the issues.

Mr FRANK SARTOR: I think some people tried to create that perception and to some extent they succeeded because some mud sticks, but I actually think it is unfair.

The Hon. MELINDA PAVEY: I suppose the point is that you were planning Minister for three years and one month, yet a lot of those reforms did not come in until the very end—and there are questions about whether they actually have been reforms or not. I suppose it is a reasonable question to put to you, as former Minister for Planning: Did you have conversations with Karl Bitar or any other members of Sussex Street—

The Hon. CHRISTINE ROBERTSON: Point of order: This is well and truly outside the terms of reference of this inquiry.

CHAIR: I believe that we have to stick to the issues and to the terms of reference. No personalities in this, please. I will allow you to continue, but make sure you stick to the point.

The Hon. MELINDA PAVEY: I would like to appeal the ruling on the basis that the former Minister has opened this line of questioning about integrity of the process and I think in terms of looking towards the future of a planning system, which is our terms of reference, they are very reasonable questions.

The Hon. CHRISTINE ROBERTSON: To the point of order: Personal reflections on the witness are well outside the terms of reference. The way the Hon. Melinda Pavey has presented what she is asking about sounds quite relevant at this time, but it certainly does not involve personal reflections on the witness.

The Hon. MATTHEW MASON-COX: To the point of order: In relation to the politicisation of the process, the Hon. Frank Sartor referred to that and the fact that cocktail parties caused him difficulties in terms of conflict.

Mr FRANK SARTOR: No, I did not say that.

The Hon. CHRISTINE ROBERTSON: No, he did not.

The Hon. MATTHEW MASON-COX: You mentioned the uncomfortableness of being at cocktail parties where you have to speak to people.

CHAIR: Mr Mason-Cox, what we do not want is to get into unnecessary issues that have nothing to do with the terms of reference of this inquiry. What the witness was talking about was being approached at supermarkets and being asked questions about a particular planning issue, as I understood it. I will allow questioning to continue but I warn questioners to please stick to the terms of reference or we will move on to another member.

The Hon. MELINDA PAVEY: In regard to the terms of reference, Mr Sartor, when you introduced the Environmental Planning and Assessment Bill in 2008 you said that 80 per cent of the part 3A projects would be determined by the Planning and Assessment Commission.

Mr FRANK SARTOR: At least.

The Hon. MELINDA PAVEY: In November 2008 Kristina Keneally said the Planning and Assessment Commission would determine part 3A projects where the developer had made a donation to any political party, and this only applies to projects lodged after November 2008. As at April 2009 the Planning and Assessment Commission has determined just two projects whilst it was formed in September 2008 in your last

days as Minister. Are you concerned about the authenticity and the running of the Planning and Assessment Commission as it stands and as you intended it?

Mr FRANK SARTOR: I, as Minister, expressed a view of what I intended and I stick by that. Here I am saying that in the long run I think that is inevitable. However, I am not going to canvass the judgements made by my successor, nor am I here to talk in detail about any of that because I am actually here to talk about principles of the planning Act. If I could just talk about this issue of the role of elected people, including all those around this table, and it is particularly the case in local government. I will give you some examples of why elected people often are prejudiced before they get to a decision, and I am not putting myself in this category because I worked very hard to make sure that every decision I made was fully based on merit. But setting that aside, I, as a councillor on the city council, and many councillors are called to public meetings by communities who decide that they want to oppose a development or sometimes they are invited to meetings by applicants about a development—smart ones typically do not go.

What happens is that at these public meetings they are asked to take a position before they have properly considered all the issues. It is very difficult for an elected person to get up at a public meeting and tell the committee, "No, I haven't made up my mind." People want you to get up at the time and support them. What I am saying is that the electoral and political process that elected people operate in is inimicable to a totally transparent and independent process, which deals with only the planning issues concerned rather than the political issues. That is all I am saying, and that is why I referred to supermarkets, public meetings, cocktail parties—whatever the forums are—where people like you and people like me get lobbied by all sorts of people.

It could be a local pensioner who has a bee in his bonnet about something; it does not matter. I am simply saying that when you are dealing with development decisions, which often involve a lot of issues, a lot of money, a lot of impact on people, they should be totally transparent and should be outside the political process. It is just a belief I have; it is a conviction I always have had, which is why in the planning reforms last June there were a lot of movements in that direction. We did not go the whole way because it was just an incremental change to the current planning Act, but that is the direction I think as a society we will eventually end up in. The South Australians have done that, and I think it will not be long before all other States will do the same thing. That is all I am saying.

The Hon. MELINDA PAVEY: But those planning reforms have been undermined to a certain extent. I refer to our terms of reference that principles should guide such development, and you refer to taking out political decision-making, basically, but that part 3A has been changed again so the Minister is again involved in making decisions.

Mr FRANK SARTOR: The Minister has just not delegated as many as I might have. You will have to ask her this, but my understanding is that it is in a transition phase and she is trying to assess the nature of the system. She is a new Minister and I think she is entitled to make her own judgements about that. Every Minister has their own perspective. I was one Minister; I have got a perspective. I am arguing that in the long run it would help us all in this State if we had a less politicised and a much more predictable process, which therefore would be totally out of any suggestion of any improper influence, whether it be being lobbied by people, often locals, or by developers or by anybody else. I think everyone would agree we just want to get rid of the politics and all the sort of innuendo over this and do it properly; correct?

The Hon. MATTHEW MASON-COX: Just on that, do you think it is appropriate that in relation to part 3A applications before November 2008 that the Minister continues to consider those where there are political donations?

Mr FRANK SARTOR: I do not want to comment on that because there is a principle in planning that you tend not to change things retrospectively. So with some applications that were lodged and processed under a certain system it is not unusual for someone to continue to see them out. They will always have a grandfathering provision. Grandfathering provisions are very common in planning matters. Even when you change a State policy or an LEP, whatever came before it you do not change, even though it has not gone the full process. I would say that what she has done is not inconsistent with the general legal approach you take to planning matters.

The Hon. MATTHEW MASON-COX: Is that something that if you were in her shoes you would have done?

The Hon. CHRISTINE ROBERTSON: Which term of reference are you referring to?

Mr FRANK SARTOR: I am not in her shoes.

The Hon. CHRISTINE ROBERTSON: Point of order: I would like to know which term of reference the Hon. Matthew Mason-Cox is referring to.

The Hon. MATTHEW MASON-COX: It is 1A, the principles that should guide such development, and the question is pursuing the issue of transparency and accountability of Ministers who make these very important decisions.

The Hon. CHRISTINE ROBERTSON: To the point of order: I perceive that the witness has already answered this question very well without further imposing individual nitty bits onto it.

Mr FRANK SARTOR: Mr Chair, I come here in good faith to talk about the future of planning. I am not here to throw mud or criticism at anybody.

CHAIR: If the witness is prepared to answer that question any further I will allow him to do so. If not, we will have another question asked.

The Hon. MATTHEW MASON-COX: I just wanted to explore that. I think Mr Sartor has answered the question. If I could ask you in relation to your comment about it taking three to four years for a new Act and that you think that is really where we should be?

Mr FRANK SARTOR: Where we should be going.

The Hon. MATTHEW MASON-COX: Where we should be going, yes. You were Minister for over three years and you came from a planning background as a Lord Mayor of Sydney, so you have probably forgotten more about planning than most of us have had the opportunity to learn. Why did you not strike for the change to a new Act when you became planning Minister, rather than at the back end of your term as planning Minister?

Mr FRANK SARTOR: Life is a journey and on that journey you learn. The greatest gift human beings have is that they learn things, and over the three-year period I gained a lot of experience in dealing with the issues that came before me, and my opinion matured. I formed the view there probably needs to be a new Act around about the time we started the reform process, but I felt we had to do it in two stages. We needed some short-term reforms because there was a serious backlog we just had to deal with and the Opposition would rightly have criticised us if we did nothing about it. But I also formed the view that there was a case in the longer term for a new Act, but I also knew that the Federal processes were still quite in their infancy and that now there is more impetus at Federal level it will be good if we have got a new Act that it is consistent with the national planning principles. They are not totally finalised yet. As I have indicated in my submission, there are various projects happening—a lot of them will be finished this year or next year—that will then give all the States clarity as to what the national framework will look like. That is why moving for a new Act earlier would have been a waste of time.

The Hon. MATTHEW MASON-COX: When you came to Parliament you were familiar with part 3A quite intimately, were you not?

Mr FRANK SARTOR: But I was not planning Minister. When I came to Parliament part 3A had not been enacted.

The Hon. MATTHEW MASON-COX: Sorry. Well before you were planning Minister—

Mr FRANK SARTOR: About a month before.

The Hon. MATTHEW MASON-COX: What I am saying to you is that you would have been aware of the problems with part 3A when you became planning Minister, so far as transparency and accountability were concerned, would you not?

Mr FRANK SARTOR: No. Let us get the chronology right, firstly. Part 3A was enacted, I think, in June 2005. I became planning Minister in August 2005. The major projects State environmental planning policy, which listed all the matters to be dealt with as State significant projects was, I think, gazetted in June or July 2005 by Minister Knowles. I think part 3A is actually a very robust process; it is much more transparent than part 4. All I have said is that it is inflexible for some of the less complex developments. What part 3A does is create, first, a more transparent process and, second, it switches off other departments stopping something. That is what a lot of people do not like because we had built up a situation where up to 10 or 12 other departments could refuse an application—you would get an approval but it is not an approval because you would then have to go to several other departments to get a further approval. Part 3A allowed for everything to be brought together.

But in terms of transparency, under part 4 you lodge an application, it gets exhibited and then the council or the consent authority sits down and makes a decision. Under part 3A firstly you indicate you want to do a project, the director general issues you with the director general's requirements but is required to consult other departments to look at all the issues relevant to that—which is why I say it is good for conflict projects—then, when you have got the director general's requirements finalised, the applicant then lodges an environmental assessment report, which will take months to prepare because they have got to respond to all the issues that the director general tells them they have got to respond to, which are based on advice the director general has received from the Department of the Environment and various other government departments.

It is a much more robust process. You need to understand this because it is a misconception. They lodge an environmental assessment report and then the department has the right to say whether it is adequate or not. So even before it goes any further the department can say, "Go back. It is not adequate." Once they say it is adequate then it goes on public exhibition, then you receive community input and then all the submissions go back to the applicant, or a summary of them goes back to the applicant, so that the applicant can respond to the submissions. If the department feels there have to be amendments then there has to be a preferred project report. If the Minister or the director general feels there needs to be an inquiry then there is an inquiry. It is a very complex process.

My point simply is that a process that is so long and so complicated might be fine for a desalination plant, might be fine for a major coalmine like Anvil Hill, but it is crazy for a building at Darlinghurst that is $20 million for the Garvan. It is absolutely crazy. All I am saying is that it is a bit too much of a sledgehammer for small things, but it is actually a very good process for projects that have environmental risk or other risks in terms of land use. It is actually a very good process and I do not think anyone can objectively say it is bad. To me it is just too inflexible.

The Hon. MATTHEW MASON-COX: Is there not a perception that in fact it is like putting the project in the Minister's control and he will make these decisions outside, if you like, the local community's interest? Is there not a perception of part 3A—

Mr FRANK SARTOR: If I could just relay to you a bit of information here. Ministerial intervention and determination of developing applications have been a feature of the planning system going back probably to the early twentieth century but certainly to the 1960s with section 342V (3) of the Local Government Act, section 101 of the Environmental Planning and Assessment Act since 1980 and, of course, State significant developments in 1997. Part 3A was only introduced in 2005. Government intervention and ministerial intervention have been around for at least half a century—probably a lot more—and they often happened.

The Hon. MATTHEW MASON-COX: That is what we want to look at: What is the best model for the future? That is a very important consideration for this Committee. So looking to the future you have said that you support the idea that part 3A and part 4, et cetera, should be reviewed and we separate particularly the decision-making from the policy work and implementation of decisions, which is part of the problem with the current Act. Is that a fair summation?

Mr FRANK SARTOR: I say that for development assessments as opposed to land-use decisions, which always have to have a government involvement, it is better to have an independent body do it. But my view is that you have one section of the Act but it has enough flexibility so you do not treat a coalmine in the same way you treat a $20 million building in the middle of Sydney, for example, because there are totally different issues and processes required. I think anyone would logically agree with that. There are some issues where there are massive environmental consequences—threatened native vegetation, threatened species—and there are urban sites which are really all about traffic and local amenity; they do not really go to fundamental

environmental questions. I am simply saying that there ought to be a new model of dealing with it that has, on the one hand, the more extreme assessments that might be more 3A-like but, on the other hand, simpler assessments that relate to the degree of risk or environmental risk or local amenity risk that might be associated with a project. That is what I am simply saying.

The Hon. MATTHEW MASON-COX: There are also the perception issues.

Mr FRANK SARTOR: Your point is well made. There is a perception that part 3A is overused. I quoted the figures earlier. In fact, it is not used in as many development decisions as people think, because whilst the State Government through the Minister or department has probably made 300 decisions a year in the last few years, a lot of them were part 4, they were not part 3A. The part 3A are less than that. So there is that perception as well. Under the model I am advocating, I am advocating that at State level the Planning Commission make all the development decisions but if you depoliticise local government and let them appoint their own panels, provided they are accredited experts—they are not their mates down the street, not some Liberal Party branch member, not some other dodgy branch member—the Labor Party has no dodgy branch members, only the Liberal Party—

The Hon. MELINDA PAVEY: Not in Wollongong, is there?

Mr FRANK SARTOR: No. We could make them all Christian Democrats, I suppose, but that would make them all pretty, kind of—

Reverend the Hon. FRED NILE: Hopefully.

Mr FRANK SARTOR: But they have factions too, I hear. What I am simply saying is the changes last June were about saying, "We have got State significant, we have got regional projects and we want to shift some of those back." That is why we came up with the concept of joint regional panels. If you had the system I am talking about, you probably only need two tiers—the State system with the Planning Commission and then local panels appointed by the councils themselves so they have a bit more ownership, but not elected people. They have to be independent, accredited experts who, subject to certain criteria—you would probably want at least one planner on a panel; you might want at least one architect, whatever, depending on the nature of the development. All I am saying is that there is scope for shifting some of that back to the local level, provided that it is not politicised. The problem is the politicisation of things. People like to say that it is about developer donations. That is only one subset of politicisation. There are all sorts of partial behaviour that has nothing to do with donations.

The Hon. MATTHEW MASON-COX: Is not that subset of politicisation exactly what made you uncomfortable as planning Minister.

Mr FRANK SARTOR: No. It takes a lot to make me uncomfortable.

CHAIR: The next questions will be from Reverend the Hon. Fred Nile.

The Hon. MATTHEW MASON-COX: I had a few more questions.

CHAIR: We may come back to you.

Reverend the Hon. FRED NILE: Thank you, Mr Sartor, for attending as a witness. Just following up your comments a moment ago about the regional panels, you have recommended that the membership be made up of people drawn from a State accredited list of experts. You are not very keen on having a council representative. We have had a lot of criticism from councils that they have been cut out of the process. How can councils be involved?

Mr FRANK SARTOR: If you were going to remove council, I would just let the council appoint the panel so they are comfortable, so long as they are accredited. They cannot just be, as I said, Joe Blow, my cousin, or the Chairman's cousin, or your cousin; they have got to be genuine people who are on a list that everyone thinks is reasonable. The South Australians could do that. I am not sure whether they have the accredited State list idea but I think it is important that these people have a certain standard that the State has accredited and said, "These are competent people who could sit on panels." I am saying that if councils then appoint their own panels they will be more accepting of the process than if you just give them two or three token

councillors. I am talking here about depoliticising, so councillors are off; experts are in but they appoint the experts. Then I am saying we probably should expand third party appeal rights so that if these panels approve something outside the planning controls, it is easier to get a review of it, provided the appeals are low cost and quick, and not subject to lawyers at 50 paces.

Reverend the Hon. FRED NILE: In another recommendation you have outlined a role for a State Coordinator General.

Mr FRANK SARTOR: Under the Nation Building Act there is one now. There are two ways of dealing with logjams where you have 12 departments all trying to stop something for their own very narrow reasons. The problem with a lot of these decisions is they go down the line to some bureaucrat who might be either very conservative or an ideologue like a right-wing Liberal Party ideologue, one of those extreme types.

The Hon. MELINDA PAVEY: They are opening a lot of lovely doors for us, Frank.

Mr FRANK SARTOR: Sorry, Chairman. One way to do it is a 3A process where the Minister for Planning can overrule all these different opinions. In reality, that did not happen. The department actually came to an agreement with these people. The other way to deal with it is to say that where there is a dispute between departments, a Coordinator General can arbitrate. In other words, we cannot afford to have something sitting around for years because there is a squabble between two departments. You need someone to say, "Right, I am going to arbitrate. That's the decision." That is all I am saying.

If you look at the British model, the reason why they introduced their new Act recently was because of the dispute over one of the terminals at the airport, which took about six years to get planning approval. That is what brought that on. You just have to stop agencies trying to hijack the system over one small issue and the idea of a Coordinator General, whether that person is also the head of planning or not does not matter, but I think to have clout probably in the Premier's Department who can actually step in and say, "The Department of Environment and Climate Change wants this, so and so wants this, I will make a decision, let us move on." I think you need a way to break the deadlock. You need to be able to break deadlocks.

Reverend the Hon. FRED NILE: In your submission you put a big emphasis upon the Commonwealth involvement. You have talked about national best practice principles and so on whereas up to now New South Wales has developed its own environmental planning laws. Do you feel we would lose some of the best practices in this State or are you suggesting we put aside our own initiatives and wait for the Commonwealth?

Mr FRANK SARTOR: No. I think it is two-part. There should be some national approaches and principles that we can all agree to, but then, of course, every State will have their own control. We might decide in a particular urban setting that because it is a heritage area we will control. That is up to us. It is never going to be Commonwealth. What I am saying is that if there is a common language across the country—a bit like what we tried to do with LEPs—common definitions, a common approach in general terms, that does not stop the States having their own controls, having different emphasis and saying, "This region we are going to control, limit growth and in this region we are going to promote growth."

I do not think I mean that at all. It is a very good point but I am not meaning that we stifle our ability to do what we want. I am simply saying that there are some aspects of it that it would be good if everyone agreed, because once there is a national scheme under the Council of Australian Governments [COAG] it tends to depoliticise the process, a bit like we have done with company law and the defamation law. Once there is a national scheme, then you are less vulnerable to political influence that you will end up with these complicated amendments that we have to prepare and then sometimes the upper House, in its infinite wisdom, makes them even more complicated—sometimes but that is very rare, I know. It is the exception.

The Hon. CHRISTINE ROBERTSON: That is our job.

Reverend the Hon. FRED NILE: Another recommendation in your submission states that third party appeal rights should be extended. The impression I have had is that the policy had been to try to get rid of third party appeal rights because they tend to lead to a drawn-out court cases and so on—

Mr FRANK SARTOR: Yes.

Reverend the Hon. FRED NILE: —and the project cannot proceed.

Mr FRANK SARTOR: At the State level when you have senior people in the Planning Commission making decisions, particularly if they have had public hearings, the strong argument is that a court will not do a better merit decision than they can do. However, I am talking here particularly about local decisions. If you have an independent panel making a decision, the community will feel that they cannot appeal to their elected representatives so they will feel a little bit disenfranchised. What I am saying, like we have done in the bill passed last year, we did actually extend third party appeal rights where a decision of council exceeded some development standards by more than 25 per cent; they gave them 25 per cent greater height or 25 per cent greater FSR rights, then there was a right for a third party appeal. All I am saying is if we take it away from elected councillors and we give it to independent panels, even though they are appointed by the council, some in the community may feel that they cannot appeal to anyone because there is just this body. I am saying there might be an argument in extending third party appeal rights where there is a breach of the standard, not where they conform.

I am not talking about if the height is six storeys and it is under six; I am not arguing that. I am simply saying where they go outside the rules, there is a public policy argument the community are entitled to review. I am not again talking about anyone in the community; I am talking about people who have made a submission, who live fairly close to the site concerned—and there would be different rules, depending on the size of the development—and where there has been a breach of a standard. Under the system I am advocating they would go to the court and they would say, "I believe there has been a breach of a standard; I want to appeal." The court would make an initial assessment of whether there has been a breach of a standard. If there has been, they have a third party appeal right, which would be dealt with within a month or so by a competent independent assessor and that person would review the decision.

It is just a way of saying: If you want to depoliticise, you have to make sure that bureaucracies do not get out of control as well, and there are some appeal rights. They are there now for legal matters; they are there now if there is a breach of standard by 25 per cent. I am saying maybe that standard breach ought to be lowered to zero, but only if you reform the appeal system. The current appeal system, as I have pointed out in my submission, favours the big applicants. It is no good for the little people because they come into my electorate office all the time complaining. They have often got a case but they will not go to court. They just cannot afford the $30,000 it takes. They just will not do it, which is why, I remember, we set up planning arbitrators for the very small stuff, thanks to your support.

Reverend the Hon. FRED NILE: In your submission you also support the setting up of growth centre corporations. As you probably know the ones that were in existence were abolished. What is your opinion?

Mr FRANK SARTOR: Yes, I know. I think what I have said here is the right way to go. Victorians are using them; Queenslanders not so much. The Western Australians and Victorians are using them a lot. Victoria has the growth area corporations on the periphery of Melbourne. I just think the planning department is a regulator. You need other bodies that are kind of facilitators, that work with the private sector and I think that growth centre corporations or Landcom are actually quite a useful vehicle; they can often get things done that the planning department should not be doing or is not geared to do. The planning department needs to step back and be impartial.

A growth centre corporation can actually be advocating a development, and that is why I think they are important. I think you need to do both because there are parts of greater Sydney where there are complicated issues. Take for example Green Square. Without Landcom that would not have happened. Green Square is happening because Landcom unpicked all the complexities, moved government departments and found them another site. The same with Little Bay, the old hospital, Landcom, together with a few private sector partners, were able to do that. I think that these development agencies are an important tool that governments need to unlock complex and difficult sites or greenfield sites. That is my view.

The current Minister has a different view. I respect that view; I won't die in a ditch about that view. However, if we are setting up a new system, my argument is that they are a really important arm, particularly when you have to merge infrastructure with land use. It makes real sense to get a government agency there, on the ground, so that they can cut through all the—because developers would always put in ambit claims. You actually need your own agency on the ground to tell you what the truth is.

Reverend the Hon. FRED NILE: I agree with you. I see great value in them.

Mr FRANK SARTOR: Yes, I think they are a good idea.

The Hon. CHRISTINE ROBERTSON: Just picking up on what Reverend the Hon. Fred Nile said about the inquisitional versus adversarial role of the process. During our hearings to date we have certainly met a lot of people who are structured in the adversarial role. Many of the local government bodies operate in protection from adversarial or otherwise. It seems that many of the persons and developers involved in the planning process actually perceive that to be the norm. I refer to your suggestion about moving from that process to an inquisitional appeal type of role that is more structured and less adversarial—how would you propose the cultural changes would occur?

Mr FRANK SARTOR: What you do for a start, you could either abolish the court or you could keep the court. I am not arguing the abolition of the court but if you keep the court, you make it basically two divisions. I know it is there now that you actually have a division that is probably not even called the court; it would be the planning arbitration division of the court. If you look at the two judgements I quoted, one was Peter McClellan, who was Chief Judge of the Land and Environment Court; he may now be the Chief Judge of the Appeal Court—any of you who are lawyers would probably know that. I quoted his case and I quoted the Tobias case. Tobias took the view that it was adversarial. McClellan argued that in fact the original Act did not intend it to be adversarial but I think once something gets into a court and lawyers get involved, it will become adversarial because that is what they are taught to do.

The difference in the model I am proposing is similar to what we did with the planning arbitrators in the bill. Let us say it is a small application. You have a concern; you want it reviewed, a merit review or a merit appeal. You go to the court and you say, "I am unhappy. I have been refused by the council; they have taken too long." What the court does, it calls for papers, it gets in all the parties and it basically reviews everything. It does not mean that people cannot argue their case. It simply means that it is driven by the commissioner, not by the adversarial process. It is not about subpoenaing of documents and inspection of documents. It is actually driven by the commissioner. The commissioner has to make up his or her mind. When you consider some of the very inexperienced councillors who end up getting elected to council, they sit there making these decisions about major development and they do not even know how to read plans.

An experienced commissioner, who has been in planning for years, who is an expert, who has got experience of the system, can cut through that very quickly. When I chaired the Central Sydney Planning Committee for 11½ years we had on that committee the Director-General of Planning; Sue Holliday often came to meetings and sometimes Gabrielle when she was around before she left the department. They had two outside experts. We had a total of seven. There was myself and two other councillors and we would often have these kinds of sessions, which were inquisitorial. We would get an army of objectors and you get the developer and his architects and whatever. It was kind of an interactive system where you actually asked them questions, and we all asked them questions, "Developer, why wouldn't you cut the height of this building? Why wouldn't you do X?" It was also a lot of fun. I actually had a ball because we used to have fun. Characters would come before you and you could have a good time. The fact is we dealt with complex developments in central Sydney. We approved $10 billion worth of development over those 11 years and, I have to say, the community was quite relaxed about it.

The Hon. MELINDA PAVEY: And you had fun.

Mr FRANK SARTOR: We had fun. My vote kept going up. Even Kathryn Greiner agreed with some of it. What I am saying is you can do these things without the palaver of formality and expensive counsel. You simply address the issue. You look at the papers. It has been to council. There are documents. You say what are the issues, and there are usually a few issues. You sit down and you resolve it. That does not mean the developer cannot have people there saying X, Y, Z, but they are not running the agenda of the court, the hearings. You are running it.

Reverend the Hon. FRED NILE: Should a new Act, then, have some aspect of reforming the Land and Environment Court?

Mr FRANK SARTOR: Absolutely. It would cut costs enormously. Victorians allow third party appeals, by the way. Queenslanders do to a large extent as well. They get about 3,500 a year, which is significant. That is why you have to have it quick and low cost so people could have rights.

The Hon. CHRISTINE ROBERTSON: Have the right to do it?

Mr FRANK SARTOR: Have a right to do it, but it has to be gone in a month. If everyone comes to know that—you cannot have an expensive litigation that will go on for six months. There will always be legal appeals. You will not stop those, and I am not advocating getting rid of the adversarial system, because you are buying into jurisprudential issues that are way beyond me, but I know with merit matters you can do that. I know Chief Judge McClelland thinks you can do them and various others think you can do them. I know Judge Preston is trying to move in that direction, but I think there is a cultural problem.

The Hon. CHRISTINE ROBERTSON: Yes, a cultural problem out there as well as—

Mr FRANK SARTOR: In the court as well. It suits lawyers. They get a lot more work under the adversarial system.

The Hon. CHRISTINE ROBERTSON: My next question relates to this issue of strategic regional planning. During the hearing process so far we have heard the most amazing definitions of a region for planning purposes. One definition related to a major road, which I thought was very interesting. Some related to geography, some related to water catchment areas and very rarely they related to demography itself. There seems to be an incredible amount of politics involved in defining what is a region for a regional strategic planning process. If there should be a statutory recognition of regional planning processes, how do we deal across the State with this amazing new political brawl about what is a region?

Mr FRANK SARTOR: I think your question is a really good one. It is a bit like council boundaries. You can argue any shape almost. Joh Bjelke-Petersen used to do the same with electoral boundaries but, at the end of the day, there is nothing like geography and catchments to define a region. I think the people of the Central Coast see themselves as a separate region. I think the people of the lower Hunter see themselves as a separate region. I think the people of the Illawarra see themselves as a separate region. To me, they are the logical regions you are talking about. In Sydney you have the greater Sydney region but you also have six regions within greater Sydney as well, like subregions, and they are more linked because of the employment patterns of greater Sydney.

I think it is easier for the Central Coast, the Hunter, probably the far North Coast. To me, the priority for this regional approach really belongs where there is significant growth. It is where there is growth you have these infrastructure pressures. Where there is not population growth, like in some parts of western New South Wales, whilst it is okay to define them as a region, there is not so much of the case for brand-new expanded infrastructure simply because there is no population growth and it is harder to argue. Replacing infrastructure is reasonable but growing it and making it bigger is probably less justified.

Everything you do, whether you are in a private company or government, has to be broken down into manageable bits. By having regional strategies it is breaking down the State growth problem to manageable areas, to bits where you can define the parameters, define the key transport routes. Remember, the most important bit of infrastructure that goes with land use is transport. Transport leads land use. When you build the M7, land values go up all round the M7. If you define significant regions like the Central Coast or Illawarra, whatever, with that goes the transport implications and then the social infrastructure, hospitals, schools and so on. All I am saying is at that strategic level is when we should be saying here is a region, we expect it to grow by this much, this is what infrastructure will be provided over the next 20 years. Of course, some of that will come out of levies and some will not. I think that is better than rezoning a few things and then the council decides to do a section 94 plan and it goes off on a frolic or we decide at a State level that we have to change priorities. We need to be a bit truer to the regions. We need to decide what infrastructure has to be and stick to it.

The Hon. CHRISTINE ROBERTSON: I think none of the Committee, after what we have heard, would argue that the aims of regional planning processes are not important. As a Country Labor person I get somewhat concerned that western New South Wales can be perceived as western New South Wales, because within western New South Wales—and we have had lots of information in relation to this in our hearing process—there are incredibly different structures, and using catchments as a definition also creates incredible problems for the central west area where there are amalgamations of local government areas that belong to four or five catchments. So, this debate requires a lot of energy, and I am wondering, rather than have the Commonwealth plonk onto us what a regional definition is or how we can divide the State, what processes should we put in place—understanding that the Hunter, the Illawarra, et cetera, are easy enough to define

because they are in catchments and they have more sociodemographic similarities—for the more difficult parts of the State, what sort of work should go into working through how a region is defined?

Mr FRANK SARTOR: There will be some degree of arbitrariness, and it will not always be water catchments because they do not always work. The first thing I think is that a region for planning purposes should be the same as a region for State development purposes or the same as for the Department of Premier and Cabinet. In other words, as much as possible the regions that various State departments define should be the same, with the possible exception of health which is a much more complex problem, because you have specialty issues. Even though they are arbitrary, if they were defined so they apply to all agencies and all departments it starts to help. It is about tying the provision of infrastructure and services to regions which I call manageable bits. You could not have just one region for western New South Wales because it is just not manageable. You have to make sense of it. The approach to regions in western New South Wales may be different like it is, for example, for local government. The changes one would make in one's dreams in coastal New South Wales or in Sydney, you would never make in the country, because they would not work.

The Hon. MATTHEW MASON-COX: That is how this Government treats western New South Wales.

The Hon. CHRISTINE ROBERTSON: No, that is not my question. The question is how to resolve this. We are looking forward to the future.

Mr FRANK SARTOR: I think what you have raised is a good question, but that does not mean we should not have more of a regional focus. If you do not have a regional focus you cannot tie together infrastructure and planning. It is not just local focus, because the local boundaries are often so small, petty and parochial you have to have a regional focus, because it is about transport. When you come to the health services it is regional. It is local but it is also regional.

The Hon. MELINDA PAVEY: Mr Sartor, I refer to your maturing. You talked about your views matured.

Mr FRANK SARTOR: While I was planning Minister.

The Hon. MELINDA PAVEY: I also refer to your evidence when you were Mayor and how—

The Hon. CHRISTINE ROBERTSON: Is this a personal question?

CHAIR: Order!

The Hon. MELINDA PAVEY: It is about planning. I refer to the changes that you ultimately made in 2008, the Act you brought before Parliament. Was there any one moment that led to that need for change? Was it during the Wollongong crisis that you—

CHAIR: I am going to stop you there. You can rephrase the question or we will move on to Reverend the Hon. Fred Nile, whichever you prefer.

The Hon. MELINDA PAVEY: I would like to get some information in relation to what was the moment you decided to bring in the Act.

Mr FRANK SARTOR: There was not one moment. What I did after the election, David Richmond, the Director General of Planning, and I did a tour of other capital cities and looked at what they were doing. That was where the genesis of the Act came from. We visited other States. We thought they were doing some things better; we thought they were doing some things worse. We said let us just look at what we should do, and what we did was in the way the whole national framework is moving. We also thought about how much of this can we do in the short term and we basically put a boundary around it. We thought we had to clean up the backlog of very small development applications because they were just clogging the system. There was a big emphasis on that. We had to increase confidence in certifiers and the certification process, so we toughened the laws there. We had to clean up how small local environmental plans were done with the new gateways and the new part 3. That was a big change, and we had to start the process of depoliticising development applications. They were the three big moves in what we did.

To this day I think that was still the right strategy. It would have been ridiculous to sit on our hands for four years while the new Act was prepared. We looked at what we needed to do. They were being done. We knew they were in the same direction as other States, and I think now is the time, in the next year or so, for the Government to start a process to go forward. It is up to the Committee to recommend what it will and for the Government to consider that. I am quite passionate about this. I have been involved in planning for four decades. I have thought a lot about it. I discussed it with senior people in the industry, senior lawyers and other people, and there is a fair bit of support for the sorts of things I am talking about.

Reverend the Hon. FRED NILE: Following up a related question on development, there is some controversy over the power of councils to requisition land compulsorily that they could then on sell to developers. Do you have any solution on how that should be handled?

Mr FRANK SARTOR: I think there has been some legislation dealt with. The issue there is that public authorities have to be able to restructure town centres and restructure things. They need to have a fair bit of flexibility but there need to be clear rules and processes so these are not done for opportunistic reasons; they have to be done for genuine public policy reasons. When you are interfering with someone's land it is important there is a good public policy reason to do so. I think some legislation has been proposed that allows those processes to continue.

I was a bit surprised by the High Court decision. The Supreme Court held by three to nil that Parramatta council was within its rights. The Land and Environment Court held it was not, and the High Court has gone with the Land and Environment Court, which is highly unusual. Councils have to have that sort of flexibility, provided it is not just to make money or some other purpose. It has to be for some proper public purpose. Maybe it needs a bit more definition so we are clear what the rights are. Good planning is not just putting controls on a map; it is also being able to reshape places. You never would have had Paris without a little bit of State intervention by certain, in those days, autocratic people. These days it is much more democratic people.

CHAIR: Mr Sartor, on many occasions, particularly in rural areas—as you know we have travelled to rural and regional areas—a lot of the councils have been saying to us that one size does not fit all.

Mr FRANK SARTOR: Yes.

CHAIR: You touched on the subject earlier. Could you elaborate on that please?

Mr FRANK SARTOR: Yes. In rural areas in particular we introduced a State policy on agricultural land because before that we were getting a lot of pushback about subdivisions, and so on. In the State policy we introduced we allowed for an appeal process so if there was a situation where in a particular township or whatever the rule was too rigid and did not make sense and stopped good and healthy economic activity happening, there could be flexibility. So, we did that.

It is a very good question. The difficulty with land use planning, if I have to say this, the difference between regulating land and regulating butter or regulating tea or regulating something else is that you can always keep producing butter and tea but land is a finite resource and it is extremely tied to environmental values which people care about and heritage values which people care about. The problem with allowing one person to do something, even though in that particular instance it is okay, is that it sets a precedent; once you allow for one property owner you tend to have to allow for others. So that is the thing you have to balance—the idea of being consistent and not setting precedents with the idea of being flexible so that in some settings you allow people more choices.

The idea of the new zones under the standard LEP was that they would be more flexible zones so people had more choices. I think it is a really good question. It is particularly difficult in country towns. I had an experience in Inverell I think it was where the mayor and Torbay, the local member, and the general manager lobbied me about a development for I think a supermarket and car park which was at the back of the main street but still adjoining the main street. My department was so against it, and I drove past it with the local member and mayor and so on and I could not see why we were opposing it. What the department was doing there was it was trying to follow the same rules as it followed everywhere else. If we allowed that to happen there it might change the settlement patterns, and I said, "If Inverell is going to get a lot more investments like this in the future it will have a good problem because it'll never have that sort of problem. It's not a place that is under a lot of growth pressure and we should therefore be more flexible in that circumstance."

So I think there is a strong argument for more flexibility in country areas because it is not as if you set the precedents that you would set in a high-pressure part of Sydney where the moment you allow it for each you have to allow it for everyone else. In some of those towns it will not matter because it is not as though they are under a lot of growth pressure. So, yes, you are quite right. How to fix it is difficult. It is just to have better crafted planning controls and making sure the local councils in those country areas get a bit more flexibility in what they can do.

The Hon. MELINDA PAVEY: And more strength at the regional office level?

Mr FRANK SARTOR: No, because the regional office levels end up becoming fiefdoms; walled fiefdoms with their own little agendas that I often found were just a headache.

The Hon. MELINDA PAVEY: So one fiefdom in Sydney is better than more?

Mr FRANK SARTOR: No, not at all. That is why you have to have good review and appeal rights. You end up having low-level decision making, and sometimes that is good—it can be quite good—and sometimes it is bad. You have to understand what the implications of a decision are for the system as a whole.

The Hon. MELINDA PAVEY: That is why regional offices—one of the arguments for them from witnesses—

Mr FRANK SARTOR: My experience is that they do not always work that well.

CHAIR: If we have any further questions to give to you, could you please respond to those questions within 21 days?

Mr FRANK SARTOR: Within 21 days?

CHAIR: Yes.

Mr FRANK SARTOR: I think I made reference, maybe it was an earlier draft of my submission, to this road map that the Development Assessment Forum had done back in 2004. It might be useful. It is just a little brochure—a few people wanted me to circulate a copy of it. A lot of that stuff is in the submission but if I could table it and you could circulate it.

CHAIR: Yes.

Mr FRANK SARTOR: It just relates to some of the stuff in the submission.

CHAIR: Thank you.

(The witness withdrew)

ALISON CLAIRE McLAREN, President, Western Sydney Regional Organisation of Councils, PO Box 63, Blacktown, and

SHARON RUTH FINGLAND, Assistant Director, Western Sydney Regional Organisation of Councils, PO Box 63, Blacktown, affirmed and examined:

CHAIR: Welcome, Ms McLaren and Mrs Fingland, and thank you for your attendance at this inquiry this morning. I point out to you that if you consider at any stage certain evidence you wish to give or documents you wish to tender should be seen or heard only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate it if your responses were sent to the Committee within 21 days from the date on which the questions are forwarded to you. Before the Committee commences with questions, would you like to make a brief opening statement?

Ms McLAREN: I would like to. Members of the Committee, I have the great privilege of representing 1.7 million people in western Sydney. The Western Sydney Regional Organisation of Councils Ltd [WSROC] takes in 11 member councils, Auburn being the most easterly, the Blue Mountains the most westerly, The Hills and Hawkesbury to the north and Fairfield and Liverpool to the south, with Holroyd, Blacktown, Penrith and Parramatta in between. I represent an incredibly diverse area, a wonderful area but also an area that unfortunately suffers from severe disadvantage. One of the big problems to be faced in western Sydney is that the area has been a victim to poor planning over a long period of time. Some of the things that we would like to raise with you today that we care very deeply about are the effects on communities of poor planning and why changes to the planning Act are essential to ensure that the people of western Sydney instead of going backwards, like they did last time in the SEIFA [Socio-Economic Indexes for Areas]—socioeconomic index of disadvantage—can move forward. That is all I would like to say to start with.

CHAIR: Would you like to add anything, Mrs Fingland?

Mrs FINGLAND: I would like to stress our recommendations to the Committee. Having consulted with our councils in the region, there is a strong feeling that it would be an improvement to redefine the planning processes in a new planning Act, but the new planning Act should take a strategic approach based on triple bottom-line principles for long-term sustainability rather than just focus on development control. We believe there is a need for encouragement rather than just prohibition. The planning rules should be based on evidence and recognising contemporary environmental concerns such as climate change and sustainability.

The State regional and local plan should be retained and streamlined in a planning hierarchy that recognises strategic policy directions. Greater emphasis should be given to social equity issues, hence some of Alison's comments. Community consultation and participation should be fundamental components of the planning system. Local government should be given greater recognition in having a primary role in planning for the local area. There should be proper integration of all facets of planning at the State level. The State environmental planning policy 10—SEPP 10—needs further refinement, and micromanagement and development control should not be undertaken at the Department of Planning level.

CHAIR: I will start with the questions. Your submission at page 2 argues that the Environmental Planning and Assessment Act needs to be replaced entirely with new legislation that takes a holistic view of regulating land use in New South Wales. Why do you believe that is necessary? Can you expand on how such a new holistic planning framework should operate?

Ms McLAREN: The way that the planning Act is now means there are several inconsistencies and irregularities. Recent changes to the planning Act mean that planning control and accountability have been removed from local representatives, people who know their local community and have their best interests at heart and are in a position to determine what is best for their local area, but more importantly are accountable to the people in that community. By removing those particular powers from councils, you are disenfranchising the community. That is one aspect that needs to be changed. The other thing that greatly concerns me and a number of the WSROC councils is the one-size-fits-all model.

I am a representative on the Blue Mountains City Council, which is a very unique area. To say that we should have similar planning controls to Penrith or Blacktown, which are very, very different, is ridiculous. By doing that you are putting at risk our world heritage national park, whereas at the same time Penrith council should be allowed to increase its development. Medium-density housing is appropriate in that community and is

wanted by members of that community. By doing the one-size-fits-all model you are not taking into account what is really important to local communities. Moving it to a centralised planning system is removing that local focus, that local need focusing on the community, which is really important.

Mrs FINGLAND: When the Environmental Planning and Assessment Act came out it was seen to be a very fine piece of legislation and very suitable at that time—and there are a lot of fundamental principles in it that we would still agree with, such as the consultation aspects for the community and aspects like that. The world has moved on a bit since 1979 and there are major issues now such as global warming and climate change. A whole lot more research has been done into social inequity, for example, social planning principles, social impact, in addition to the economic costs and the world global prices that we are facing at the moment. We think it is very appropriate to have a rethink of it, to keep some of the better principles but to think about these broader terms that are so important for all communities at whatever level you are talking about.

CHAIR: Your submission at page 4 states:

> WSROC has been alerted to inconsistencies in the planning framework with regard to control of development of flood-prone land.

Can you outline these inconsistencies? What is required to remedy the situation?

Mrs FINGLAND: This is very much an issue for Penrith council, one of our councils. I believe they have also appeared before this inquiry and perhaps have gone into a little more detail. We are just reporting that they have alerted us to the inconsistencies that they believe that there is a difficulty for councils that have large floodplain areas. A lot of councils, not just Penrith, but also others, such as councils associated with Georges River, have also got together and worked quite extensively. Fairfield, Liverpool and Bankstown councils, for example, have worked on the Georges River flood management study. They have had a lot of consultation in terms of this, but they are finding by conforming to the requirements of the New South Wales floodplain development manuals they are carrying out their duty of care, which is required under the New South Wales Local Government Act, but as a result of the amendments introduced by the Department of Planning in 2007 a number of uncertainties have arisen. The two Acts seem to be working slightly differently from each other and need to be reconciled.

The Hon. MELINDA PAVEY: Following on from the issue of flood-prone land are environmental considerations. You say that climate change is a key issue that needs to be addressed in any review of the Environmental Planning and Assessment Act. Can you suggest key ways in which it should be addressed?

Ms McLAREN: Certainly. One of the big issues that we face in western Sydney is the urban heat phenomenon. That is because there is too much concrete, too much high-density developments in one location. Also in certain council areas there is no control over the size of the house that you build on a block. One of my pet peeves is that there is no requirement that houses have eaves, which means that they are incredibly inefficient and you need to heat them in winter and cool them in summer. The greenhouse gas emissions from those are phenomenal. Regulating requirements on development to meet certain standards means that you are not designing a house that has high-level CO2 emissions. There have been big moves forward. Ten or 15 years ago it was impossible to get a water tank approved by a council. Now all new developments require them. To ensure that any new development is environmentally sustainable and not just a concrete jungle, which parts of western Sydney are, and ensuring that there are controls so that the greenhouse gas emissions from each individual property, whether it be residential or commercial, are limited should be enshrined in legislation.

Mrs FINGLAND: Research conducted in the last few years by Greening Australia has shown that in western Sydney there has been a temperature rise over and above what one would have expected through natural climate change. A lot of this has been attributed to the loss of vegetation in western Sydney. If you look at aerial photographs of western and eastern Sydney, the urban heat island effect that has been known for many years for cities is not as extreme in eastern Sydney as it is in western Sydney. It is quite clear it is because of the loss of vegetation.

The Hon. MELINDA PAVEY: Or is it because of onshore winds?

Mrs FINGLAND: The climate and the way that the airshed in western Sydney works as well obviously has something to do with it. Research is showing that it could be up to two degrees temperature difference that is not attributed to that.

The Hon. MELINDA PAVEY: At page 4 of your submission you say:

> Social inequity limits the ability to achieve environmental sustainability and that the need to respond to climate change either by reducing its causes or by adapting to its impacts is constrained by economic and social inequities.

You say that equity must be a consideration in determining who pays for climate change responses. Given your previous answer, Councillor McLaren, in relation to wanting environmental considerations and eaves built into properties, are you saying that government should pay for that type of environmental improvement because some people may not be able to afford it?

Ms McLAREN: Not necessarily. This is a very, very difficult question in western Sydney. Being a lower socioeconomic area or having large pockets of lower socioeconomic areas, there are often residents with cars that are older, houses that are energy inefficient.

The Hon. CHRISTINE ROBERTSON: It sounds like the country.

Ms McLAREN: There are a lot of similarities with the country; that is right. It is very difficult. It is something that needs to be worked through in consultation with government and in consultation with relevant stakeholders. One of the important things about planning is not allowing those developments to go in in the first place. That is not saying that we can undo things that have happened in the past. We should try to take steps to rectify things, but moving forward. Being energy efficient does not mean being more expensive. It just means being more creative about how you do things. I am not saying that government should necessarily pick up the costs, but I do think there needs to be a discussion about how we do this. I do not have all the answers, but I do think it needs to be something that is out there that we do think about.

Mrs FINGLAND: One of the really pressing issues for our region is the high level of car dependency that we have in our region. As we have talked about, there is a high degree or certainly concentrated pockets of quite severe socioeconomic disadvantage. If you look at it outside local government boundaries and take the local government average of statistics—people often do look at one local government from an area—but look at it at a more sub-regional area, you will discover that the areas of disadvantage are really quite substantially more than if you look at it only from an average point of view for each local government area.

We then have a situation that the urban form in western Sydney has changed from a series of small towns along railway lines when it was first settled to one where people are moving further and further away from existing infrastructure and are now totally car dependent because public transport opportunities are very poor. The cost of location in western Sydney for those people, who in many instances are already poor, is adding to the cost of living. It is not just the cost of affordable housing, because some of the housing certainly is cheaper there than it used to be, it is the actual cost of living in that area. There are the costs of congestion, travel, greater exposure to oil dependency and all of those things. We argue that taken in its entirety those issues should be considered as an environmental impact as well as an economic and social impact.

The Hon. MATTHEW MASON-COX: I have a question about planning. You mentioned that western Sydney is at a severe disadvantage due in part to a lack of planning. In your submission you detail FutureWest and what you have sought to do in that regard, noting of course that the New South Wales Government has a metropolitan strategy. Can you outline to the Committee the problems that you see with the Government's metropolitan strategy and why you saw fit to develop FutureWest?

Ms McLAREN: The major problem with the Government's metropolitan strategy now is that it is predicated on infrastructure that does not exist and will not exist. A large part of the metropolitan strategy—the released lands in the north-west and south-west—relied on the north-west rail line and the south-west rail line. You can release land and build houses but without those rail lines there will be no way for people to get to work. Other major essential infrastructure may not exist and you will end up with large developments that consist entirely of houses with no sense of community, and that is a real concern. One of the major issues with the metropolitan strategy is that it cannot deliver what it intends to deliver without the infrastructure, and the mini-budget last year removed that essential infrastructure.

Mrs FINGLAND: When WSROC produced FutureWest with 14 councils in western Sydney—we started the exercise in 2002—it was prior to any thought at the State Government level of producing a metropolitan strategy. The reason we produced a strategy for our subregion was because at a mayoral forum at that time one of the priorities of the mayors from councils in western Sydney was how to cope with the expected growth of the region in the future without a commitment to the infrastructure. We worked with the councils and

published FutureWest in 2005, which was our contribution, as it were, to metropolitan planning for our region. We presented it to the Government and some of its better elements were incorporated into the metropolitan strategy. We realised that the economy of western Sydney was not going to develop in the way that it should without proper access to the tertiary education opportunities and higher order jobs located in what is often called the global arc of Sydney—the Sydney-North Sydney-Ryde-Macquarie Park area.

As things stand there is a real divide in western Sydney between the areas north and south of a line, such as the M4, but also including Penrith. A number of the social indicators such as tertiary education participation, access to higher order jobs, and higher levels of unemployment show that our region not only has not developed as well as it should have during the economic good times but is quite vulnerable now that those economic good times have passed. The importance of the infrastructure related not just to getting people from one part of Sydney to another but to ensuring the poorer parts of western Sydney had better and more equitable access to those opportunities that everybody else in Sydney takes for granted, and at the moment they are denied that access.

The Hon. MATTHEW MASON-COX: Very well said. I have an unrelated question about affordable housing. I note that on page 21 of your submission you say that changes are needed to the legislative and/or regulatory planning system to support the affordable housing objectives of the Environmental Planning and Assessment Act for local government. Could you expand on what changes you think are needed to support affordable housing in western Sydney and, for that matter, in other parts of Sydney?

Mrs FINGLAND: Touching slightly on what I was talking about earlier, affordable housing is more than just the cost of a house. It is the cost of living in a particular area and the cost of accessing education or employment opportunities or other life-enhancing opportunities such as open space, cultural facilities and all those sorts of things. The social disadvantage suffered by the areas I am talking about is not touched on at all in the metropolitan strategy. That is one of the reasons we argue that social equity should have been one of the fundamental principles behind the metropolitan strategy. At the council level, councils are hamstrung in many ways in how they can deal with housing affordability. For example, in the urban renewal areas proposed in the metropolitan strategy plan for subregions such as north-west and west-central Sydney there are details about the numbers of houses and jobs that should be produced to serve those subregions, but there are no mechanisms in the strategies for the older established areas that require urban renewal to happen.

In the older parts of western Sydney and the areas I am talking about, not the areas that have been gentrified but those areas where gentrification has not taken place, there are large tracts of land with single fibro dwellings on quite large lots that are coming to the end of their lives or there are three-storey walk-ups around town centres that were built in the 1950s—again, the housing stock is pretty poor—but there are no mechanisms for councils to do large-scale clearance or site amalgamations to get good urban outcomes for the renewal of those areas. As I said, they were not gentrified because they do not have many things going for them in the way that the Paddingtons and Balmains of this world have. They do not have access to facilities and services and they do not have the transport access.

Western Sydney is very much hamstrung between two different markets. There is the housing market at the urban fringe where you get the larger developers buying up large areas of land, such as the north-west and south-west growth centres, but there is no mechanism in the older established suburbs such as parts of Fairfield and Auburn to get effective urban renewal. The building industry there consists of very small builders who finance their operations by buying two or three lots, knocking down the houses and building villas, duplexes or triplexes or sometimes McMansions. The local councils are left in the awful situation where the community does not like the urban renewal that is happening because it is so ad hoc and there is no provision of other facilities and services. It is just replacing a house with another house or two houses with one house. What about providing other facilities such as parks and all those things that go to making up a community?

The Hon. CHRISTINE ROBERTSON: When you are increasing the population?

Mrs FINGLAND: Yes.

The Hon. MATTHEW MASON-COX: Are you seeking the ability to levy developers for those types of social infrastructure or are you seeking some support from the Government?

Ms McLAREN: That is the idea of the section 94 contribution. One of the big difficulties that councils have with the $20,000 cap—I realise some exemptions have been granted—can be seen in Blacktown council,

which has a large new release site. The cheapest price at which the council can develop that site with footpaths, roads and very basic infrastructure—we are not talking community centres or playgrounds—is $56,000 per block. If a $20,000 levy limit is imposed on that council it will have to make up a $36,000 gap per house. That particular council would have to increase rates on that new suburb by 110 per cent or by 64 per cent across the entire City of Blacktown just to make up the difference. Obviously that is not feasible, so that land would not be released for development. We need to release land in western Sydney; we need more properties. That is one of the keys to making housing more affordable. But these suburbs have to be well planned; they have to have sporting facilities, playgrounds and community centres. Infrastructure needs to include the most basic footpaths as well as schools, roads, hospitals and transport access.

We cannot emphasise enough the importance of having those transport links. Seventy-five per cent of people who live in western Sydney work in western Sydney, yet 80 per cent of them rely on their car to get to work. In the north-west sector 97 per cent of people travel to work by private motor vehicle. That is unsustainable and incredibly inequitable, and without providing that essential infrastructure—everything from the basic playground to essential transport links—and the planning that is needed we will end up with ghettoes. There will be houses but the people will not be a community, and that is what is leading to the social dysfunction in our area. You have all read about it lately.

CHAIR: How do you balance the need against the want?

Ms McLAREN: I think there are some very basic needs and they can be determined. Things such as a playground and a community centre are a need. Whether you put a cap on how much can be spent on that is another matter. You do not need to have a Rolls Royce model, but it needs to be there.

CHAIR: I am not disagreeing with you. I am trying to get your view as to how—

Ms McLAREN: It is incredibly difficult to do. I feel that the $20,000 cap per block was an arbitrary figure. It was not based on any scientific measure. If you are going to put caps on developer donations they should be worked out on a case-by-case basis. It is obviously going to be more expensive to develop a greenfield site that has no infrastructure as opposed to a brownfield site that already has some of the infrastructure in place and the development is around it. A $20,000 limit may be reasonable on some of those sites, but it really needs to be decided on a case-by-case basis and you need to see what is there to start with. Having an arbitrary figure constrains councils and the reality is that councils cannot pick up the bill. The result will be that they will not release the land for new housing. That is not a good outcome.

Mrs FINGLAND: One of the issues for western Sydney for many years has been a proliferation of plans but provision of the infrastructure has not matched the plans. Another issue is the fragmentation of development. For 10 years I worked at Baulkham Hills council trying to sort out the problems of the north-west sector, the Rouse Hill development area. In one local government area alone there were seven development fronts, all separate little pockets of communities developing in different areas depending on who owned the land and with no infrastructure linking them. It was clearly not only an inequitable situation, but also it did not make any planning sense because there was no logic to the development. Each little community needed its own primary school and community facilities and connections to the existing urban areas. Sequential development of land is an important principle that seems to have been lost in the way we have been developing our new release areas. We have been very much focused on where land is available, particularly large landholdings, but not on how it fits into existing urban structures.

The Hon. CHRISTINE ROBERTSON: Is that because there is a deficit in the regional planning process?

Mrs FINGLAND: I would say there is a disconnect between the idea of planning and the financing of the infrastructure. Financing the infrastructure is absolutely crucial.

The Hon. CHRISTINE ROBERTSON: Could that be addressed if there was a structured and legitimised regional planning process?

Mrs FINGLAND: Very much so.

Reverend the Hon. FRED NILE: Just to clarify one of the comments you made about the development at Blacktown and the cost of $56,000, is that being developed by the council or by a private developer?

Ms McLAREN: That would be developed by a private developer but the $56,000 would be the cost to the council of putting in essential services such as the roads and footpaths, which are the council's responsibility.

CHAIR: Less the $20,000.

Ms McLAREN: Less the $20,000, yes. So there would be a $36,000 gap.

Reverend the Hon. FRED NILE: But some councils require the developer to put the roads in. Why is that not happening in that area?

Ms McLAREN: It is a very complex arrangement. I do not know the specifics of that actual development. Perhaps Sharon might know a bit more.

Mrs FINGLAND: There is often a difference in these new-release areas about who pays for the roads. The regional roads tend to be paid for generally by the State Government, whereas the developer produces the local roads for the subdivision, so there is a different funding mechanism for that. Part of the issue with section 94 is that what is levied for is, for example, some of the public transport infrastructure that the councils have to provide, because they have to provide bus stops and footpaths, separate cycleway routes, the open space provision for parks and drainage lines and things like that. So there are different levels of responsibility about who pays for what. What Alison was talking about was the cost to the council of those facilities for which the council has responsibility.

Reverend the Hon. FRED NILE: Alison did mention roads particularly, which is what caught my attention.

Ms McLAREN: It does vary on a case-by-case basis.

Mrs FINGLAND: For example, in the north-west sector there was a levy put on for developing the subregional roads, but not the local roads that serve the residential areas.

Reverend the Hon. FRED NILE: Your organisation obviously represents what we regard as a disadvantaged area of Sydney. I grew up at Revesby in a fibro house, so nothing seems to have changed over many years. Is there any explanation for that when there are so many members of Parliament—even the Premier is from Toongabbie—representing those areas? Why do you think the western suburbs have been disadvantaged and neglected for so long?

Ms McLAREN: I think there are lots of reasons why western Sydney has not managed to move forward in the same way as other regions and I think it all comes back to the lack of transport infrastructure. Western Sydney is the most ethnically diverse community in Australia and often recently arrived migrants do not have access to a car, so they are very reliant on public transport. If that public transport does not exist or does not go where they need to go, they will not seek employment. There is also a very large indigenous population. The social disadvantage experienced by Aboriginal Australians is well documented. Everything comes back to the lack of access to transport. If you cannot get to school, if you cannot get to work and if you cannot meet with social networks, you will end up being far more disadvantaged.

There are also other reasons. Western Sydney, which is the same size as South Australia, has one university. South Australia has three. Our universities do not sit in convenient locations. The Nirimba campus at Blacktown is incredibly difficult to get to by public transport. Everything comes down to those links. One of the big issues has been that transport infrastructure has always been focused on making the CBD the centre. Even the proposed north-west and south-west rail links came in to the Sydney CBD. With 75 per cent of people working in western Sydney living in western Sydney, or people living in western Sydney working in western Sydney, you need the infrastructure to go across the region. From Liverpool to Penrith is less than 20 kilometres as the crow flies, but if you were to catch a train from Penrith to Liverpool it would take you well over an hour. It is just not feasible. When those transport issues are addressed, everything else will flow from that.

Reverend the Hon. FRED NILE: You mentioned that you were disappointed that in the mini-budget the infrastructure was cancelled.

Ms McLAREN: Absolutely.

Reverend the Hon. FRED NILE: Did the Western Sydney Regional Organisation of Councils get involved with any negotiations or discussions?

Ms McLAREN: We were not aware prior to the mini-budget that those projects were cancelled or delayed. Afterwards we expressed our disappointment that that had occurred.

Reverend the Hon. FRED NILE: I know you mentioned that your FutureWest plan might have been picked up in the metropolitan plan, but was it treated seriously? Did it get the recognition you were hoping for? Were you disappointed or happy with the response?

Mrs FINGLAND: When the metropolitan strategy came out and there was the north-west, CBD and south-west rail link, we did feel that one of the important issues that we had been arguing for—which was that connection to higher order jobs and tertiary education opportunities—was a major plus. But, of course, last November we lost it all. I think it is fair to say that we have been doing work with the University of New South Wales on a project called Socially Sustainable Urban Renewal and we know from that research that basically if you look at an area west of Strathfield, for example, there is very little market for urban renewal in those areas, despite that being a major plank in the metro strategy.

In terms of employment, we have done an employment study with the University of Western Sydney and Macquarie University, which as I mentioned earlier has shown that our economy in western Sydney has not developed in the way it should. A number of the issues that we were trying to deal with through FutureWest was getting those important strategic links to look more effectively at getting jobs located in centres, to do a whole lot of things that have not happened well in western Sydney. For example, since 1986 only 18 per cent of all new jobs in western Sydney have gone into a centre in western Sydney. The rest have gone into suburbia. The transport implications are, if you can imagine the public transport problems associated with trying to deal with that issue, that we are becoming more and more car dependent. People have very little choice.

Whilst we felt our FutureWest project highlighted a number of things, I think in a way we would argue that our responses were a little more sophisticated because instead of dealing with just one issue—which was that you need a bus from here to here—we were saying that you need a bus from here to here because it raises the economy, it gives people who are living in areas that have no access to employment access to employment for the first time, it changes the social profile of an area and it stops there being intergenerational unemployment. We were trying to come up with more sophisticated answers. To me, that is what planning should be about. That is how I was trained as a planner: to come up with solutions that solve more than one problem at a time. I think it is fair to say that some of the failures in planning this State for many years have been people looking at issues in isolation and coming up with a solution in isolation, but it does not necessarily solve some of the bigger-picture issues that I am talking about.

Reverend the Hon. FRED NILE: You have mentioned the pressure on the inner-city council because of the high migrant population, which is a low socioeconomic group, and obviously the Commonwealth Government is happy to encourage that migration. There should be some way in which the councils that have that extra financial burden have some subsidies. There should be some connection between the numbers of people who move into a council area in the migrant category and grants or subsidies to those councils.

Ms McLAREN: Whether there are support services through the council or through another organisation, certainly recently arrived migrants need a level of support higher than other parts of the community. It is well known that councils are experiencing financial difficulty and consideration should be given by both levels of government to offering support to help these councils support their population, but there is a long debate and discussion about how to appropriately fund councils to deliver services. Councils are an easy target for other levels of government and are often attacked for failing their communities, but we deliver services with decreasing revenues and increasing costs, and it is becoming harder for us. Community expectations are growing and we cannot meet those expectations. It is really sad when you have to resort to things like reducing your library service so that your budget balances in a year because you do not have the capacity to raise money due to rate capping and you do not have any access to Federal or State government

grants because they are doled out as per certain criteria. Certainly consideration should be given to supporting councils with increasing populations.

Reverend the Hon. FRED NILE: Harris Park has been in the news recently with a large migrant population and conflict between two migrant groups. Have you noticed that, if those facilities and other things are cut back, it adds to the tension and creates further breakdown in harmony in the community?

Ms McLAREN: Absolutely, and this comes back to the absolute core of the need for social equity. Without having the services in place to support community and develop a sense of community as a whole, people will migrate to what they feel is their natural position, so they will congregate with other people from the country that they previously came from. Whereas if you have community centres and places where you can be encouraged to meet other Australians, regardless of nationality or background, a lot of these problems will not exist. The lack of infrastructure and community support means that there are often not places to go where you can meet as young people or as a certain group to mix with people from different backgrounds.

Mrs FINGLAND: I have also worked at Fairfield council, which has a very high immigrant population, and it is certainly very noticeable when you go to work in councils such as Fairfield how very disempowered the community is in those areas. I know I did some work on the 2001 census when I worked there and about 10,000 people did not actually answer the census in Fairfield, partly because of the background they came from.

The Hon. CHRISTINE ROBERTSON: Did they put it in blank?

Mrs FINGLAND: They do not fill in the census. The reason is that they have a great concern about government, many of them having come from communities where they have been persecuted. So one of the reasons why western Sydney has not progressed is that it has disempowered communities who do not feel that they can demand more for their areas. They feel very nervous about arguing for their basic facilities and rights, and when that gets out of control you get the situations we have been having and the social imbalance. One of the things that WSROC has argued for many years is the equity argument. In every place in Sydney there should be a mixture of people from different backgrounds with the same level of opportunity to access facilities and services.

You should have a housing mix, not gated estates with mansions at the urban fringe. This is really poor policy. Apart from anything else, it is very expensive policy because having concentrations of higher-income families or management classes or whatever in one area and very poor people in another puts huge loads on age-specific services, like having to provide so many new schools at the urban fringe because they are all young families, or having to provide in coastal areas for the needs of the elderly who are flocking there. We are not dealing with the social aspects of our planning processes properly.

The Hon. CHRISTINE ROBERTSON: I am very impressed with your use of the SEIFA data. I come from a background of obsession about SEIFA data and it is the first time in any inquiry I have heard anybody mention how important it is—so thank you. My question is how that really important information about socio-economic disadvantage can be integrated into the planning process rather than being used only by a few different organisations in a small way. Do you have any concept of how that can happen? Many persons involved in the power and control of planning processes do not want to know about it.

Ms McLAREN: That is really difficult and a problem. One of the standout results from SEIFA, the 2006 census, was that in western Sydney 8 per cent of students do not finish year 8. When you take out The Hills and Blue Mountains councils it rises even more. So we have kids who do not make it to 14 at school—and a significant percentage—and then we have all the problems that flow from that. I think one of the things that would be really important to be included in the data is why those children are not going to school. Is it that they do not have access to transport, so it is about location and all of those kinds of issues? They are not taken into consideration by planners. But it is part of social planning and that data should form the basis of social planning.

The Hon. CHRISTINE ROBERTSON: Most of us are from the country and in the country we replicate your SEIFA data almost consistently across the State. That does not necessarily have anything to do with transport access issues; it has to do with some cultural issues.

Ms McLAREN: We also have some cultural issues. There are some sections of western Sydney where education is not valued particularly, and we have noticed that parents do not see a need to send their children to

preschool; it is not valued as an important stepping-stone for moving forward. We could keep you here for weeks on all the social problems in western Sydney and the solutions. But certainly those things need to be taken into consideration when you are planning.

CHAIR: What are councils or State governments or Federal governments doing to try to keep those kids at school, or get them to go to school? What is in place in your areas?

Ms McLAREN: Some pilot programs are in places such as Mt Druitt and Campbelltown, which actually sits outside the WSROC area but is another highly disadvantaged community. But this is often the challenge in government that the programs are piloted but they are never made permanent or they are not rolled out because they are expensive. I guess, from a council's perspective, in my council area we have children's reading programs to make learning fun from an early age in the hope that that will encourage kids to go to school. But my area is largely middle class and is not an area that suffers from low preschool participation rates. Similar programs are run by other councils with varying degrees of success, but State and Federal government policy is another thing we can talk about for ages.

The Hon. CHRISTINE ROBERTSON: I have one more question about problems in relation to the ABS collection of the census data. In country New South Wales there has been incredible input by the ABS to collecting more accurate census data from Aboriginal communities. Do you perceive the ABS is not putting the effort into non-English speaking background people? What do you perceive the problem is there?

Ms McLAREN: That may be the case. Another point is that because there is a large perception, particularly by Federal Government agencies, the indigenous population is entirely in rural and remote areas—

The Hon. CHRISTINE ROBERTSON: No. You people are winning on that sort of debate at the moment.

Ms McLAREN: It could be that the 17,000 Aboriginal people in the Blacktown local government area are not getting that level of focus and that some of the people who are not filling in the census may well be Aboriginal because some people are frightened of forms. There are over 100 languages spoken in the Fairfield local government area; if there are not translators or the services available then people may not—

The Hon. CHRISTINE ROBERTSON: So you actually do not know what the ABS has tried to do.

Ms McLAREN: No, we do not.

Mrs FINGLAND: Could I just make one point about your earlier question to Alison? I think there is a mismatch going on between the requirements now of the Department of Local Government and the Department of Planning and the two approaches to planning in this State. The Department of Local Government and I believe our councils in western Sydney have been very consultative and they are coming up with a better model for how councils are going to be reporting on their management plans and how they are trying to integrate the planning, particularly the social planning processes. We have welcomed that very much in WSROC and applauded them on that. We think there has been a real need for this. Whereas the Department of Planning's reforms seem to be going much more along the statutory development control side of things and are missing out on what, to me, is a fundamental part of planning—which is the social planning aspects of planning. We seem to have focused a lot in the past on land use. We have focused quite commendably on environment, but we seem to forget that there are people involved in this process.

The Hon. CHRISTINE ROBERTSON: So with the two structures—I know that some of them are only just being introduced—do you perceive there is going to be conflict?

Mrs FINGLAND: I think they are going in slightly different directions, and there could be.

CHAIR: I thank you both for coming this morning and for your submission. Could you please provide the Committee with copies of Future West, Authoring Contemporary Australia and the Agenda for Sustainability and Wellbeing in Western Sydney? Could you send them to the secretariat, who will be sending you correspondence shortly?

Ms McLAREN: Could I just make one final comment before we finish? Western Sydney is going to be, on current predictions, 200,000 jobs short by 2031 to maintain the current work to the home ratio—and that

was done on good economic predictions without sensible planning and infrastructure. This region will continue to go backwards. There will be social problems that are inconceivable; the environmental problems will get worse. The only thing that I can do is implore you to please look at this carefully and recommend sensible planning that takes into consideration the social needs of our area. This is an area that has so much to offer but it just needs the opportunities to do so.

(The witnesses withdrew)

(Luncheon adjournment)

TIMOTHY DONALD ROBERTSON, Senior Policy Officer, Urban Development Institute of Australia, PO Box 912, Epping, sworn and examined, and

JUDITH LEE McKITTRICK, President, Urban Development Institute of Australia, PO Box 912, Epping, and

JENNY RUDOLPH, Councillor, Urban Development Institute of Australia, PO Box 912, Epping, affirmed and examined:

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

Ms McKITTRICK: Yes, Mr Chair, if I may take a moment to make a brief opening statement. Thank you very much for the opportunity to appear before the hearing today. The Urban Development Institute of Australia [UDIA] is a national confederation of State-based bodies, which represents leading participants in the urban development industry. In New South Wales we represent more than 500 member companies, a quarter of which are based in coastal regional New South Wales. Our members include developers, financiers, lawyers, associated consultancies, such as planners, architects, engineers, civil contractors, State government authorities and local government.

I should also point out that we are in no way politically aligned. UDIA members in New South Wales are represented by an elected council of 13 leading industry practitioners who are responsible for the strategic direction of the institute. That council is represented here today by myself and Jenny Rudolph. Tim Robertson is our senior policy officer for the UDIA. The UDIA also has an extensive committee and regional chapter structure that involves more than 150 development industry stakeholders who are involved in formulating policy and working closely with government. This structure ensures that our advocacy is realistic, constructive and professional and we provide recommendations that reflect the day-to-day realities and impacts of policy where it matters the most on the ground.

Nowhere is this more relevant than in planning reform. The UDIA has been a leading advocate for reform in the New South Wales planning system. We articulated a case for reform prior to the Government's latest round of amendments to the Act and were supportive of the changes. We believe that the reforms of 2008 will likely yield benefits for the industry and the New South Wales economy. We have been participants on the Minister's implementation advisory committee and also meet regularly with the department's executive and senior officers to ensure that the implementation is done in a practical and efficient manner.

Despite these reforms, which I might add are by and large yet to be introduced, we believe that the planning system remains unnecessarily complex, legalistic and inefficient. The process of incremental change over the last 30 years has resulted in a departure from the original intent of the Environmental Planning and Assessment Act and has only served to compound the need for complete reform. The property sector is sensitive to the vagaries of the economic cycle and changes to monetary conditions. It is therefore critical that the economic and regulatory framework provides a context for investment certainty and in turn allows developers to bring new product to the market in an affordable and sustainable fashion.

The planning system in New South Wales, both in a strategic and statutory sense, has manifestly failed to provide an environment for investment certainty. In New South Wales we are coming out of half a decade of the worst housing supply results since the Second World War. Year on year we have been producing less than 75 per cent of the underlying demand for new housing. This has been in the context of record levels of immigration and declining household sizes, so in a very real sense the property sector has been suffering for quite a while now and this has been reflected heavily in significant declines in the Government's own stamp duty revenue.

Whilst exclusive blame for the prolonged downturn in the residential market cannot be levelled at the planning system, it has certainly contributed heavily. In fact, one of the biggest weaknesses of the planning

system is the Environmental Planning and Assessment Act itself. The 30-year-old Act is ill equipped to deal with new and evolving issues, which, as a result, are subject to disparate and inefficient responses. Climate change is an example of an emerging issue that affects development and is subject to a range of regulatory responses from various agencies, departments and levels of government outside of the planning regime.

From our view, the greatest failing of the New South Wales planning system is that it bears no relationship to the Government's own objectives for growth and economic development. There is no consistent narrative that delivers or even seeks to deliver on the strategic policy initiatives within the State Plan, the Metropolitan Strategy or the various regional strategies. The UDIA's position is that we do need a new planning regime. We are, however, realistic and resigned to the fact that if done properly, this process will take a number of years.

There are, however, significant gains to be made for both government and the development industry in focusing our appetite for reform towards some short and medium-term objectives to the sector. Firstly, a key priority for government must be to restore the integrity and credibility of the strategic planning framework for New South Wales through the metropolitan and regional strategies. The value of these documents in providing certainty for investment has been compromised heavily by stronger than predicted population growth, significantly lower than required building production and, critically, a failure to deliver on key infrastructure investment commitments, such as the north-west and south-west rail lines. The UDIA is strongly advocating a comprehensive review of the Metropolitan Strategy and is currently developing recommendations to government on the way forward.

Secondly, further structural reform on the funding framework for infrastructure is required. From our point of view, the key learning from the Government's recent review of development levies is that the framework is highly complex and cannot be significantly reformed without a broader, more comprehensive debate about how we finance infrastructure and how we finance the appropriate governance model. This must include a genuine look at local government pegging.

Thirdly, there needs to be removal of duplication of approvals with legislation that sit outside the Environmental Planning and Assessment Act. This includes the Federal Environment Protection and Biodiversity Act, the Threatened Species Act, the Native Vegetation Act, and I could go on. Fourthly, major policy initiatives to increase density and infill within the urban context require reforms to the strata schemes. Ninety per cent of dwelling production in Sydney is currently from within the existing urban footprint and 50 per cent of these homes are being delivered on what are called major sites.

The Department of Planning estimates that we only have about 10 years worth of supply left with these major sites. That means we will now have to turn to the smaller sites with existing strata schemes and that will not be able to be achieved unless there is reform to the strata legislation. Finally, we need to move to a more accountable and outcomes-focused planning system. The recent appointment of the project delivery coordinators is a start but it is questionable that the 10 or so people in these positions will be enough. All involved in the planning assessment system need to be empowered to resolve issues and accountable for their performance. I thank you for your time in listening to me and we are now happy to take some questions.

CHAIR: Does anyone else want to say anything?

Ms RUDOLPH: No.

Mr ROBERTSON: No, thanks.

CHAIR: Page 2 of your submission argues that the planning reform needs to rationalise the dependence on legal planning instruments and focus on the use of policy and strategic guidance for planning. In your view, what should be the outcome of this rationalisation?

Ms McKITTRICK: What we would like to see is the documents that I mentioned—the State Plan, the Metropolitan Strategy and the regional strategies—should become the overarching guiding tool to planning. The legislation should be enabling to make things happen but, at the moment, the way we have our structure is that it is the Environmental Planning and Assessment Act, a whole raft of instruments that sit outside it, and the key strategic documents that guide economic growth and planning are in documents that are not even recognised within the legislation.

CHAIR: Page 3 of your submission refers to delays associated with part 3A development applications. Can you outline for the Committee the causes of these delays?

Ms McKITTRICK: One of the fundamental problems with delays in the assessment process, whether it be with part 3As or at local government and part 4, is caused by the need to consult, the need to get input from the raft of other government agencies, from the Roads and Traffic Authority, the Department of Water and Energy, the Department of Environment and Climate Change, and so on. The problem that we face is that those who have the ultimate responsibility of making the planning assessments are not empowered to resolve issues when they are raised by other government agencies sitting outside the planning framework. That is an issue that pervades—whether State, regional or local proposals are involved.

The Hon. MATTHEW MASON-COX: If I might just pick up your comments in relation to the lack of any legislative force for regional plans for other planning documents, particularly the planning documents that affect the Sydney Metropolitan Strategy, et cetera, is it your view that these documents should be given some sort of legislative force so that they are seen to be of overriding importance in terms of how we move forward as a State?

Ms McKITTRICK: I actually think one of the greatest problems in New South Wales is that it is also legalistic. I actually think it would be better if we had a suite of planning documents that set the direction for the State, the regions and the local level that was not bound up in the legalistic drafting that goes on. As I said, it is something that we are currently, as an industry body, working up our recommendations but, our initial thoughts were if you have your strategic plans as the documents and you have the Act almost sitting over to the side that brings that in, as distinct from the Act guiding where direction should happen.

The Hon. MATTHEW MASON-COX: So those plans would be, if you like, mentioned in the Act as being overriding planning instruments, if you will?

Ms RUDOLPH: Yes.

Ms McKITTRICK: Yes. At the moment they are not even mentioned.

The Hon. MATTHEW MASON-COX: No, they are sort of mystery items.

Ms McKITTRICK: At the moment all you have mentioned are State environmental planning policies, local environmental plans and development control plans. You actually do not have the key planning documents of this State recognised in the legislation.

Ms RUDOLPH: The strategic documents such as the metropolitan, regional and subregional strategies—the Act should be kind of incidental—should be where developers can get some certainty and where councils can get some guidelines as well.

The Hon. MATTHEW MASON-COX: And those planning documents, regional plans and the Metropolitan Strategy obviously detailing the infrastructure requirements and the planning that goes with that in detail so that people have the certainty to invest and understand where the Government's priority in those sorts of areas are?

Ms RUDOLPH: Definitely.

Mr ROBERTSON: Absolutely.

Ms McKITTRICK: Infrastructure has got to be a fundamental part of the plans for the State because without that you are left with inability to deliver.

The Hon. MATTHEW MASON-COX: We have heard from a number of other parties in relation to the importance of regional planning, and obviously we have lots of different regions in New South Wales. I want to get your thoughts on how the Government has identified regions to date in New South Wales. You would be aware that we have the Sydney metropolitan region, the Illawarra, Newcastle, the Hunter, the North Coast, the South Coast, the Sydney-Canberra corridor and then the rest of New South Wales as sort of west of the Blue Mountains region. What are your views in relation to that? Do you think that is the way to go?

Ms McKITTRICK: As an industry association we do not have a stated position on the regions west of the great divide. As I said in my opening, we represent regions but effectively most of our representation is along the coast. But I would certainly say that lumping the whole of the State into one region does not make sense but as to what the boundaries should be I cannot really comment.

The Hon. MATTHEW MASON-COX: Can you just outline what you do in your role as members of the implementation advisory committee?

Ms McKITTRICK: The implementation advisory committee was set up by the former planning Minister, Frank Sartor, and has been carried on by the current Minister. It consists of representatives of all the varying stakeholder groups. We meet on a monthly basis. But there is more depending upon what issues are emerging, but predominantly it is a monthly meeting and it is used by the Government as a means of bringing forward its proposals on how it is going to implement the different 2008 reforms. For example, on the joint regional planning panels, which are to come into force on 1 July, it has tabled to the implementation advisory committee the draft code of conduct and the draft practice note and has sought comment from us as individual stakeholders, which we provide both at that meeting and also off-line.

The Hon. MATTHEW MASON-COX: Are you satisfied with the progress the Government is making in implementing these reforms?

Ms McKITTRICK: I think it has been a lot slower in some areas than we would have liked. One particular area where we are a bit frustrated around the delay has been on the levy reform. That announcement was made by the Premier in December last year, which was made very expediently, I must say. We were consulted by the Treasury at the beginning of the month and within a month there was a decision. The problem has turned into the actual implementation. It took a lot longer for them to review, and they are still reviewing, section 94 plans.

The Hon. MATTHEW MASON-COX: You are talking about the $20,000 cap?

Ms McKITTRICK: Yes, the threshold. At the moment they have reviewed 11 and that is predominantly in the release areas in Sydney, and I think also the City of Sydney was in that too. So, there is still a tranche of another 17 councils they are still working through. The other area of slowness has been the State infrastructure contributions. The decision was made back in December that the State infrastructure contributions would be reduced but, more importantly, there was a change to when the State infrastructure contribution payments were made, and that was to be paid on the sale of the land as distinct from when you get your linen plan.

We assembled in January the top developers in the State and had a workshop. We got legal advice. We put a submission in to the department by the end of January giving it three options as to how you could legally go about bringing in those deferrals. As of last week we received some draft notes from the department as to how it is going to go. We are frustrated that we are six months into that process and we still do not have certainty about how it is going to happen. One of the things we have already flagged with the Minister's office is that we will be calling for an extension to the period of time that the State infrastructure contributions are reduced.

Mr ROBERTSON: That is probably a key point, the timing, because they were introduced as a temporary stimulus in recognition of the prevailing market conditions and also the impact on government revenue through stamp duty.

The Hon. MATTHEW MASON-COX: When does that expire?

Mr ROBERTSON: June 2011. It is coming on the back of five years of historic declines in dwelling production. So things were pretty bad.

The Hon. MATTHEW MASON-COX: It will be June 2011 before you get access to it, is that what you are suggesting?

Ms McKITTRICK: I do not think it is that, but we have lost six months.

Ms RUDOLPH: The State infrastructure levy is not just for Sydney metropolitan and growth areas but for the regional areas. There is no certainty and clarity for our regions at all, and it is certainly frustrating for them.

The Hon. MATTHEW MASON-COX: Yes, a number of people have lodged submissions, particularly developers, that particularly in regional areas it makes development impossible unless you know, and certainty is not there. That is what you are hearing from your members?

Ms RUDOLPH: Yes

The Hon. MATTHEW MASON-COX: I was interested to read that you made some comments about local government and the need to reform local government if you are going to reform the planning Act to get a system that works, particularly with financing of local government and rate pegging. Can you expand on that?

Ms McKITTRICK: The real issue here is the inequity of infrastructure funding particularly at the local level. Because local government has had rate pegging, how is it get to fund the new facilities that are required for their population? They have had to turn to section 94. That effectively puts the impost on people buying the new houses. We say you should core it back to the very basics of the new development and spread the funding of infrastructure across a wider population base, just as Sydney Water has done with water and sewerage charges within the Sydney metropolitan area. We advocate that that is the model that should be used at all other levels to fund infrastructure. To do that, local government would have to have rate pegging removed. We do not want to see a holus-bolus claim for massive increases of rates, so there needs to be clear guidance around that, but that is what we have been advocating to government.

The Hon. CHRISTINE ROBERTSON: What do you mean by clear guidance?

Ms McKITTRICK: Just as now with section 94, the Government is working up some guidelines as to what you can and you cannot levy for. The same thing would have to apply with rate pegging so there are clear guidelines as to how much you can increase rates by and for what purpose.

The Hon. MATTHEW MASON-COX: It is interesting how you go about that, because in local government areas, as you say, they are pretty much starved of funds and they had to take on further responsibilities without extra funding from the State. They see greenfield developments, particularly, as a real cash cow, and just balancing the conflicting priorities, and there is the challenge, I suppose?

Ms McKITTRICK: We recently had a meeting with the Federal Government around the introduction of broadband. The same issue here was: it is going to introduce charges on greenfield sites for provision of broadband, but those of us who are fortunate enough to live on existing homes do not cop the charge. That to me is inequitable.

The Hon. MATTHEW MASON-COX: What sort of charge is it? I understand it is quite significant for greenfield sites?

Ms McKITTRICK: For broadband they have not landed on that number yet. At the moment they are talking about numbers they have obtained from the States. I do not think that has any certainty.

The Hon. MATTHEW MASON-COX: The comment you make very strongly is the lack of accountability within government. I want to understand how you would improve accountability.

Ms McKITTRICK: As we understand the model that has been set up around the project delivery coordinators—and it is still early days, granted—I think that is a model that could be rolled out across all levels, where you have people who act effectively as project managers and they are responsible and accountable for managing the project, whether it be a rezoning or whether it be assessing a coalmine, or whatever it might be, and seeing that right through to the outcome as distinct from the process-driven mentality that tends to pervade a lot of government agencies.

The Hon. MATTHEW MASON-COX: It is not rocket science, is it?

Ms McKITTRICK: It is not rocket science, but it requires a fundamental shift in attitude. It also requires agencies such as the Department of Planning, and also local government being empowered to resolve

issues when they are raised from those other government agencies that remains a real problem, because those government agencies sit outside the planning regime but clearly have a significant impact on what is happening within.

The Hon. MATTHEW MASON-COX: Does the new legislation not mandate a 40-day period for agencies to report back and, if they do not report back within that period, it is granted?

Ms McKITTRICK: Yes, that is correct.

The Hon. MATTHEW MASON-COX: Do you see that as a positive change?

Ms McKITTRICK: That is definitely a positive change.

The Hon. MATTHEW MASON-COX: And those types of changes where accountability is brought right in is what you are looking for?

Ms McKITTRICK: Yes, correct.

Ms RUDOLPH: I think the accountability level has to do also with when there are differences between various comments that come back from State agencies that have led the Department of Planning or local government to take accountability for resolving those, because in many cases they leave it to the developer or the landowner and it sits there because there is no power, if you like, from the applicant's point of view to resolve or take accountability for resolving some of those issues, which we think would be very beneficial.

The Hon. CHRISTINE ROBERTSON: Following on from that specific issue, I guess there is integrity in all of the Acts that are outside the Environmental Planning and Assessment Act, for example, the water and fire and different organisations? So, how do you maintain the integrity while removing the power—almost removing the Act? Are you saying the advice coming from the other organisations is a bit of nice advice?

Ms McKITTRICK: No, not for one minute are we suggesting that issues such as threatened species or water management or bushfires should be ignored. We are saying they should not be sitting outside the planning regime. They have come about because these issues have emerged and you could say it is a fault of the Environment Planning and Assessment Act because 30 years ago we did not have threatened species, so what was the response? The then National Parks and Wildlife Service formulated an Act, and we have an Act that sits outside of the system. That is why I say if we go back to what would be the best planning system—let us take the Hunter region. You have a strategy there that identifies biodiversity corridors. It identifies where infrastructure should be. That should be the vehicle that sets the direction for where that region goes as distinct from a raft of disparate pieces of legislation.

The Hon. CHRISTINE ROBERTSON: So the different Acts and departments and issues should participate, in your minds, with a formulation of the regional strategy rather than at the development level? It already should be covered?

Mr ROBERTSON: Absolutely.

Ms McKITTRICK: Could I give you an example? In the growth centres in metropolitan Sydney, when we had the Growth Centres Commission, we had a process there of biodiversity certification where the growth centres drove what is now the Department of Environment and Climate Change to formulate an outcome around areas that must be retained and areas that could be cleared. That then provided certainty for people in their planning and development to know what areas had to be protected. That is what we are talking about, that sort of attitude, that sort of process to get an outcome.

Ms RUDOLPH: It is integrated with that overall strategy.

The Hon. CHRISTINE ROBERTSON: The Hon. Matthew Mason-Cox's question in relation to regional strategic planning process and having it in a legislated form or legislating its authenticity and therefore its integrity creates a problem in its own right? At the moment the regional plans are sort of an advisory document even though they have been done on a consensus basis with people who are interested in that region? Have you ideas on how you would legislate for it to be a legitimate authorisation for the future? The problem now is that mentioning it in the Act as something that happens still may not give it teeth?

Mr ROBERTSON: I think the key issue with the way strategies are handled now is that their credibility has been eroded over time. The key strength of something like the metropolitan strategy is that land use matches infrastructure and it is a whole-of-government approach to growth. Once you start taking away things like the north-west rail link or the south-west rail link the credibility of that document within government is diminished. So rather than it being necessarily a statutory approach it is also a cultural approach. The agencies participating in that strategy are developing a strategy and they see that as something they have ownership of.

The Hon. CHRISTINE ROBERTSON: Say you get a new government next week and it has gone away, then all the planning has to start again. I am making this up on purpose. We are having a lot of discussion about regional strategic plans throughout the hearings. Certainly a lot of our evidence legitimises their role, ensuring the future of their meaning something for the local areas to work within, as far as us advising on future legislation. I just want to hear your ideas. Like, a word in the Act saying that this is a legitimate plan may be not enough?

Ms McKITTRICK: It probably needs to be more than that but I am sure without—

The Hon. CHRISTINE ROBERTSON: I know that you do not want it to go to Parliamentary Counsel. I recognise that that is what you are saying.

Ms McKITTRICK: Yes, this is the dichotomy. We do not want those documents to become the legal drafting documents but we want them to have the authority and the mandate to guide. I would have thought that by referring to those documents in, let us call it, the enabling legislation that these are the vehicles that guide the future of the region or the State, whichever level we are talking about, and that then when you are right down to sort of the development application level these are matters that you need to have regard to. So when you are doing your residential subdivision it needs to be consistent with the regional strategy.

Ms RUDOLPH: Just taking it further, if all the agencies have helped develop those strategies, their comments—so you are not taking away the integrity of those acts or their view or all the different bushfire or legislation—would be aligned to the strategic strategies or plans. So in that way you would be able to integrate and give certainty on the direction to go.

The Hon. CHRISTINE ROBERTSON: We have just had WSROC here this morning giving some very valuable evidence. One of the issues they brought forward was that the metropolitan plan certainly recognised the work that they had put into the plan that they had done for the western region, but they still perceive that their specific issues were not necessarily covered by the metropolitan plan.

Ms McKITTRICK: I am not sure—

The Hon. CHRISTINE ROBERTSON: I am not asking you to argue their issues. I am just trying to work through the future of regional planning processes.

Ms McKITTRICK: I am not sure what particular issues they feel are not—and by no means can we say that the regional plans are perfect. Certainly, in terms of the north west and south west, we were very much aligned with WSROC—in fact, most of their members I think are our members—the disappointment and incredible frustration in fact around the pulling away of key infrastructure projects—

The Hon. CHRISTINE ROBERTSON: On the mini-budget stuff, yes, they talked about that.

Ms McKITTRICK: Yes, that were identified in those regional plans underpinned the future planning for those regions and yet it is no longer there.

The Hon. CHRISTINE ROBERTSON: The other debate—and the Hon. Matthew Mason-Cox also picked up on this—related to defining a region. I brought in the Sydney thing, but the further away from Sydney you get, the more fierce are the debates about how you define a region.

Ms McKITTRICK: As I said, we do not actually have a position as to what the boundaries should be, particularly west of the Great Divide.

The Hon. CHRISTINE ROBERTSON: Do you hear it on your advisory or is it just too hard so you see the worst of New South Wales?

Mr ROBERTSON: I think a smart approach would be to align services with the regions. You have a regional strategy for, say, the North Coast. Perhaps that should align with government agencies and the services they provide within it. That would make logical sense. We are not going to get into the parochial arguments about "we are a region and we do not want those in our region". I think the most smart way to go about it is to align your services appropriately.

The Hon. CHRISTINE ROBERTSON: But interestingly in country New South Wales the government services are only a piece. They are industrial bases in their own right, albeit totally different to the metropolitan regions.

Mr ROBERTSON: Yes, absolutely. We do not disagree with you.

The Hon. CHRISTINE ROBERTSON: It is not just about State and Federal services.

Ms McKITTRICK: We are happy to take that as a question on notice and come back to the Committee around that.

The Hon. CHRISTINE ROBERTSON: I would be interested to hear what you and your people have to say because it is not just about the west of New South Wales. It is about the south and the coastal regions as well, how you define it. Some people are saying it is water catchment. Some people are saying it is a main road. Some people are saying it is demography. It seems to suit far too much a political decision-making process rather than a definition of similarity.

Ms McKITTRICK: We are happy to take that on notice and come back to the Committee.

The Hon. CHRISTINE ROBERTSON: I know it is a complicated question.

Ms McKITTRICK: Yes. I am not sure there is a simple answer to the question.

The Hon. CHRISTINE ROBERTSON: I am sure there is not but your ideas on it would be very helpful to us. As part of the advisory committee on the implementation of the reforms, how did the issue of flood plain management come up? They have changed the rules in relation to flood plains and development approvals on flood plain regions, and they put a deferral on implementing that piece for 12 months because of the complexity of the question.

Ms McKITTRICK: That has not been a matter before the IAC at all. The IAC's mandate is to deal with the 2008 reforms.

The Hon. CHRISTINE ROBERTSON: Yes, it is part of them.

Ms McKITTRICK: So it has not been discussed. I have not missed a committee meeting and I am sure it has not been discussed.

The Hon. CHRISTINE ROBERTSON: That is interesting, thank you.

The Hon. MATTHEW MASON-COX: I will just pick up the regional plan a little more. It seems like we have advisory regional plans. We then had the LEPs, which we have not been discussed, which are meant to comply with the advisory regional plans, which fit into an advisory State Plan, which some would argue was a political document in its formation. So we seem to have a structure here which you have really put your finger on, which is advisory, top down, State Plan, regional plan, LEP. But the statutory force, if you like, is the other way round: LEP, moving up to the centralised function of the planning department and the planning Minister being by way of part 3A, et cetera. We have a conflict in relation to the centralisation of planning through the department and the Minister, and the actual on-the-ground grassroots planning concerns of communities.

Ms McKITTRICK: Correct. In many instances, if you take some of the regional plans, the LEPs predate those regional plans. Yes, we are in a process of going through and having various comprehensive LEPs done for different local government areas but that is certainly well behind the regional plans. It picks up a very

key point: if you have a regional plan and a regional direction, and it is not reflected in the local plan, you then have—and you only have to see this in the metropolitan area where you have infill development, we have a regional metropolitan strategy that is aimed to increase dwellings in the existing urban area but you have local environmental plans that are not reflective of that and then you have a dispirit connection between what we are trying to achieve and what the local communities expect when they look at their own local documents.

The Hon. CHRISTINE ROBERTSON: Is there a way of getting the LEPs to have to register the regional strategic plan?

Ms McKITTRICK: There would be but it would take time under the current—

The Hon. CHRISTINE ROBERTSON: I know about changing.

The Hon. MATTHEW MASON-COX: That is the sort of model that you are looking for, is it not? You are looking for more of a top down model with no doubt flexibility for local community concerns but certainly key direction from the top of government via a State Plan, which then trickles down into regional planning documents and sub-regional strategies, which if you like then are reflected in local environmental plans put together by local councils. That is the structure that you would like to see given some legislative force and bite so that people understand what is going on so the market has a certainty to invest.

Ms McKITTRICK: Correct.

Ms RUDOLPH: Yes.

CHAIR: Thank you for being here this afternoon.

Ms McKITTRICK: We will undertake to come back within 21 days on that regional matter.

(The witnesses withdrew)

MILTON LLOYD COCKBURN, Executive Director, Shopping Centre Council of Australia, 1/11 Barrack Street, Sydney, and

KATYE EILEEN JACKETT, Deputy Director, Shopping Centre Council of Australia, 1/11 Barrack Street, Sydney, sworn and examined:

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

Mr COCKBURN: First, thank you for the opportunity of appearing today before the Committee. You will have noted that our submission concentrates on only two aspects of the Committee's terms of reference, that is, item 1 (e), the appropriateness of considering competition policy issues in land use planning and development approval processes in New South Wales, and item 1(f), the regulation of land use on or adjacent to airports. We have not specifically commented on the other items of the terms of reference because we fully endorse the submission that has been made by the Property Council of Australia in relation to those. Commenting briefly on item 1 (e), we note that since we lodged our submission the New South Wales Government has announced a specific inquiry by the Better Regulation Office [BRO] dealing with similar issues as a result of an issues paper issued by the BRO on promoting economic growth and competition through the planning system.

We lodged a submission to the BRO last Friday on that issues paper, and we would like, if permitted, to forward a copy of that submission to this Committee. Our concern here in relation to this item are the false claims that have been made over the last year or so that the planning system, and particularly the operation of the centres policy, is operating in an anti-competitive manner in relation to retailing. Among the claims that have been made are, firstly, that the centres policy by which economic and social activities, including retailing, are concentrated in a hierarchy of activity centres operates to shield established shopping centres from new competitors, and we have demonstrated in our submission that that is false.

The second popular claim that has been made is that the planning policies have created a shortage of retail space, particularly in Sydney. Again, we have demonstrated in our submission that that is false, that the amount of retail space per head of population is continually growing and there is no sign that this is slowing down or reversing—in other words, there is no evidence of a looming shortage of retail space. The third popular claim is that the planning system is locking out new retailers, particularly new grocery retailers. Again, we show that this has not happened. The fourth claim is that the Environmental Planning and Assessment Act protects existing retailers from competition. Again, we have demonstrated in some detail that that is not the case. In particular, we draw attention in our submission to the decision of Justice Stephen of the High Court in *Kentucky Fried Chicken Pty Ltd v Gantidis*, in which he said:

> The mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration.

We believe it could not be more clearly stated than that. In relation to item 1(f), we have argued for some time that there are inadequacies in the land use planning and development approval processes for non-aviation related developments for airport land. We believe that commercial non-aviation development of airport land should be subject to the same level of scrutiny, community consultation, planning assessment and developer contributions as a similar development under State and local planning laws. We can see no public interest justification for exempting non-aviation development—and I stress non-aviation development—on airport land from the State and local planning laws that apply to every other development. While commercial control of aviation development at airports is warranted, given their national significance, we cannot see that there is any similar justification for exempting non-aviation development from local planning laws.

We emphasise that we are not saying that there should be no commercial or retail development of airport land. We are simply saying that if there is to be commercial or retail development on land that was previously set aside for aviation purposes, it should be subject to the same level of public scrutiny, community consultation, planning assessment and developer contributions as are similar developments under State and local

planning laws. Finally, Mr Chairman, at the very end of our submission under "Other Issues" you will note we refer there to the fact that the Department of Planning is currently preparing an exempt and complying development code for retail office and industrial buildings. We understand that that code is almost complete and is about to be released. If that is released, we believe that will resolve the situation we raise there about the necessity for retailers to lodge development applications for fit-outs in their shopping centres. I am happy to say it looks like that issue is now about to be resolved. Thank you very much.

CHAIR: I will start off with a fairly lengthy question, which you have touched on in your opening statement. In your submission you say you do not believe that there is any evidence that planning laws restrict retail competition or the amount of retail space generally. As you would be aware, in May the Government asked the Department of Planning and the Better Regulation Office to review the impacts of the planning system on competition and investment, taking into consideration the public interest. The discussion paper accompanying the review states that from a competitive perspective it is essential that the planning system minimises any regulatory burdens that could inadvertently constrain sustainable economic development and competition within the industry. This means ensuring there is sufficient suitably zoned land available for development to reduce barriers to entry. There is a view that there is an insufficient amount of suitably zoned land for retail development. Why do you think this perception exists?

Mr COCKBURN: I think, Mr Chairman, it is a mythology that has developed simply because people have not bothered to look at the statistics. We have noted in our submission both to this inquiry and to the Better Regulation Office that if you look over the last 15 years—unfortunately these are Australia-only figures, but we have no reason to believe that these are any different in New South Wales—over the period in which the firm we commissioned got detailed statistics, that is, from 1991 to 1992, the amount of shopping centre floor space in Australia virtually doubled from 9.2 million square metres to 17.3 million square metres. So it was not quite doubling but pretty close to doubling in the space of only 15 years. Outside shopping centres the amount of retail floor space increased from 23.6 million to 27.5 million. Obviously not as much as within shopping centres, nevertheless, still a substantial increase.

We made the point there that the actual increase in the total retail floor space was much faster than the growth of the population. As a result of that, the actual amount of retail floor space per head of population grew from 1.88 square metres to 2.18 square metres. In other words, the amount of retail floor space created or generated through the planning system was faster than the rate of growth of population. I do not really know where this perception comes from—that, in fact, there is a shortage of retail space. I could point to just about any retailer in Australia that has expanded in the last decade in which they have substantially increased the number of stores they have had. I suppose the one that has made the most vocal claim that there is not enough space has been Aldi, the arrival of the German supermarket operator. But we have noted in here that in only eight years Aldi has been able to build up in excess of 200 stores.

That is a faster rate of store opening per year than either Woolworths or Coles achieved, and they have not even yet tried to expand beyond the eastern seaboard—they have not gone into South Australia or Western Australia. If they were a national retailer, then I suspect their rate of store opening would be substantially higher than that. Although they have been vocal in saying they found it hard to find store locations, as I said, they have opened them faster than Coles or Woolworths. I have no doubt that if any retailer, for example, an Australian retailer, moved to Germany or any mature market, it would not find it easy to find prime spaces because it is Johnny-come-lately compared to the established retailers. As I said, when people say there is not enough retail around, what they generally mean is there is not cheap retail space, and it is a big difference between the two of them.

The Hon. MATTHEW MASON-COX: What do you say to the idea of let the market work it out?

Mr COCKBURN: I agree with it completely, within the bounds of the planning system. I am not suggesting that the planning system be abolished and we have a laissez-faire method such as you will find close to that in some American States. I think the planning system plays an important function, which we have demonstrated in our submission. Within the constraints of that, I certainly do not see any reason why the market should not be the primary determinant of these issues.

CHAIR: Are you saying that there is no organised market restriction for retail premises?

Mr COCKBURN: Organised only in the sense that we do not believe, for example, you should be able to open a retail shop in a non-retail area. It comes back to local government to ensure that, in fact, there is

sufficient land that has been zoned commercial or retail. The one exception to that, I suppose, is the bulky goods formats. Over the last 15 years in New South Wales exception has been made for bulky good retailers and they have been permitted to establish bulky goods zones usually in industrial zones. An exception has been made there, or a recognition has been made, that the floor plate area of a bulky goods retailer and the nature of the retail offer of those sorts of retailers are such that it would be very difficult to find land within actual urban centres, within the area zoned commercial and retail. So they have been given a concession, if you like, by the planning system to operate outside those retail and commercial zones. We have said that if they are given that concession, it is beholden upon the planning system to say, "Okay, but the only retailers that can locate in those zones are those who have a bulky retail offer." We should not be allowing general retailing to be operating in those zones. Subject to that exception, we believe that retailing should be confined to retail and commercial zones.

Ms JACKETT: It is a case of let the market determine the need but the planning system determine the location.

Mr COCKBURN: Yes.

The Hon. MATTHEW MASON-COX: The Government has issued a draft centres policy. What are your views on what would justify an out-of-centre development? You mentioned bulky goods. Is that where you see it ending, subject to new development of estates where there is a demonstrated demand and it is integrated into the planning framework?

Mr COCKBURN: Those sorts of land releases, of course, are occurring all the time. We do not object to that. In fact, we made a note in our submission, I think, both on the draft centres policy and also the Better Regulation Office paper that the number of new centres that have been created in Sydney over the last 20 years has been quite a substantial number. It is not as if we have frozen the number of activity centres. They are being created all the time. Obviously there is a responsibility there on the part of the planning administration body to ensure that new centres are being created and that we are not constraining the growth. Subject to the exception in relation to bulky goods, we generally believe that should be the case, and for quite very good reasons. It is not widely known, Mr Chairman, that back in the 1950s and 1960s, basically the 1960s, when shopping centres or the modern form of shopping centres started to become established in Australia, the preference of the developers of those shopping centres was not to go into the centres. They wanted to go into what we now call an out-of-centre location, for the simple reason that is where the cheap land was. One or two of them were able to be established in those out-of-centre locations.

For example, Roselands, now Centro Roselands, probably would not now be permitted to be built in that location if we were starting from scratch now. But the planning authority then said, no, if we are going to have these shopping centres, we want them to be located inside the centres, not outside the centres and drawing activities away from the centres. It is fair to say that the shopping centre developers 50 years ago were basically forced into the centres. We now find it somewhat amusing that we are now sometimes being painted as the villains of the piece in saying that everyone should be in the centres, and the accusation that we are being protected by being in the centres. It is as though the arguments that our members were using 50 years ago are now being thrown back at them. I think the attitude of the planning authorities 40 or 50 years ago has been vindicated. We have now got in Sydney, Newcastle and Wollongong fairly large and vibrant town centres—they should be called activity centres because the word "centres" sometimes gets confused with shopping centres. By and large, we have quite good, quite active and quite vibrant activity centres and that was as a result of the fact that the planning authorities said, no, we want these things located inside the centres.

The Hon. MATTHEW MASON-COX: Turning to airports, in your submission you looked at issues with airports, particularly that non-aviation development is not subject to the same requirements as a similar development off airport. What do you think of the argument of airports that in purchasing a 99-year lease pursuant to the Airports Act they have paid for the right, if you like, to develop the blue sky potential of an airport, which includes both aviation and non-aviation businesses, and moreover they are subject to a master planning process which goes through a community consultation period and should be given that opportunity as part of what they have bought?

Mr COCKBURN: I do not disagree with any of those things. They have bought the ability to develop those lands. They are required to lodge master plans and major development plans [MDPs] but I think anyone would agree that the requirements for the MDPs and the master plans under the Airports Act are nowhere near as rigorous as they would be under the relevant State Environmental Planning and Assessment Act. The

Department of Planning, for example, which is ultimately the authority in relation to both of those things, is not a land use planning authority. It is a body that is tasked with transport issues. As far as I am aware they do not even have urban planners in the Department of Transport. The period of consultation is extremely short; it used to be 30 days. I am not sure whether it is anymore. In some cases we or other bodies only found out about the fact that a major development plan or a master plan was on exhibition because of a very small advertisement buried in the back of a newspaper. We have an example of that, not from New South Wales.

I do not think the process of consultation and planning assessment is anywhere near as rigorous under the Airports Act as it would be under the Environmental Planning and Assessment Act. I accept that this is not an issue for State governments. I accept that State governments have been as frustrated about this as many other bodies such as ourselves. I think the New South Wales Government has probably done more to draw attention to these anomalies than any other State government. I am happy to say that as a result of the Government drawing attention to it, the current review of the aviation policy statement has also drawn attention to these issues as something that is being reviewed.

The Hon. MATTHEW MASON-COX: Do you think the proposals in the aviation green paper are sufficient to accommodate your concerns?

Ms JACKETT: Not completely. They have done a lot to fix many of the problems—

The Hon. MATTHEW MASON-COX: There is not a lot of detail, is there?

Ms JACKETT: No. I think the crucial thing is making the non-aviation developments subject to the local planning laws. The interesting thing is they have bought this 99-year lease yet Commonwealth Government departments are subject to the Environmental Planning and Assessment Act. You lease land but even though you are private sector—

The Hon. MATTHEW MASON-COX: That is right. They have created an interesting creature.

The Hon. CHRISTINE ROBERTSON: It does not work on Crown land in the Western Division of New South Wales, does it?

The Hon. MATTHEW MASON-COX: It has a particular regulatory framework that was put in place when these airports were "sold", or leased for 99 years, and they extracted very large premiums for the opportunity to develop those sorts of businesses on airports as a result. That is why I put it to you.

Ms JACKETT: I suppose the response of the New South Wales Government is that that is effectively cost shifting because they do not pay any development contributions. It is the State and local governments that are picking up the costs of that sale money.

The Hon. MATTHEW MASON-COX: Governments always complain about cost shifting, don't they?

Mr COCKBURN: The best example of that is Brisbane. Anyone who travels regularly to Brisbane and uses Brisbane Airport will have seen the substantial and very good development that is occurring around that airport. The reality is that it has created huge infrastructure problems for those who actually want to use the airport and those who are travelling down the freeways. Not being a Queenslander I cannot quote the names of those roads. As you know, the problems with access to the airport have now become intense. Who is footing the bill for that? It is the Queensland taxpayer, by and large. Although there was some settlement between Brisbane Airport and Brisbane City Council, I understand the number was not substantial. I think it is a case where a developer has been fairly opportunistic in terms of being able to do developments without having to pay a great amount for associated infrastructure.

The Hon. MATTHEW MASON-COX: A great opportunity.

Mr COCKBURN: That is right. I stress that they did pay high prices and we are certainly not saying that they do not have the right to develop those lands. We are certainly not opposed to development—

The Hon. MATTHEW MASON-COX: You just want a level playing field?

Mr COCKBURN: Yes. Unfortunately there was a perception that we were opposed to it. One of the most popular developments that they are trying to get onto airport plans is the direct factory outlet [DFO]. The perception was that we were opposed to DFOs, and that is not the case at all. We are quite happy for them to be located—

The Hon. MATTHEW MASON-COX: They would be one of your members, wouldn't they?

Mr COCKBURN: Not really. We represent the traditional shopping centres, not the new form of shopping centre.

The Hon. MATTHEW MASON-COX: It is worth clarifying.

Mr COCKBURN: As I said, we are happy for this land to be developed in a commercial sense. As you say, we just want a level playing field.

The Hon. MATTHEW MASON-COX: I come from Queanbeyan.

Mr COCKBURN: I know it well.

The Hon. MATTHEW MASON-COX: I have seen the development at the airport come on enormously over a number of years and of course the DFO has been built at Fyshwick, which has really upset a number of major retail shopping centres in Canberra. That is all in one very small area and it has created quite a deal of tension.

Mr COCKBURN: As you know, there are peculiarly Canberra reasons for there being two DFOs operating within a kilometre of each other. You will be familiar with the across the border 99-year lease, which is just taken for granted by any developer in Canberra, so I am not sure that the 99-year lease is all that significant in extracting a higher price.

The Hon. MATTHEW MASON-COX: They tell you it was in relation to selling airports, but that is another issue we will not explore here. Would you expect completed non-aviation developments at airports to pay some contribution? Should there be a change in the regulatory regime for the ones that have been completed to pay a retrospective amount, or should it just be for new developments?

Mr COCKBURN: I cannot see how you could operate a retrospective regime. I think that would be a shifting of the goalposts and I cannot see any way that you could fairly apply it retrospectively. I certainly think that should apply in a prospective sense.

Reverend the Hon. FRED NILE: Would you see it as a possibility to bring the airports under State planning and environment laws for consistency?

Mr COCKBURN: I can certainly see the argument for carving out aviation as a matter that should be retained for approval by the Federal Government, ultimately by the Federal Minister for Transport, because realistically I do not think a State Government or a local authority is competent to make assessments about aviation development. That is not to say they should not consult. Obviously decisions on new runways are such significant issues that any decision should be made in consultation with both the State and local government. In relation to non-aviation development, just general commercial development, I think there is a strong argument for saying the same State and local planning regimes should be applied to them.

Reverend the Hon. FRED NILE: If a shopping centre were built at Kingsford Smith airport is it possible it would have an impact on some of the regional shopping centres?

Mr COCKBURN: Any shopping centre built anywhere, Mr Nile, will have an impact on another shopping centre. The trade area that a shopping centre draws from can go out to about 15 kilometres, so yes, any shopping centre built there would have an impact. I do not think it would have a substantial impact. Sydney is a bit unusual in the sense that it is not Brisbane or Melbourne and there is not a vast area of spare land, as we all know. Any significant traffic generating development at Sydney Airport is going to cause huge problems. You will be aware that the only example where the Federal Government has actually rejected a major development plan was at Sydney Airport and clearly that was largely for traffic generation reasons.

Ms JACKETT: It would have an impact but the other issue is that there is the idea that it is getting a cost advantage because it is not paying developer contributions and all the rest, so any competition with surrounding centres will not be fair competition.

Reverend the Hon. FRED NILE: So they could charge lower rents for tenants?

Ms JACKETT: Yes. They can even trade when other shops cannot.

Reverend the Hon. FRED NILE: Because of the shopping hours.

Ms JACKETT: Yes.

The Hon. CHRISTINE ROBERTSON: They do not have State trading hours.

Mr COCKBURN: It varies from State to State. When it was happening the States had the right to do a trade with the Federal Government as to which State Acts would apply and which Acts would not. It is certainly the case in Queensland that the State trading hours laws do not apply at Brisbane Airport. I am not sure whether that is the case in New South Wales.

Ms JACKETT: I am pretty sure it is.

Mr COCKBURN: For example, they would be able to trade on Boxing Day but a normal shopping centre in Sydney would not.

Ms JACKETT: We are not talking about the retailer in the terminal but outside.

Reverend the Hon. FRED NILE: There is always a bit of controversy when a new shopping centre is proposed and the local retail outlets say the shopping centre will have an impact on their sales. Should that be a factor that is considered in approvals or is it part of competition and you have to put up with it?

Mr COCKBURN: It is in a sense. As I said, while the decisions that I referred to in our submission say that the effect they would have on another competitor is not relevant, the effect they would have on the overall amenity of the area is a relevant consideration. It is certainly something that the council will take into consideration now if a development application is lodged for a shopping centre. It is easier to think about this in terms of a supermarket. If Woolworths, for example, was proposing a full-line supermarket in a particular area, the impact that would have on an IGA supermarket in the same location is not a relevant consideration under the Act. What is relevant is that if it is a full-line supermarket it will include a Dan Murphy's and perhaps a petrol offer, a bakery and a delicatessen. If the local council felt it was going to have such a drastic effect on other businesses or amenities in the town centre, it would consider that a relevant consideration. The same would apply with a shopping centre. That is something that would be taken into consideration.

The Hon. CHRISTINE ROBERTSON: Does that not contradict competition policy?

Mr COCKBURN: No, as I said they can only take into consideration the impact on the overall amenity within the local area.

Ms JACKETT: Like if a local shopping strip was suddenly for lease and the thing that everybody came there for, which could be the Post Office or anything, was suddenly gone. It is that sort of thing as opposed to turnover or trading.

Mr COCKBURN: It is actually a very good example of the market at work, Mr Nile. After the opening of Westfield Bondi Junction, for example, where two shopping centres were razed to the ground and rebuilt as a very significant shopping centre, it was noted over the next couple of years that it had a significant impact on trade in Oxford Street and in Double Bay. Of course, the market then came into play and rents on Oxford Street were lowered as landlords were faced with the prospect of tenants or customers moving to Westfield Bondi Junction. They had to lower their rents to retain or attract tenants and all of a sudden you saw Oxford Street reviving. It bounced back. Rents went down and innovative new retailers came in.

Reverend the Hon. FRED NILE: Different types of retail outlets.

Mr COCKBURN: Sure. Then five years later when rents were up for renewal in Westfield Bondi Junction the renewal rents had to take into account the fact that the rents in surrounding areas were much less. They had to guard against the prospect that tenants would be moving in the other direction. It is probably fair to say—this is only anecdotal and I have not seen any detailed studies—it has taken longer for Double Bay to bounce back than it has for Oxford Street. Certainly the market will again take care of that. Rents will be lowered in Double Bay and retailers will be attracted back into that area. By and large the impact that a new shopping centre would have in a particular area probably would not last more than a couple of years before market forces came into play and evened things out.

Reverend the Hon. FRED NILE: Do you know of any area where the retail shopping centre died?

Mr COCKBURN: Oh yes.

Reverend the Hon. FRED NILE: As a result of a large shopping centre being established?

Mr COCKBURN: I am sorry, of the strip dying? No, by and large the strips co-exist pretty well with the shopping centres. If you go to Chatswood, for example, it is unusual in that there are two very large shopping centres almost side by side—Westfield Chatswood and Chatswood Chase—and between them there is a very healthy high street, a very active retail area, and surrounding that area within about five kilometres there are another five, admittedly smaller, shopping centres. They are what we call regional shopping centres, a shopping centre that is anchored by at least one department store. There is a classic example where the retailing surrounding those two big shopping centres coexists quite well with the shopping centres.

CHAIR: What involvement do you have with shopping centres in regional areas?

Mr COCKBURN: We have a number of members who do own regional shopping centres. I have to be careful with my terminology here because in the industry what we call regional shopping centres are big shopping centres, but within the region of New South Wales we have a number of owners who do concentrate on owning shopping centres in regional areas, yes.

CHAIR: How does that affect the strips, as you put it, in those regional areas? Is there much resistance?

Mr COCKBURN: No. Where the shopping centre has been located within the town centre, by and large the effect that I was talking about earlier does operate, the shopping centre and the surrounding strip seem to coexist quite well. I am very familiar with Tea Gardens in the Port Stephens area. I do not really know the history of it—I must find out—but if you go to Tea Gardens you will find the town centre itself is moribund, a lot of vacancies in the town centre, and on the outskirts of Tea Gardens as you come in from the highway is quite a large shopping centre, what we call a subregional shopping centre. Each time I go there I cannot help but think how much more vibrant Tea Gardens would be if the council had said that that shopping centre has to be built in the centre of Tea Gardens, because it would have generated the town centre area and those who might not be able to afford the rents inside the shopping centre could afford the rents outside the shopping centre.

That is the reason we have made the comment we have in our submission that the centre's policy is actually intensifying the competition that shopping centres face because effectively you are going to be surrounded by your competitors. Instead of your competitors being located some distance away, they are going to be surrounding you. That is why, if you go to any sort of shopping centre now and it is located in a town centre, retailers are able to feed off the shopping centre, if you like.

Reverend the Hon. FRED NILE: It is a healthier situation.

Mr COCKBURN: Very much so, and it makes for a much more vibrant town centre, so a very healthy coexistence I think is the short answer to the question.

The Hon. CHRISTINE ROBERTSON: In some of the growth regional areas there have been decisions about centralising new shopping centre developments and putting them with others rather than extending another shopping centre that perhaps was not quite so close to the central area. In one in particular that I know of, it has created the most amazing traffic and parking difficulty that you could imagine, and the decision was made on planning grounds, not necessarily on any competition policy deal, which brings me back to our terms of reference and the appropriateness of considering competition policy issues in land use. You have

dealt with it in your submission, but I am still having personal difficulty in getting a handle on what it means. Sometimes centralising goes past what the centre can cope with.

Mr COCKBURN: Yes. I suppose by and large what we are saying is that we do not think the planning system should be the avenue for dealing with competition issues. We have a Trade Practices Act, which is the appropriate Act, and an independent competition regulator, the appropriate bodies that should be dealing with competition issues. I think that to use the planning system as a competition mechanism is the wrong way to go. There is a competition test, for example, that has now been introduced in the United Kingdom planning system. It is still too soon to see how it is operating, but we have doubts—in fact, significant doubts—about whether that would be a good thing, because it is overloading an already complex planning system to expect it to not just be dealing with the general amenities issue that a planning system should be dealing with but to be dealing with competition issues as well. I think by and large the proper interpretation of section 79C of the Environmental Planning and Assessment Act, which is the section that is often misinterpreted, is to say that the competitive effect that a development would have on a surrounding competitor is not a relevant consideration for the planning scheme.

The Hon. CHRISTINE ROBERTSON: And that is in relation to another alcohol outlet wanting to come in, like individual business competition?

Ms JACKETT: Yes, or I suppose, thinking of what some judges talk about, if that meant that five out of six shops in the local shopping strip or another small shopping centre closed and were not there any more, then there has been a net loss to the community. So it is not the individual impact on each of those shops, it is the fact that the community did have a centre. I think perhaps councils often do not quite understand that, and that is where the mistakes are made.

The Hon. CHRISTINE ROBERTSON: Maybe it is not as obvious in the city as it is in the country, but when local government bodies make planning decisions for the future, particularly in relation to retail, quite often they result in massive change to the community?

Mr COCKBURN: Often it is a good change though.

The Hon. CHRISTINE ROBERTSON: Sometimes.

Mr COCKBURN: Often you find that the arrival of a competitor ends up having a positive effect on the existing retailer. They realise that in fact they have now got a significant competitor and they have to improve their retail offer, they have to improve their standard of service, and there are certainly a lot of examples where the arrival of a competitor has had a beneficial effect for the community because it has basically meant that someone has had to realise that they are going to have to work a lot harder—I do not mean physically—to make their shop more attractive and attract customers.

The Hon. CHRISTINE ROBERTSON: One of the interesting side effects of development in country New South Wales has been regional centres. There has been massive investment and there are some incredibly good regional centres right across New South Wales. We have created our empty strips in every small town.

Mr COCKBURN: Thinking of a lot of the country towns that I know well, that would certainly not be my observation. My observation, apart from the Tea Gardens example I used, is that by and large they have integrated the shopping centre into the town centre quite effectively.

The Hon. CHRISTINE ROBERTSON: Yes, the regional centres have grown really well, but I meant the small surrounding towns.

Mr COCKBURN: Sure, yes.

The Hon. CHRISTINE ROBERTSON: Many of these centres have got to the stage where they have had to develop an IGA and maybe a baker and butcher, so they have done that, but the small towns in the region may be the empty strips.

Mr COCKBURN: Yes.

Ms JACKETT: And also it is not just retail, is it?

The Hon. CHRISTINE ROBERTSON: No, it is industry-based.

Ms JACKETT: It is a lot of other services getting concentrated in the regional towns.

Mr COCKBURN: And they lose a key industry there that obviously has quite a substantial impact upon the town itself.

The Hon. CHRISTINE ROBERTSON: They have trouble with supplies.

Mr COCKBURN: Yes.

The Hon. CHRISTINE ROBERTSON: I do not know if there is a solution. I have always been interested in the term of reference in relation to competition policy and planning, and you have actually put on the table exactly where it comes from.

Reverend the Hon. FRED NILE: We have talked about whether some retail strips would die. Has there ever been a shopping centre that has become uneconomical?

Mr COCKBURN: Yes.

Reverend the Hon. FRED NILE: I have noticed a lot of controversy about the Bankstown Centro, for example.

Mr COCKBURN: Bankstown Centro I am pleased to say is still a thriving shopping centre—a difficult one, but it is thriving. It is in the hands of a very good shopping centre operator and I think, if anyone can make it work, Centro can. But it is a tough centre to make work, there is no doubt about it. What happens in those situations, and we are certainly seeing a lot of it at the present time, is that Australian shopping centre owners and managers know how vital it is to ensure that the vacancies in their centre do not increase. Often the only way that you can ensure that that does not happen is to lower rents and to lower them on renewal. Certainly we are seeing that at the present time throughout Australia. The overwhelming objective of shopping centre owners at the moment is to ensure that the vacancies in a centre do not increase because once the vacancies start to increase and vacancies get up to 4, 5, 6 per cent, a lot of retailers are going to say, "I don't really want to go into that centre", every third shop is going to be empty shortly and obviously that means the number of customers you are going to be attracting to the centre becomes fewer.

Australian owners tend to be a lot more flexible in terms of keeping their vacancy rates down, whether that is ensuring that rents on renewal go into negative or giving promotional allowances or rental assistance. As I said, the objective is to make sure that your centre remains full, concentrate on cash flow and worry about other things when the economy turns up. In the United States the phenomenon of dead malls is very common. In fact there is even a website—www.deadmalls.com—that keeps track of dead malls. I went to a conference earlier this year in which they pointed out that a shopping centre in upstate New York, quite a significant area, was now completely empty and only five years ago it was quite a significant shopping centre. In the space of five years it literally went from being a thriving shopping centre to not just a dead mall—the only economic activity in the mall was a Coke machine. I suppose that is one of the upsides of the fact that we do not have anywhere near the amount of retail space per head of population that the United States has. We have probably slightly under half the amount of retail space per head of population that the United States has and one of the flipsides is that by and large we are not getting these dead malls, which of course become significant urban blight once they are no longer functioning as shopping centres.

Reverend the Hon. FRED NILE: Were they built outside the major centre?

Mr COCKBURN: Often that is the case in the United States.

Reverend the Hon. FRED NILE: That would have contributed to the problem.

Mr COCKBURN: Yes. They have a much more laissez-faire planning scheme—not everywhere, but certainly in a lot of the states of the United States they have a much more laissez-faire planning scheme.

Ms JACKETT: Would Birkenhead Point be an example?

Mr COCKBURN: Yes, Birkenhead Point started out as a shopping centre. It is a shopping centre that has struggled. It became more of a factory outlet centre and I think it struggled as a factory outlet centre for a while. Then the new owners, who are our members, carried out a very substantial redevelopment to try to rebirth it as a shopping centre. Australian owners by and large keep working at a shopping centre until they can make it work.

The Hon. CHRISTINE ROBERTSON: It is more like an excursion to Birkenhead Point, though, is it not?

Mr COCKBURN: True.

The Hon. CHRISTINE ROBERTSON: It is not a natural focal point.

Mr COCKBURN: That is right.

CHAIR: Thank you both for your submission and for your time here this afternoon.

Mr COCKBURN: Thank you, and I will send a copy of the other submission to the secretary.

CHAIR: Yes, if you would not mind, and there might be further questions that you might receive in the mail.

Mr COCKBURN: I am happy to answer them.

(The witnesses withdrew)

(The Committee adjourned at 3.59 p.m.)