

PORTFOLIO COMMITTEE NO. 8 - CUSTOMER SERVICE

Thursday 5 December 2024

Examination of proposed expenditure for the portfolio area

LOCAL GOVERNMENT

UNCORRECTED

The Committee met at 9:15.

MEMBERS

The Hon. Emma Hurst (Chair)

Ms Abigail Boyd

Dr Amanda Cohn (Deputy Chair)

The Hon. Greg Donnelly

The Hon. Scott Farlow

The Hon. Aileen MacDonald

The Hon. Bob Nanva

The Hon. Peter Primrose

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000**

The CHAIR: Good morning and welcome to the supplementary hearing of Portfolio Committee No. 8 – Customer Service for the inquiry into budget estimates 2024-25. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today. My name is Emma Hurst. I am the Chair of the Committee.

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

Mr BRETT WHITWORTH, Deputy Secretary, Local Government, Office of Local Government, on former affirmation

Ms ASHLEY HINDS, Acting Director, Investigations, Office of Local Government, sworn and examined

Ms ERICA van den HONERT, Executive Director, Local Government, Office of Local Government, affirmed and examined

Mr MICHAEL BRUCE, Director of Communications and Media, Crown Lands and Local Government, Department of Planning, Housing and Infrastructure, sworn and examined

The CHAIR: Welcome, and thank you for making the time to give evidence. Today's hearing will be conducted from 9.15 a.m. until 1.00 p.m., with a 15-minute break at 11.00 a.m. During this session, there will be questions from the Opposition and crossbench members only, and then 15 minutes is allocated to the Government for questions at 10.45 a.m. and 12.45 p.m. We will begin with questions from the Opposition.

The Hon. SCOTT FARLOW: Thank you for coming back again. From the outset, I foreshadow that we did, of course, have a range of questions that we couldn't ask at the last hearing due to the court proceedings at the time. I think we foreshadowed at that time that we wanted to come back and ask those questions when you would be able to answer them. Thank you for making yourselves available to do that today.

BRETT WHITWORTH: That's okay, Mr Farlow. I feel like I'm almost a professional witness at this point. I would ask that if questions are directed, that they be directed through me.

The Hon. SCOTT FARLOW: They will be directed to you, Mr Whitworth. Thank you very much. I preface that, in a sense, by saying that while you're here, we and other members might have the opportunity to ask you some other questions, but I don't think we will necessarily be going until one o'clock today. Mr Whitworth, just going back to that section 430 investigation into Liverpool council, why was the recommendation to suspend the council changed between 11.27 a.m. on 10 July and 5.17 p.m. on 10 July?

BRETT WHITWORTH: Mr Farlow—I hope you don't mind—that's a very simple question, but there is quite a degree of complexity behind it.

The Hon. SCOTT FARLOW: I'm happy for complexity to be added to the debate.

BRETT WHITWORTH: If you don't mind, I'd like to take you through some of the process and what we were thinking at the time. I think it's also important to remember that we were dealing with quite serious issues in terms of what was coming out of the investigation. We flagged the WHS concerns that the staff at the council were raising. There were questions about the decision-making on staffing issues. It appeared, if not political, then at least partial. There were appointments of people with political backgrounds; there were terminations of people that seemed to be of a partial nature. The interaction of councillors on the compliance and planning issues seemed to be concerning. There was mayoral involvement in executive staff decision-making, and councillors were writing to the Minister raising concerns about the decisions, the funding allocations—in terms of some of the funding allocations that were being made—and the staffing allocations. I also had councillors seeking the sacking of the council. All of this is the context why this is a very serious issue. And, from when I received the first draft of the interim report into the section 430 investigation, I also received a draft briefing note—

The Hon. SCOTT FARLOW: Can I just pause on that point. What date was that, in terms of when you received that interim draft report?

BRETT WHITWORTH: I received the draft on 28 June. You will see, if you have access to some of the discovery documents, that there is a reference to it being a birthday present for me. The twenty-eighth of June was the Friday; the twenty-ninth is the Saturday. That was my birthday. I spent 30 June reading the report and reading the briefing note.

The Hon. SCOTT FARLOW: Happy birthday.

BRETT WHITWORTH: Interestingly, Spotify has told me that 30 June was the day that I spent listening to Spotify the most: seven hours. That gives you an indication as to what I was doing on the day after my birthday. I think, first of all, I've got a draft briefing note. Put aside the interim report; let's focus on the draft briefing note. I've got a draft briefing note that's been given to me that says, yes, we should suspend the council. This is as early as 2 July. And, in doing that, it's not abundantly clear on what grounds we should suspend the council. And again this is where the complexity and the nuance needs to come in. There are different ways in which a council can be suspended under the Local Government Act. A council can be suspended under section 430I, which is based on an assessment that the governing body's function against criteria in section 413E of the local government

regulation is poor or dysfunctional. So you need to prove that. You also need to identify that the functioning of the governing body has so broken down.

There is also an ability to suspend a council under section 438W, and that suspension occurs during a public inquiry if it's in the public interest to do so. It's, effectively, a way of making sure that, whilst a public inquiry's going on, there are no adverse decisions, I think. You can read that, potentially, into the legislation and look at the second reading debates and so on. But it only allows a suspension until the public inquiry is complete or until there is an election. So we're talking about two months, effectively, out from an election. So a suspension under 438W, without a postponement of that election, would only see the council suspended for, effectively, two meetings, and one of those meetings would have been the caretaker meeting. So, thinking about that context, I am going, "We have this great degree of concern. We've got these incredible pressure points around the increasing tension in the workforce and the conflict with the mayor. I've got councillors calling for termination of their council. I've got fear of reprisal happening."

Into that mix we get the allegations about the record destruction being brought to OLG, and all of this is in the heightened environment of an election campaign that is well and truly in full swing. So there are a number of options available to me, and I am debating which one of these options should be suitable. And I think that you can see that I'm asking myself, "Should we do nothing and just go straight to the public inquiry? Should we be looking at a suspension and try and make the argument that it's a suspension under 438I, with the notice-of-intent process and the detail that we need to identify?" My challenge is the council has the ability to make decisions. They're not so dysfunctional that they can't get quorums. They're not so dysfunctional that they can't get a majority decision on issues.

So I think I have to rule out that 438 process. Then I'm back with 438W, which only gives me a suspension up until the end of the election unless there is an ability to postpone the election. Everyone has focused in this conversation about the suspension of the council, and I don't think that's the right thing. They should have been focusing on the issue about whether we should be postponing the election. And, if I can actually take you back to what Minister Hoenig said during the last budget estimates, where—and I'd like to quote this because I think it's important:

But I do say, Mr Farlow, that the decisions about Liverpool council weren't difficult; they make themselves. The only difficult decisions were, with the election coming up, do you interfere with the democratic process or don't you, and whether you suspend them during the public inquiry or not.

So my mind is going, "Should we postpone the election?" But I also have an understanding from the Minister—and he's made decisions about Cootamundra-Gundagai; he's made decisions about Snowy Monaro—that he wasn't keen to suspend elections. I think he also said during the previous budget estimates that it's not something that he likes to do. He doesn't like to interfere in that process. This is my decision-making: On 2 July I've got a briefing note that says to me, "We should suspend". I'm still nervous about that. On 8 July I write an email to my staff, including my legal team, where I talk about an options analysis. I talk about if suspension is in the public interest if it's only for two meetings. I also start presenting, I suppose, in my mind, another option that if there were there was a postponement of the election, I believe that you could justify the suspension under 438W. That's my thinking on the eighth.

On the tenth—and that's the day I think everyone's interested in—I have provided a copy of the draft interim report that I've given to the Minister's office to my team, and I've also listed a set of recommendations in there where I'm landing on the point of no suspension. I think, if you actually read that—and that's at 10.25. At 10.27 I send an email with a draft briefing note to Mr Bruce, I send it to Mr Walther and I send it to my executive officer, Ms Beaumont. It doesn't recommend suspension, but I also think that it's important. People have read bits of that briefing note out, but they haven't read the full context of the briefing note out where you can see, in the briefing note itself, the struggle and the challenge that I'm having with the idea about should the election be postponed or should it not be postponed.

I'm working in an environment where I think any advice I give to the Minister is going to come back and say, "No, we shouldn't be postponing the election." But when I consider that more, when I think about the escalation that's occurring and when I think about the concern that I have of the whole point of the election being about the 430 investigation and the potential public inquiry, I am concerned about trying to ensure the strength, the validity and the ability of that public inquiry to occur without that political hurly-burly. It's at that point that I change my mind and I say, "No, I actually think we should recommend to the Minister to postpone the election and to therefore suspend the councillors on that basis." That's the email that I send at 5.17.

The Hon. SCOTT FARLOW: So in those six hours, you changed your mind.

BRETT WHITWORTH: In that six hours, the thinking that I had been undertaking over the last two weeks probably came to a fulfilment, yes.

The Hon. SCOTT FARLOW: As part of that thinking and as part of the germination of that thinking, did you have any further discussions in that period that made you change your mind, potentially, or lean one way or the other?

BRETT WHITWORTH: I had lots of discussions with lots of people. I really don't want to go and broaden the witness list of any subsequent, "What did he say to you?" The recommendation was mine and mine alone. What I do want to make clear is that I sent a draft, unsigned briefing note, because we hadn't pinned down whether Ms McCulloch was going to be commissioner or Mr Glover was going to be the commissioner. I sent a draft, unsigned briefing note to the Minister's office at 5.17 p.m. on 10 July. That is the first time they received that briefing note, so any allegation that I've been sharing the briefing note that I've been directed by the Minister or the Minister's office to do a particular thing, I utterly reject and refute.

The Hon. SCOTT FARLOW: Mr Whitworth, you indicated that one of your concerns in terms of actually making a recommendation for the suspension of the council elections was dependent on what you thought the Minister would do. You indicated that the Minister had been reluctant in the past. Did you potentially have a conversation with the Minister's office in the interim to see what the Minister's perspective would be on such a recommendation?

BRETT WHITWORTH: I did have discussions where I was, I suppose, trying to understand the contextual situation in which the Minister might be wanting to make a decision. That's something that is entirely appropriate to do as a public servant. In fact, the Australian Public Service Commission actually says that a job of a public servant is to understand the contextual environment in which they are making their recommendations and their advice to a Minister. I was having conversations about that. I am acutely aware that a recommendation that I have has the potential to derail, to impact and to interfere with the democratic process of council elections going on. I want to understand what the contextual environment is and what the consequences of such a pretty bold political interference point like that would be. So, yes, I did have discussions with the Minister's office, but not with the Minister.

The Hon. SCOTT FARLOW: So you had discussions between the 11.27 and the 5.17 with the Minister's office and you didn't provide them with a copy of the report during that time, however—

BRETT WHITWORTH: Sorry, a copy of which report?

The Hon. SCOTT FARLOW: The interim report. The one that was circulated at 11.27.

BRETT WHITWORTH: The interim report was provided to the Minister's office on 10 July, probably around 11 or so. I did provide a copy of the draft interim report to the Minister's office.

The Hon. SCOTT FARLOW: So they had a copy of the draft interim report at the time you were discussing your potential changes with them?

BRETT WHITWORTH: No, I'm not discussing my potential changes; I'm trying to understand the context of a recommendation and how that might land, given it's such a political step to take. I'm effectively saying that a council is going to have to defer its election. It has been well documented and well ventilated that that's a \$1.6 to \$1.8 million decision for the council. It's a political implication of intervening in a democratic process. I'm also concerned—as I said, I've got staff that are concerned about coming to work. I've got councillors and the mayor having arguments with their union representatives in social media, and I've got concerns about allegations about record destruction. I've got this incredible heightened environment. If I do nothing and say, "Well, let the election fix it", then I've got quite considerable concerns. That's still two months away and we might not get to the election without the whole place coming undone.

The Hon. SCOTT FARLOW: I understand that, Mr Whitworth, but you provided the Minister's office with a copy of that draft report—and it had recommendations in it—so when you had those discussions with the Minister's office, you would've been gauging, would you not, their response to those recommendations?

BRETT WHITWORTH: No, because the recommendations in the draft interim report—the draft briefing note and the briefing note itself gives the Minister the legal action and legal power to act. I don't want to go into the recommendations of the interim report because we don't want to bring that back to the surface, given its position and status, but the recommendations in the interim report are not the recommendations in the briefing note.

The Hon. SCOTT FARLOW: With respect, in terms of the briefing note—this is where I need some clarification—were they provided with a copy of the draft briefing note at 11 o'clock or thereabouts?

BRETT WHITWORTH: No, absolutely not, and I categorically say absolutely not. I'm very careful about that.

The Hon. SCOTT FARLOW: Were you discussing with the Minister's chief of staff at that time?

BRETT WHITWORTH: I was discussing with the Minister's chief of staff and other—

The Hon. SCOTT FARLOW: Or other advisers in the Minister's office?

BRETT WHITWORTH: There was a lot of conversation going on about Liverpool so I don't want to just hone it down to a single person.

The Hon. SCOTT FARLOW: That's fine. We'll keep it at the Minister's office, but we will also broaden it to, in a sense, the Minister's chief of staff and advisers within the Minister's office without any specifics.

BRETT WHITWORTH: They're your words but—

The Hon. SCOTT FARLOW: Okay. You weren't speaking to the receptionist. Or maybe you did in part?

BRETT WHITWORTH: I can't remember whether I went up to Parliament House on that day or not.

The Hon. SCOTT FARLOW: Fair enough. So these were potentially discussions within the office rather than necessarily on the phone?

BRETT WHITWORTH: No, there were a number of these conversations on the phone.

The Hon. SCOTT FARLOW: Mr Whitworth, with respect, you mentioned in terms of the discussions you were having, or the thinking you were having, in terms of whether it was Ms McCulloch or Mr Glover who was appointed as the—excuse me in my terminology.

BRETT WHITWORTH: The commissioner?

The Hon. SCOTT FARLOW: Thank you. What made you land on Mr Glover in the end?

BRETT WHITWORTH: It was an availability issue.

The Hon. SCOTT FARLOW: Was that informed during that day or was that informed at another point in time?

BRETT WHITWORTH: Yes. That's a whole other interesting story, given that we had to track down Ms McCulloch and she was overseas and we also had to track down Mr Glover, who was in court. It was a very busy day.

The Hon. SCOTT FARLOW: I can imagine, as was our last hearing for you as well.

BRETT WHITWORTH: Absolutely.

The Hon. SCOTT FARLOW: Is Liverpool City Council still under investigation as per section 430 of the Local Government Act?

BRETT WHITWORTH: Yes.

The Hon. SCOTT FARLOW: What investigatory work has been undertaken since the publication of the interim report into Liverpool City Council on 18 July 2024?

BRETT WHITWORTH: I think that it is an appropriate thing for a regulator to say that, whilst there is an investigation going on, we don't comment on the specifics of the investigation. What I also would make comment on is that the public inquiry has commenced and the commissioner has commenced a call for submissions. There is information that is available to members of the community to make a submission. Given that we are talking about an active—we're not just talking about an ongoing section 430 investigation; we're talking about an active public inquiry under the Local Government Act as well. I don't really want to get into who is doing what and why, given that any sort of speculation or commentary might prejudice the subsequent activity that is going to come out of that.

The Hon. SCOTT FARLOW: When do you expect the section 430 investigation to be concluded?

BRETT WHITWORTH: The section 430 investigation will be concluded following and based on any recommendations or further action from the public inquiry.

The Hon. SCOTT FARLOW: Do you have any timeline in terms of when you expect a full report to be furnished?

BRETT WHITWORTH: That will be dependent on the public inquiry process. The public inquiry is at arm's length, being undertaken by an independent commissioner. Since the last hearing, we have appointed independent instructing solicitors as well. The public inquiry is entirely at arm's length. The timing, method of any hearing—if there is to be a hearing—the consideration of witnesses and so on are entirely in the hands of the commissioner, as is the time frame for the report.

Dr AMANDA COHN: Thank you so much for coming back this close to the end of the year. My first couple of questions were about the Local Government (General) Amendment (Tendering) Regulation (No 2). We had a debate in the Parliament about that back in May in relation to a disallowance that didn't pass. Certainly the intent of that regulation is really commendable, but it was raised in that debate that there were a number of unintended consequence of that regulation that needed working through with affected stakeholders. The Minister at that time made a commitment to work through some of those issues. Since May, what meetings or what conversations have taken place with impacted stakeholders?

BRETT WHITWORTH: There have been a number of meetings and conversations. I don't necessarily have the detail of individual dates. I know that there was a conversation that I held with Local Government NSW and the waste industry association in the Local Government NSW offices to hear their concerns. We also had a round table in June which we held with Local Government NSW, local government professionals, the waste industry association, Transport Workers' Union, the USU and the Office of Local Government, and I think EPA were involved in that as well. Following that, we identified five potential policy improvements. We put that into a short paper and sent that out to the parties. Do you want me to go through those five improvements?

Dr AMANDA COHN: Please.

BRETT WHITWORTH: The five potential policy improvements that we identified—and this is coming out of the workshop. I won't say that this was a consensus that came from the workshop. There was no consensus. These were the five policy improvements that OLG believe that we should be putting forward—ensuring that regulations only apply where there are potential impacts on worker entitlements and making it clear that unions will be consulted as part of that decision. That was about the scope of when the requirements would apply. There were bizarre commentaries about people collecting women's sanitary products in council, so we were trying to limit it to address that. Requiring incumbent contractors to report annually on existing staff and entitlements, which was a way of trying to get at building up our understanding and our information without necessarily requiring everyone to provide the information at the end. Making clear that the incumbent contractor holds the employment of the workers and therefore the obligation to pay out any redundancies unless the staff are transferred to the new contractor.

Make it clear that contracts are signed through direct negotiations after a tender process has not been successful. Under the Local Government Act, if you decide that you don't want to accept the tenders, you can go to a direct negotiation. Making sure that those direct negotiations can only occur if there's an undertaking about workers' entitlements made by the new contractor, and clarifying that a registered organisation only refers to the unions. Those were the five policy points that we wanted to flag. We have received feedback on those. Again, no consensus. I wish there was. We are going to go back. We'd look at that, and one of the—I actually have it with me to settle, advice to go back to those participants, to the round table, to say, "This is what I'm going to put to the Minister to be embedded into the regulation."

Dr AMANDA COHN: That's very helpful. What is the time frame for those next steps?

BRETT WHITWORTH: I was on leave for a month. I have come back and I have been preparing for this, done a conference yesterday, and doing my staff restructure discussions tomorrow—but it's probably next week, before the end of the year, to go back to the participants in the round table.

Dr AMANDA COHN: I also wanted to ask for an update on the progress of the rollout of the apprenticeships and trainees program. I think last time we were in an estimates hearing that was anticipated very soon.

BRETT WHITWORTH: Yes. There will be some pretty detailed information that will be released shortly. But, at a higher level, what I can say to you is that we had a really good response. The applications for round one closed on 8 November, and we had 125 applications from councils, county councils and joint organisations. We were scheduling the programs so that the first round would be about 650 apprentices, and we well and truly exceeded that in terms of the number of applications that had come in. That's really pleasing, that local government has mobilised so quickly. With that, we'd always said that there'd be a second round in March, so we can pick up that second round.

The independent assessment panel has met and has been meeting throughout November, and there are recommendations that they have made that have been adopted by the person that was acting in my role. Councils have been given a provisional notification about the success of their application, and a more detailed notification will come in the next week. That will then enable the councils to go out and start actively recruiting. I know that a number of them have already started the recruitment process themselves in anticipation, and that we'd be in a position to sign deeds of agreement for the funding in the New Year.

Dr AMANDA COHN: Wonderful. I'm also really pleased the uptake has been so strong from the sector.

BRETT WHITWORTH: Yes.

Dr AMANDA COHN: I've got a question about the Federal Government's worker retention payment grant and specifically how that relates to early childhood education workers who were employed by local government. Has there been any work done to address the funding disparity that is being caused by the exclusion of some council-operated preschools from that grant?

BRETT WHITWORTH: Not within the Office of Local Government. I'll probably need to give that some context in the sense that that sounds to me that that's an award issue, that the Office of Local Government is not a party—nor is the New South Wales Government—to the New South Wales State award for local government employees.

Dr AMANDA COHN: I appreciate that. If it's causing an issue for a significant number of people employed by local government in New South Wales, I'm interested to know if the Office of Local Government or the Minister, to your knowledge, has engaged in any advocacy on that front on behalf of councils who are being excluded from this funding.

BRETT WHITWORTH: Unless something happened during November while I was on leave, I'm not aware of that. I'm happy to take that on notice but I also want to flag that we wouldn't necessarily get involved in that level of detail: (a) because we're not party to the award; and (b) I do not have visibility over that area of government activity and government policy. I'm not quite sure who is the regulator or the policy holder of that area. I understand your question to me because it's local government and you believe that I've got an input and a role there, but I've made the point before that I don't necessarily know what councils are doing from an environmental protection standpoint because the policy holder and the regulator is the EPA, as an example. An early childhood issue sounds to me that it's much more in Education's bailiwick, but I'm happy to take that on notice and see whether that's a matter that we can follow up with the Department of Education.

Dr AMANDA COHN: I appreciate you've taken it on notice. I will put the same question to the education Minister next year as well. I appreciate that you're not a party to the agreement. But, on many other issues, the Minister for Local Government and the Office of Local Government have taken on a facilitation role or an advocacy role or an education role on issues that impact the local government sector even when it's not directly your responsibility. To clarify, that's the intent of my question.

The CHAIR: Mr Whitworth, at the last estimates we discussed the additional \$37 million that had been allocated to bolster the capacity of the Office of Local Government and you told the Committee you were working on a dedicated companion animals team or area within the department. I want to get some more information. Has anything progressed since our last discussion on that space?

BRETT WHITWORTH: Yes, Ms Hurst. Before I took my leave, I provided my staff with a draft change management plan that set out a new structure for the Office of Local Government. As part of that new structure for the Office of Local Government, I'm specifically proposing, effectively, the creation of a new branch within the Office of Local Government that would deal with companion animal policy and programs. It would have a separate director that would bring together the staff from the programs, like the grants area, the pet helpline, the people working on the Pet Registry and also would have a policy focus. I think I made a lighthearted comment about the fact that I've been busy this week. I actually have a meeting set up tomorrow afternoon to talk to the team. It's not the final feedback—because I know that they're all watching—but it's for me to give them some views about the feedback that they've provided to me on that. I think a lot of people see a lot of sense in that, but it's just a question about some of the policy issues and how that works.

The CHAIR: Have you got any idea about how many people will be employed in that team overall?

BRETT WHITWORTH: It's not necessarily an increase. It's more about bringing people together. Having said that, the recent passage of the puppy farm legislation does provide an increased set of responsibilities for the Office of Local Government that the Department of Primary Industries and Regional Development have said that they will fund. Any additional people doing that investigation of the—and, please, I haven't got my head around the right language for that, but the ongoing breeders, for example. I would place those people in that team

as an example. If we continue to talk about the office of animal welfare with the Department of Primary Industries and Regional Development and any outcomes for that, and if there's more funding for the Office of Local Government that comes as a result of that, I think putting those people in there as well.

The CHAIR: So there might be some additional staff employed in the team as part of legislation that comes through, but not so much from that additional \$37 million. Is that right?

BRETT WHITWORTH: It has enabled me to make some decisions to ensure that people are brought across from being temporary to permanent. A number of that funding is on the basis of—the size and structure of that team is focused on the Pet Registry work as well. The Government's still considering the response to the pounds inquiry as well, so whether there's any issue that comes from that, that would be considered there as well. But I think my challenge with companion animals is giving a clarity of policy and clarity of direction and ensuring that it is able to operate effectively with these other State agency colleagues. That's the intent of the structure.

The CHAIR: Obviously the work with the Pet Registry is ongoing—and I do have some more questions around the Pet Registry in a moment—but is there any other particular work that you see that companion animals team focused on in those early months when it's first established?

BRETT WHITWORTH: There's obviously implementing the recommendations out of the pounds inquiry. There's obviously the cat containment inquiry; we are still working on our submission to the cat containment inquiry. We are expecting findings and—I don't think they're recommendations, but responsibilities being allocated to us out of the coronial process and the coronial investigations into a number of deaths as a result of dangerous dogs. That alone is one bit, but I think we've now released the pounds data and there's a wealth of information there. I still have talked about how I want to get a better sense of the use of the Companion Animals Fund and how I can make that more effective. There is quite a degree of policy work to be done in that space.

The CHAIR: You mentioned that the pound statistics have recently been published. That data shows that the number of dogs actually entering New South Wales pounds has increased quite significantly, by 665, compared with the year before. Even more concerning is that the number of dogs euthanised in pounds has also increased by about 500 dogs. Will the department be looking into this trend of more dogs finding their way into pounds and more dogs being killed inside the pounds as well?

BRETT WHITWORTH: I think that's one of the reasons I want to get a clearer policy space and a better understanding. I have talked previously about wanting to be more data driven, so I'm quite happy that that gives me a basis to do that. I don't want to make any commitments yet on what the direction or what policy outcome there might be, but certainly it does give us an ability to better understand the issue. We probably haven't had an evaluation of the impact of the amendments to the Companion Animals Act around rehoming. That's probably another area that can do with some work as well. It has always been a challenging policy space, as you well know, with a lot of activity. It's probably a question of what do we need to focus on first, second, third and fourth. I feel, at the moment, I'm focusing on everything first, which means that I'm not getting anything done.

The CHAIR: I know that feeling. It sounds like you are looking at that data. Even though I understand you can't say what sort of policy or if there are going to be any changes put into place, is that something of concern that is being considered or looked into by the department?

BRETT WHITWORTH: I will say that the pounds data was being prepared before I went on leave and was released while I was on leave. I haven't actually sat down and done any sort of perspective or analysis of the data myself. I do think I picked up some of the dangerous dog statistics, because every time I get presented with the dangerous dog report there always seems to be a slight uptick in the number of reported incidents. I haven't actually had the chance to sit down with the pounds data as well to see whether there were any sort of trends that we can see, whether they're geographic or whether they're related to council size. There's a lot of other data that we can use to start talking about socio-economic impacts and so on. I haven't actually done that, and I haven't actually given any direction to the team to do that. My focus is on getting them together in the one space first and then saying, "Alright, what is it that we need to do first, second and third?"

The CHAIR: So that work is ongoing at this point.

BRETT WHITWORTH: Yes. When I say it's ongoing, it's more that it's where I want to get to.

The CHAIR: I mentioned that I wanted to talk about the Pet Registry. Obviously the puppy farm bill passed in November. The bill makes a number of changes to the Companion Animals Act and the Companion Animals Regulation regarding applications for the BINs, or the breeder identification numbers, as well as the information that will be displayed on the Pet Registry. Are you aware if OLG has commenced any of the work to implement those reforms for the Pet Registry, or when that work will start, if it hasn't started already?

BRETT WHITWORTH: We've commenced conversations with DPIRD about it. I think we've ensured that it's been flagged in the conversations with the Department of Customer Service, who are the agency that is building the Pet Registry for us. My first focus in terms of Pet Registry is to deliver on Link My Pet, which was the first commitment, which we are working to do early in the New Year. But in terms of the build of the Pet Registry, we've been talking about IT terminology but the road map that we need to build in. The road map talks about the creation of the registry itself, the creation of the Link My Pet function, the creation of the various portals and the creation of the breeder identification number. We're aware of that and we're building that into the road map.

The CHAIR: I think we spoke about this a little bit last time, but I think previously the department wasn't sure if the puppy farm bill—because it obviously hadn't passed at that stage—would result in increased costs to the development of the Pet Registry. Now that the bill has passed and it imposes quite a few new requirements on the Pet Registry, do you know what those additional associated costs will be? Is that going to be covered by the department of agriculture?

BRETT WHITWORTH: I don't know what the precise costs are going to be. We do have a commitment from the Department of Primary Industries and Regional Development that they will cover the costs for that. We haven't yet got a detailed work program—a work order conversation—with the Department of Customer Service on that, so I can't give you a "They're saying it's going to cost that much and they've got that much money," but we're all aware of it and are talking.

The Hon. SCOTT FARLOW: Mr Whitworth, returning to the timeline—and I know you can't outline a timeline for when this will be concluded—you outlined that Mr Glover has been appointed as commissioner. How long is that appointment for?

BRETT WHITWORTH: I don't believe that that appointment is for the term of the public inquiry. It's not a time-limited—

The Hon. SCOTT FARLOW: It isn't time limited at all?

BRETT WHITWORTH: No.

The Hon. SCOTT FARLOW: I take it that's the same in terms of counsel assisting and the like as well.

BRETT WHITWORTH: Yes.

The Hon. SCOTT FARLOW: With counsel assisting the public inquiry, was there an open tender for that process?

BRETT WHITWORTH: Counsel assisting?

The Hon. SCOTT FARLOW: Yes, Holding Redlich was appointed as counsel assisting—is that correct?

BRETT WHITWORTH: No, we've appointed Holding Redlich as the instructing solicitors. There's a distinction between counsel assisting and the instructing solicitors. Counsel assisting is more of a process that I understand comes from a conversation—actually, I think what's safest for me is to take that on notice and give you some advice on the appointment of counsel assisting because there's a process and it involves the commissioner and government approval, because you're effectively appointing a barrister. But your question—Holding Redlich. We did use a panel process. I asked the department's legal team to undertake a process to see who the most appropriate instructing solicitors would be. I know that they had at least three different legal firms that they talked to.

The Hon. SCOTT FARLOW: That determination in terms of who was the most appropriate firm, was that made by you or was that made on recommendation of the staff?

BRETT WHITWORTH: Can I take that on notice in terms of who made the specific decision for the procurement approval? I don't remember signing or approving that, but I do know that I was part of the consultation process for the approval. If not, I potentially did approve it. Sorry, the detail eludes me.

The Hon. SCOTT FARLOW: That's fine. Just take it on notice. Was the Minister or his office consulted on that appointment?

BRETT WHITWORTH: No.

The Hon. SCOTT FARLOW: In terms of the terms of reference for the public inquiry, how were they constructed?

BRETT WHITWORTH: How were they constructed? The terms of reference were part of the briefing note that was prepared. I think we utilised similar terms of reference for similar inquiries in the past, probably adapted them for the Wingecarribee inquiry that Mr Glover undertook, the Central Coast inquiry that Ms McCulloch undertook, and potentially even the Balranald inquiry.

The Hon. SCOTT FARLOW: Further, in terms of the determination for both a 430 and a 438U inquiry into Liverpool council, has that been standard with other investigations as you've outlined—for instance, the Central Coast Council or Wingecarribee?

BRETT WHITWORTH: These processes all tend to arrive in different ways. With Balranald, as an example, there was a performance improvement order, so there was a process under that. I can't recall in the advice given to me whether there was a 430 investigation that preceded that. Central Coast was quite an urgent matter, obviously, because of the seriousness of the issues that were in front of us, so I don't think there was a 430 investigation there. I suppose, if we want to talk about a theoretical best case world, you'd use the powers under 734A of the Local Government Act to build an understanding of the information available. You'd use a section 430 investigation to actually interview witnesses and, if you were concerned, you'd then either impose a performance improvement order or you'd move to a public inquiry. I think if you look at what we've done, that's what we did. We started with section 734A preliminary inquiries. I sent a number of those off to the council. We believe that we had the grounds for a 430 investigation which we commenced, and that led to the inquiry. Sorry, I'm being advised that I did approve the appointment of Holding Redlich on recommendation from the legal team.

The Hon. AILEEN MacDONALD: When we had the last budget estimates on 5 September, we know that the discussion paper was released with regard to the code of conduct. I think you had a submission close-off date of 15 November. Did you receive many submissions, and how many did you receive?

BRETT WHITWORTH: We extended the submission time frame until the end of November, which I think was greatly appreciated. It was potentially not as long as what some people had wanted, but I think in terms of some of the precise numbers, I know that we exceeded more than about 200 submissions, and I think it's in the vicinity of about 220 or 230. We received both written submissions and people that filled in the feedback form.

The Hon. AILEEN MacDONALD: What is the process after you've received the submissions? Do you have a time frame of when there will be a new code of conduct?

BRETT WHITWORTH: It's not as simple as producing a new code of conduct, Ms MacDonald. The Councillor Conduct Framework and the discussion paper talked about a number of elements. It talked about changing meeting practices. It talked about updating the code of practice. It talked about the appropriate tribunal or jurisdiction, methods to consider misconduct and definitions of misconduct. So there is quite a degree of work. We have been looking at putting them into different components. It had always been intended that we would move first on the meeting code of practice work. We are working to give the Minister some advice on what an updated meeting code of conduct would look like, and I hope that there will be some announcements on that soon.

We have been looking at different options for the code of conduct and how that might be written. I need to have a number of conversations with the different stakeholders, particularly Local Government NSW, about the concept of the privileges panel and how that would be constituted. Once that has been identified, that then helps us to create those different paths. We also need to understand what the most appropriate tribunal or jurisdiction would be for the consideration of councillor misconduct, where we need to take it through to a hearing process. Some of these things require legislation, some require regulation and some require updated conduct guidelines and so forth. I don't want to put a time frame yet because there are still policy questions that the Government will need to consider in terms of what it wants to land on and how it wants to consider. But we would be talking about legislation probably in the first half of next year, I dare say.

The Hon. AILEEN MacDONALD: What interim measures will you have to address any complaints under the current system while you are going through these changes and having to do the reforms?

BRETT WHITWORTH: When you say "interim measures", I suppose the interim measures are the existing measures and the existing system. I've given evidence before on how I have been trying to improve the process, particularly from the back end—the Office of Local Government end—in terms of the speed with which we can appreciate and understand submissions or concerns that are being raised with us and get back to councils. Often people are concerned that we're a bit of a black hole into which they send stuff that doesn't come out. We have used mechanisms such as the complaints investigation review committee, which is effectively a triage process. When complaints come in, we will consider those first, continuing to make sure that we reach out to councils.

We've been using the Hit the Ground Running induction process to educate incoming councillors on the existing processes and mechanisms of how to undertake code of conduct complaints. I've also been trying to provide a message that code of conduct complaints-making shouldn't be the first lever that you pull. As a councillor, you're involved in local democratic processes that are sometimes robust. It's trying to make sure that you can talk about how to build those respectful engagement processes with your colleague councillors and work with them in that sense. That's quite optimistic, I have to say. I don't know that I'm going to get very far on that.

The Hon. AILEEN MacDONALD: I might move on to conflicts of interest then. We've had some high-profile conflicts involving MPs. What steps has OLG taken to ensure that these incidents are promptly identified and addressed under the existing misconduct framework?

BRETT WHITWORTH: I think I take issue with that question because you've said a high-profile MP. You're alleging something that I think has been ventilated in the lower House, but I don't believe there was ever a code of conduct finding that that was a conflict of interest.

The Hon. AILEEN MacDONALD: Are there any measures being taken to restore public confidence in council decision-making processes?

BRETT WHITWORTH: That's a fairly broad question. Would you like to give me some more specifics or particulars on what you're trying to—

The Hon. AILEEN MacDONALD: I think it refers to the previous question, so I might take that one off. I'll ask a few more questions with regard to the apprenticeship scheme. It's fantastic that you have received so many applications for that. Are there any measures being taken to ensure equitable distribution amongst, say, metropolitan, regional and rural councils?

BRETT WHITWORTH: When we produced the guidelines, we wanted to make sure that we could use disadvantage factors in how the funding and the grants would be allocated. There were assessment criteria that were prepared for the assessment committee. I was on leave during December when the assessment committee met. But if I was here, I wouldn't have been party to those. We had an independent chair and we had representatives from the sector and training services, as well as Office of Local Government people. There was an assessment against the criteria to ensure that there was both fairness and equity, and also a recognition of the different challenges, I suppose, that exist between metropolitan and regional councils in terms of hiring staff and being able to mobilise quickly. So we used the disadvantage factors that are similar and adapted the disadvantage factors from the grants commission and applied those, which I think you're probably familiar with.

The Hon. AILEEN MacDONALD: Just on that, did any councils express concern with their capacity to participate in the program because of, say, maybe disadvantage? If they did, what support is there for the councils with limited resources?

BRETT WHITWORTH: I'm aware that before the guidelines came out, one council particularly said to me, "We're not going to apply," because they didn't feel that they were going to get enough funding to make it worth their while. I'm also aware of another council that wanted to use a general training organisation to procure their apprentices and trainees. We specifically said that we wanted the money to go to local councils rather than to third-party organisations, whether they're non-government or whether they're profitable organisations. They're the only two that I know of. But, as I said, whether there were any others that were specifically concerned—I think we have 128 councils in New South Wales. Sorry, we've got 150 auditable entities that were open to apply. We had applications from 125.

The Hon. AILEEN MacDONALD: That's good. This might be too soon to ask, but does the program intend to create sustainable career pathways for apprentices within local government? What steps are being taken to address potential attrition? It might be too soon in the—

BRETT WHITWORTH: It is. But I also want to point out that the principle behind the apprentices and trainees, and the Government's commitment to increase the number of apprentices and trainees by 15 per cent, was to address the fact that in local government at this point in time the oldest cohort of its workforce are its skilled workers and those workers are contemplating retirement now. This program was designed to ensure that we could take advantage of their skills and their capacity to be supervisors, and to enable them to retire knowing that we had a group of people that would come through and replace them.

I say that on the basis that there is nothing in the program that guarantees those apprentices and trainees will have a job in local government after their apprenticeship or traineeship is complete. But we expect, given the nature of the workforce, that there will be roles within local government that they can take up. If that fails and they don't, we still have trained people who can work, particularly in regional areas—which is gold—to deal with

housing, infrastructure delivery, service delivery, child care and operation of childcare centres and so on. This is an investment not just in local government but in building regional capacity as well.

The Hon. AILEEN MacDONALD: I have some questions about the RSPCA. Does OLG have a robust acquittal and reporting process with regard to any grants or fundings?

BRETT WHITWORTH: That's a very broad question. You are asking me specifically about RSPCA and particular grants, but you've asked me that more broadly.

The Hon. AILEEN MacDONALD: Is RSPCA NSW subject to robust acquittal and reporting processes?

BRETT WHITWORTH: Those grants that we have provided to agencies and authorities and councils post the *Grants Administration Guide*, I believe, are robust and thorough and appropriate. There is a transition process. I mean, we're talking about the Office of Local Government. It doesn't take us much to go back to the stronger communities fund and the concerns that were raised via this House about the operation of the stronger communities fund, and I'm dealing with that legacy process and recovering from that. I would like to say that we're on a continuum of rigour.

Any grants that we are issuing now, we are using the SmartyGrants process. We are ensuring that we comply with the *Grants Administration Guide*. Starting with the stronger communities fund, I have been working to try to go back and look at how councils have been applying and how we have been acquitting grants. The reason I say all this is that RSPCA has a number of grants from us that bridge that gap. Some were post-*Grants Administration Guide* and some were pre-*Grants Administration Guide*. But what I can say to you is that we do require them to provide us with acquittal reports and for them to document how they are meeting the commitments that they said that they would meet, particularly in terms of capital works or, when we provide them with the \$20.5 million, the updated provision of services that they were undertaking.

Ms ABIGAIL BOYD: Good morning to all of you. There were three performance improvement orders that were issued to the three councils that were in administration prior to the last election. Have there been any cases previously where a PIO has been issued to a council before it has elected councillors?

BRETT WHITWORTH: No, I don't believe that there has been. I'm looking through my memory to see where we were with the New England Weeds Authority, because it's still an ongoing situation. Ms Boyd, do you mind if I elucidate a little bit on what those performance improvement orders were—

Ms ABIGAIL BOYD: I think that would be really useful because, on the face of it, they seem quite strange.

BRETT WHITWORTH: Those three councils—Central Coast, Balranald and Wingecarribee—all came into administration for different reasons. Central Coast had financial concerns, Wingecarribee had governance concerns and Balranald had a combination of finance and governance concerns. They had been under administration, and the administrators were undertaking a number of pieces of work to bring that council into a better performance environment. There was a trajectory of reform that they were undertaking. That trajectory of reform included things around governance processes and delegations. It included financial accounting and reporting processes. It included investment processes and looking at revenue and so on. Those reforms are not yet complete. In all three cases, the trajectory of reform is ongoing.

The concern was that the incoming councillors may do something that would jeopardise that trajectory of reform and that we would go backwards. We are talking about three councils that are already fragile, for want of a better word, in terms of their governance and their finance. The performance improvement orders were about setting up guardrails to make sure that if the council wanted to make a decision—it doesn't prevent them from making a decision; it just sets out requirements that if they wanted to terminate their general manager, they need to get my concurrence. If they wanted to make a change to the delegation, they need to get my concurrence. If they want to fundamentally change their financial or their resource approach, they need to talk to the ARIC.

Ms ABIGAIL BOYD: If we focus on Central Coast Council, it was put into administration, what, five years ago? How many years did it spend in administration?

BRETT WHITWORTH: I thought it was 2021.

Ms ABIGAIL BOYD: Sure. Maybe that's correct. So it was three years of administration. It seems like it was longer, as a resident of Central Coast without a democratically elected council. When we look at what a performance improvement order is for, it's sort of in the name. It's about improving performance, not stopping democracy getting in the way of reforms that an administrator has already put in place. Under which aspect of the regulations was this PIO made? I'm looking in particular at Local Government (General) Regulation 2021 clause 413D, which talks about the criteria to be considered by a Minister issuing a performance improvement

order. It's all about whether a current council is failing to comply with responsibilities, whether there are significant risks facing the council, whether previous intervention attempts have failed, whether council business is being disrupted and whether there's a pattern of inappropriate behaviour. We know from the letter that was sent to the Central Coast administrator by the Minister that he was very pleased with the performance of council and didn't think there was a need for improvement, so under which aspect of the regulation was the order issued?

BRETT WHITWORTH: You've also neglected to talk about the legislation—so the head of power. The head of power talks about the Minister being able to take action if he feels that there is a need to ensure the ongoing performance of the council. We provided the Minister with advice saying that there was—sorry, I don't have the briefing note in front of me in terms of Central Coast, but there was a briefing note that set out the concerns about the council falling back if the trajectory of reform wasn't maintained.

Ms ABIGAIL BOYD: But, again, that's not about a need for improvement; that's about something that has improved, not unimproving.

BRETT WHITWORTH: No, sorry. I use the word "trajectory" quite deliberately because a trajectory has a start and a finish and we're halfway through.

Ms ABIGAIL BOYD: I understand that you have a particular plan for this council, but we now have elected councillors who are brand new. They're not the same councillors who were there when the council failed them to begin with.

BRETT WHITWORTH: Some of them.

Ms ABIGAIL BOYD: It doesn't matter. What does it matter? They have been elected.

BRETT WHITWORTH: You're right.

Ms ABIGAIL BOYD: What I'm understanding from your response is that there's a lack of trust that these new councillors will continue the progress, as you see it, that has been made by the administrator. I don't believe that's what the legislation is set up to allow the Minister to do. Did you get legal advice before these were issued?

BRETT WHITWORTH: If I got legal advice, then that is my matter and not your matter, I say respectfully.

Ms ABIGAIL BOYD: Okay. It does go to whether, as a Committee that is responsible for the area of local government, we think that something has been done lawfully or whether the Government is being exposed to risk. I'm not sure that is just your issue. Did the Office of Local Government get legal advice that it was able to issue this order? It is causing great concern to people on the Central Coast.

BRETT WHITWORTH: Sorry, you are asking me to provide you with my legal advice?

Ms ABIGAIL BOYD: I'm asking if you got legal advice.

BRETT WHITWORTH: I certainly talked to my legal advisors.

Ms ABIGAIL BOYD: Right. Did you get legal advice that signed off saying, "Yes, you can do this under the Act"?

BRETT WHITWORTH: I'm not going to answer that.

Ms ABIGAIL BOYD: The answer is no, isn't it?

BRETT WHITWORTH: No, I'm not going to answer that because you're asking me to provide legal advice, and my legal advice—

Ms ABIGAIL BOYD: No, I'm asking if you got legal advice that gave you—

BRETT WHITWORTH: No, you're asking—sorry.

Ms ABIGAIL BOYD: Okay. So you're saying that you can make a decision and that you can make decisions like this without getting legal advice that says it's okay to do it?

BRETT WHITWORTH: No, I'm not saying that.

Ms ABIGAIL BOYD: Okay. So did you get legal advice that said it was okay to issue these performance improvement orders under the Act?

BRETT WHITWORTH: I discussed it with my legal advisers.

Ms ABIGAIL BOYD: That's not the same as getting legal advice.

BRETT WHITWORTH: No, I know, but if I have—

Ms ABIGAIL BOYD: Okay, so the answer is no.

BRETT WHITWORTH: No.

The Hon. PETER PRIMROSE: Point of order: Can we just allow the witness to answer?

The CHAIR: I'll allow the witness to answer.

BRETT WHITWORTH: So you want me to provide my legal advice. That is where the question is leading to.

Ms ABIGAIL BOYD: No, that's not what I said at all. I said, "Did you get legal advice?"

The Hon. PETER PRIMROSE: Point of order: Again, can the witness please be allowed to answer?

Ms ABIGAIL BOYD: He asked me a question, and I was responding.

The Hon. PETER PRIMROSE: The member is perfectly entitled to ask questions. The witness should be allowed to answer them.

The Hon. GREG DONNELLY: To the point of order: I think it's inappropriate to be putting words into the witness's mouth and then the witness being forced to respond by saying, "That's not what I said."

Ms ABIGAIL BOYD: To the point of order: I appreciate the interference, but I think I was asked a direct question by the witness.

The Hon. GREG DONNELLY: Point of order—

The CHAIR: Sorry, I'm just hearing the other member.

Ms ABIGAIL BOYD: I was asked a direct question by the witness, and I was attempting to answer it.

The Hon. GREG DONNELLY: It's not interference.

The CHAIR: Do you have a point you want to make about that response?

The Hon. GREG DONNELLY: Yes, a point of order. That's not interference. Being able to intervene to settle a matter and return to the back and forth of the questioning that we know is how these hearings proceed is not interference.

The CHAIR: It's fine to take a point of order. I don't uphold the point of order that the member was putting words in the witness's mouth, but I ask the member to make sure there is enough time before stepping in for further questions.

Ms ABIGAIL BOYD: If I could just rephrase the question so it's very clear. I was not attempting to put words in your mouth. My assumption is that if you had received legal advice and then gone ahead making this order, that the advice would have been that it was okay to make the order. Is that assumption incorrect?

BRETT WHITWORTH: That assumption is incorrect. I discussed with my legal advisers what are the criteria that I need to put to the Minister—sorry, what advice do I need to put to the Minister in order to assure him that he has the power to make a performance improvement order? I need to address both the provisions in the legislation, which identify that the Minister needs to form a view that action must be taken to improve the performance of the council—and I've talked about that trajectory of continued reform. We also need to address the criteria in the regulations. I did not go back and then go, "Have I done this correctly?" I know what my obligation is.

Ms ABIGAIL BOYD: Can I ask you this final question in these last few seconds? Under the performance improvement order, are the councillors precluded from taking legal action against OLG to remove this PIO?

BRETT WHITWORTH: That sounds to me like you're asking me to provide a legal view on the performance improvement order.

Ms ABIGAIL BOYD: No, I'm just giving you a warning.

BRETT WHITWORTH: It certainly doesn't fit within the—

The Hon. GREG DONNELLY: Point of order: The statement to the witness "I'm giving you a warning"—

Ms ABIGAIL BOYD: Yes. Have you got a problem with that, Mr Donnelly?

The Hon. GREG DONNELLY: —is a threat.

Ms ABIGAIL BOYD: No.

The CHAIR: I don't think it was intended as a threat.

The Hon. GREG DONNELLY: To actually say to a witness here providing evidence "This is a warning" is clearly a threat.

Ms ABIGAIL BOYD: To the point of order: It was a friendly warning that legal action is probably coming on something that's not—

The Hon. PETER PRIMROSE: So it was a warning. Talk about being discourteous.

The Hon. GREG DONNELLY: So it was a warning. That's a threat to a witness.

Ms ABIGAIL BOYD: Not from me.

The CHAIR: I don't think that was a threat coming from the member.

The Hon. GREG DONNELLY: Well, what was it?

The Hon. PETER PRIMROSE: It's being particularly discourteous.

The CHAIR: It was a comment. It was perhaps a slightly inappropriate comment, but it was a friendly comment.

The Hon. GREG DONNELLY: I ask for that comment to be withdrawn.

Ms ABIGAIL BOYD: And I refuse.

The Hon. GREG DONNELLY: That is a threat.

The CHAIR: I don't agree that is a threat. I don't think that was the intention of the member. She has already indicated that she meant it as a friendly comment.

The Hon. GREG DONNELLY: A friendly comment? To threaten a witness? It's just appalling behaviour by The Greens.

The CHAIR: As I said, it may have been slightly inappropriate, but it was not a threat.

Ms ABIGAIL BOYD: It was not a threat, Greg. Calm down.

The Hon. GREG DONNELLY: It's just appalling treatment of witnesses by The Greens.

Ms ABIGAIL BOYD: Calm down. We'll talk about your appalling treatment, if you like.

The Hon. PETER PRIMROSE: No, stop making threats to witnesses.

The CHAIR: Order! Dr Amanda Cohn has the call.

Dr AMANDA COHN: While we're talking about performance improvement orders, could you provide us with an update on Edward River Council?

BRETT WHITWORTH: It would—

The Hon. GREG DONNELLY: Chair, I ask you to remind the witness that if he needs to take a matter on notice because of the complexity—

Dr AMANDA COHN: Point of order: Why is Mr Donnelly interrupting my time? You can't just make a comment.

The Hon. GREG DONNELLY: No—

The CHAIR: Mr Donnelly, this is a very experienced witness. He is very familiar with these inquiries and when he can take something on notice.

BRETT WHITWORTH: Thank you. We received our second compliance report on 22 October and that's currently being assessed. The final report is due to the Office of Local Government by 28 February 2025.

Dr AMANDA COHN: In your view, is that council progressing in a way that is likely to result in the removal of the improvement order at the end of its duration?

BRETT WHITWORTH: I have not had an opportunity to talk to Mr Ferguson, who is the temporary adviser that was appointed by the Minister. I do know that my staff have been talking to him. I haven't yet received a report on the compliance report itself. I do get a sense that the general function and decorum of the council has improved.

Dr AMANDA COHN: Thank you. I might follow that one up next year, once you've had a chance to go over that report. That's my only question.

The CHAIR: I have a few follow-up questions in regard to the Pet Registry. Will the changes from the puppy farm bill affect the current time frame for the rollout of the Pet Registry? Has work started with regard to working out a new timeline for the Pet Registry rollout?

BRETT WHITWORTH: The Pet Registry rollout has always been done in stages. I think I said earlier that the next stage is the Link My Pet" function, and then I suppose the question that we will need to address through our update of the road map is where do the changes necessary for the breeder identification numbers impact the work in terms of the delivery of the portals for vets, rehoming organisations, councils and so on? I don't have an answer to that at this point because it's still work that is in progress.

The CHAIR: Some of the later stages of the Pet Registry process involve consulting with, for example, rescue organisations to include them into the Pet Registry. Are you expecting those parts to be further delayed? My understanding is that there is a timeline for the puppy farm legislation to come into effect, which is one year, and so I assume that will take some priority. Will that then affect the rollout of some of those other areas, like rescue groups?

BRETT WHITWORTH: I don't think I can answer that question at this point, until we've had a chance to understand what sort of work is involved and how it impacts the road map. As I said, I saw the updated draft road map for the first time yesterday since I've returned from leave, so I really haven't had a chance to delve into that, and the puppy farm legislation only passed toward the middle of November, end of November. It is a concern. If I'm faced with challenges between a legislative deadline and a nice-to-have time frame, then I'll need to go with the legislative deadline.

The CHAIR: At the previous estimates hearing in September we were told that stage two of the registry rollout has been delayed. Looking at the Pet Registry website it seems that stage two of the work is still ongoing; it hasn't been completed. Do you know what the cause of that delay is and when we can expect to see the stage two rollout completed?

BRETT WHITWORTH: I think there are differences in terminology. You're talking stage two; I think I'm talking Link My Pet. Link My Pet, like all IT or capital infrastructure builds, as soon as you give a time frame then of course there's going to be a delay or slippage of some sort. But we have changed our work method on that to go from what's called an agile to a particular time frame based approach. I am working to ensure that that's something that can be done by early in the new year—I'm talking the first couple of months in the new year. We have created a new governance structure to ensure that we can improve the understanding and knowledge of the more senior executives in both the Office of Local Government and the Department of Customer Service in terms of some of the operational activity going on in the build of the Pet Registry itself and the interaction of my team and the Department of Customer Service team.

I wish I had an ability to put my finger on what happened, or why did we slip? I think the challenge that we have has always been, as soon as you start talking about what is a process for registration, what are the expectations, and you start factoring in some of the outer factors, like how do we deal with dangerous dogs, it became a little bit challenging. We were working to get a solution for 80 per cent of the problem but not 100 per cent. And then when you start applying that 100 per cent solution, it started to become more difficult.

The CHAIR: I just wanted to ask as well about the non-registered rescue organisations that were previously finding a loophole to be able to use the Pet Registry. I think they were sort of registering as an individual, even though they were an organisation.

BRETT WHITWORTH: Yes.

The CHAIR: Now they're not able to do that. Are they still having to use paper forms? Are they still locked out of the new Pet Registry, or have we found another way to allow them in while the stages are going to progress?

BRETT WHITWORTH: I think the whole point of the Pet Registry is that it's about a digital interaction. You need a login process and you need an individual login. I think the fundamental problem—you talk about the workaround. It was that person A was using their individual login on behalf of their organisation. I don't yet have

an answer. To address that problem, I've got to create a digital identity for the organisation and work out how you validate that digital identity for that organisation that might shift and change as different people use it. That's quite complex and I don't know that that's my immediate priority. It's certainly something that we want to get to. But whilst that's happening, we're offering that paper-based service as an alternative.

The CHAIR: You can understand, obviously, that these rescue organisations are finding that extremely difficult to do it all via paperwork and having to hand it in to councils. I think I've spoken to you and the department previously about the fact that often that paperwork doesn't get put through for months on end: An animal is technically adopted but there's some real legal question marks around that in regards to the paperwork still hasn't gone through in six months—and I'm hearing sometimes even 12 months later when it's done on a paper trail version.

BRETT WHITWORTH: Is that because of a delay in councils?

The CHAIR: Yes. That was my understanding. Individual councils are struggling sometimes with the paperwork is my feedback.

BRETT WHITWORTH: I think we're looking to try and address that as part of the Link My Pet work. But, as I said, I'm just trying to explain the context of what the issue is.

The CHAIR: That will be included in this new section of rollout?

BRETT WHITWORTH: I don't want to make a guarantee that there is definitely a fix, because it's a complex problem. But it is part of the nature of the work that we're doing to provide that Link My Pet functionality.

The CHAIR: And we don't have a timeline at this point in time?

BRETT WHITWORTH: As I said, the Link My Pet functionality, I'm looking at early in the new year.

The CHAIR: We have five minutes before we go to Government questions. I will go to the Opposition.

The Hon. AILEEN MacDONALD: I will just go back to questions with regard to RSPCA NSW. You've said that they've gone through robust and thorough acquittal processes. They wouldn't be provided with a blank cheque for \$20.5 million, would they?

BRETT WHITWORTH: No. There is a deed of agreement for that \$20.5 million. This was an approval that was contemplated by the previous Minister and finalised by the current Minister. Similar grants were provided to Animal Welfare League. There were grants to Animal Welfare League, there were grants to RSPCA and there were other grants to Lucy's Project, for example, just to name a few. But the deed of agreement specifies commitments for the RSPCA, and the acquittal report is quite detailed against those commitments. We've got six-monthly reporting coming from the RSPCA on that.

The Hon. AILEEN MacDONALD: To your knowledge, in that deed of agreement, would they have spent any on building and construction projects?

BRETT WHITWORTH: There were multiple grants to the RSPCA.

The Hon. AILEEN MacDONALD: But if it was in that \$20.5 million?

BRETT WHITWORTH: Can I take that on notice? I would like to take on notice for you the grants that we have provided to the RSPCA in terms of the \$20.5 million plus the capital works projects. I think that is safer and clearer.

The Hon. AILEEN MacDONALD: To your knowledge, do they also have to report against the POCTAA enforcement outcomes on that funding?

BRETT WHITWORTH: That's a matter that you'd need to raise with DPIRD.

The Hon. AILEEN MacDONALD: DPI?

BRETT WHITWORTH: The Department of Primary Industries and Regional Development.

The Hon. AILEEN MacDONALD: Animal welfare organisations would make substantive budget submissions. Did you receive one from RSPCA NSW as well as Animal Welfare League?

BRETT WHITWORTH: I am aware that the Government received submissions from all different types of organisations. I believe that one was received from the RSPCA. But my focus is on the companion animals component and from that, probably with the RSPCA, the rehoming issues associated with it.

The Hon. AILEEN MacDONALD: You might take on notice—so the Minister would also receive the submission from the RSPCA?

BRETT WHITWORTH: I think the Government received those. I believe that there is a process by which the Government receives submissions on budget proposals.

The Hon. AILEEN MacDONALD: Does the OLG also receive them or are they handed down to you?

BRETT WHITWORTH: My understanding is that it's a centralised process. I will be made aware of these things, but it's not my role to frame the budget to the delight of Treasury.

The Hon. AILEEN MacDONALD: Now that the RSPCA has been notified of the funding, and it's significantly reduced, how will this affect councils and their pounds? Do you think there will be more cost shifting onto local government, charities and rehoming organisations?

BRETT WHITWORTH: I take issue with the term "cost shifting". Councils have an obligation to provide pound services under the Companion Animals Act. How they do that is something that we leave them the authority to do. I think I've given evidence before that some councils choose to form contractual arrangements with the RSPCA. Some councils form contractual arrangements with Sydney Dogs and Cats Home. Others form contractual arrangements with other councils, and others provide the service themselves. I certainly think that it will require councils to look at those contractual arrangements.

The CHAIR: Are there any Government questions?

The Hon. PETER PRIMROSE: I would just like to provide Mr Whitworth with the opportunity to provide any additional information on any matters that have been raised. If you would like to provide that information to the Committee, please feel free to do so.

BRETT WHITWORTH: Mr Primrose, I think I'm comfortable. Thank you. I've taken a few questions on notice, but I'm comfortable.

The Hon. PETER PRIMROSE: No further questions.

The CHAIR: In that case, we will take a break and return at 11.15 a.m.

(Short adjournment)

The CHAIR: Welcome back to the inquiry. We're going to throw to questions from the Opposition. We are providing 20 minutes of time but, just to let witnesses know, we don't expect it to go much longer than that.

The Hon. AILEEN MacDONALD: During the last budget estimates there was a bit of debate—and you alluded to it just before—about the responsibilities between OLG and DPI. I think the Minister agreed to advocate for resolving the funding responsibility ambiguity. Do you know if he has advanced that or done anything?

BRETT WHITWORTH: That's probably a matter for Government policy in terms of how that gets done and the mechanisms. Certainly there is very close alignment between the work of Ministers Hoenig and Moriarty, and there are frequent, if not daily, conversations between the Office of Local Government and the Department of Primary Industries and Regional Development. The extent to which we need to come together to deliver the puppy farm legislation—the implementation and introduction of the office of animal welfare—there's a lot of work that gets done on that. I don't know that I can say much more because it's up to the Minister to go to Government with a policy proposal on how we can get greater integration and address some of the things that he made a commitment to at the last estimates.

The Hon. AILEEN MacDONALD: I might follow that up with the Minister at the next budget estimates. Just for clarity, I think the \$20.5 million to the RSPCA was through SmartyGrants. Is that what they call it?

BRETT WHITWORTH: Yes, it probably was because—

The Hon. AILEEN MacDONALD: So that would have been subject to those guidelines?

BRETT WHITWORTH: Yes, that grant was definitely subject to the *Grants Administration Guide*. That grant lived between two governments. It was a decision to offer the grant initially that was taken by former Minister Tuckerman and the actual approval of the final grant itself was by Minister Hoenig, but it was done with the *Grants Administration Guide* because it had commenced late in 2022. I do remember when I was preparing the paperwork for that collection of rehoming grants to Minister Tuckerman that the *Guide* was the key consideration and the key process requirement that we needed to meet.

The Hon. AILEEN MacDONALD: You might have to take this question on notice. Do you remember which year had record funding for animal welfare and which government delivered that funding?

BRETT WHITWORTH: Sorry, when you say "record funding"—

The Hon. AILEEN MacDONALD: A high amount of funding, or the most amount of funding they have probably had.

BRETT WHITWORTH: In terms of rehoming organisations?

The Hon. AILEEN MacDONALD: Yes.

BRETT WHITWORTH: I'm happy to take that on notice and identify what years were provided. I suspect that no-one will be happy because I suspect it was 2023.

The Hon. AILEEN MacDONALD: I think that's all I'm going to cover on animal welfare and the RSPCA. I just want to go to the financial sustainability of councils now. I wonder if OLG has taken any steps to restore Financial Assistance Grants—I know it's talking with the Federal Government—to what they used to be, which I believe was 1 per cent of the Commonwealth taxation revenue?

BRETT WHITWORTH: That's a matter that's entirely for the gift of the Commonwealth Government. The amount of money that they identify for Financial Assistance Grants to councils across the nation is a matter for the Commonwealth Government. What I can say is I lose no opportunity to point out to my Commonwealth colleagues, in presence of my other State-based jurisdictions, the importance of looking at, both in terms of the actual amount, bringing it back to the 1 per cent of GDP that it started with, but also some of the Commonwealth-based provisions around the equitable provision and the no-disadvantage test. I think you would understand from your time on the grants commission it's quite a complex area. Even if we wanted to reallocate more funding from, say, metropolitan councils that have greater capacity to raise their own funds to regional councils, we are still limited by the no-disadvantage test and the 30 per cent limit, which is a Commonwealth-based requirement that's set out in their legislation, not in ours.

The Hon. AILEEN MacDONALD: That was going to be my next question, but you've answered that one there. Just on financial stability or sustainability of councils, does OLG play a role in—North Sydney Council in June seemed to say that they were travelling okay. And, after the election, now they're saying they've got financial weaknesses and are now going through a consultation process on whether they put their rates up and then have to go to IPART, and then IPART will also do that consultation. Does OLG play any sort of overseeing role in any of this?

BRETT WHITWORTH: I don't necessarily want to talk for North Sydney, but I'm not quite sure that they said there were no problems before the election. I certainly had been talking to the new general manager and the Mayor of North Sydney, more particularly the general manager, about the impact of the cost overruns of the North Sydney pool. That's been an ongoing conversation between the general manager and myself, and I know that the general manager was concerned and has been concerned for a long time about—as the cost overruns continue, it reduces the capacity of the council to withstand shocks, and it reduces their resilience.

Whenever I get a general manager coming to me with concern about their financial situation, I suppose, my first question is, "Do you have enough money to keep operating? Do you have enough money?" We try and identify, "Is this a right-now problem? Is this a longer term problem?" I think, with North Sydney, they are concerned about their capacity to be able to meet the ongoing increasing cost that every council has been experiencing, if they are also dealing with the cost overruns of the pool. So I don't think they got over the election and went, "Now we've got to increase rates." I think that this has been a concern that they've had for some time, that they are in a financially fragile situation.

In terms of your more particular question, "Do we get involved?", we've been talking to North Sydney Council about how the pool project is probably a good lesson on what not to do in terms of capital expenditure and council infrastructure acquisition, and I don't lay any of the blame for that at the existing general manager and the existing mayor. There's a long history behind that, which I don't think I should go into. But we also have conversations with councils, not just about the capital expenditure review and the business case process that we want them to undertake before they make major investments. We use the collection of data and the requirement for them to provide accounts. We want to get councils to provide us with quarterly information about their financial information—many of them do already—and to formalise that process, and we use a risk management framework to assess and look at the performance of each council from a financial governance and service delivery perspective on a regular basis, and that's one of the outcomes from the Audit Office performance audit into the Office of Local Government.

So, yes, we do have a sort of role and an interest in them, more in terms of the council's general health, but it is the responsibility of the council to set its own rate within the rate process set out by the Government. If the council wants to vary from that, then there are other special rate variation processes in the guidelines that the Office of Local Government has prepared. I think you'll also be aware that the financial sustainability inquiry by the State development committee has provided its report, and the Government is in the process of considering that. We have until 28 February to provide a response.

The Hon. AILEEN MacDONALD: I have some other questions, but I might leave them as supplementary questions—based on that report as well.

The Hon. SCOTT FARLOW: In terms of Ryde city council and the acquisition of TG Millner Field in Marsfield, has the Office of Local Government undertaken any valuations of that field?

BRETT WHITWORTH: I would like to take that on notice. It's not our job to undertake a valuation of that. I should also make clear that, with TG Millner Field, I had made a declaration of a potential conflict, in that my father is friends with the director of the North Ryde RSL—just so that's clear—and I had tried to absent myself from all decision-making processes on that. If we can have a conversation in the theoretical, it's not the Office of Local Government's job to undertake valuations of land acquisitions that councils are going to undertake but, in recommending to the Minister whether he should approve a council undertaking a compulsory acquisition, we want to make sure that the council has sufficient funds or available funds to undertake that acquisition, and that has to be a realistic estimate. It can't be "We think we can get such and such for this land." It's got to be a realistic estimate taking into account the operation of the compulsory acquisition just terms acquisition Act which, boiled down, effectively says that the value that a landowner has should be free of what the acquiring authority wants to do with it.

The Hon. SCOTT FARLOW: So, Mr Whitworth, in this instance, while you will take on notice as to whether—and I take your conflict of interest, potentially, as well, but let's try to zoom out to the abstract. In making these sorts of assessments in general, would the Office of Local Government be seeking information from the Valuer-General to make an assessment as to whether council has the capacity to be able to acquire a piece of land or not?

BRETT WHITWORTH: Again, that's in the hypothetical. I think we would only get to that point if we were so concerned and the council was so determined that there was a particular value, and it came down to a question as to whether the council could afford to buy that land or not. I wouldn't want us to get ourselves into that sort of position where we are trying to arbitrate. I think, using a similar but slightly different example where there was a conflict between a council perspective on the use of land and the Government's perspective on the use of land, we had to take an examination on what we thought was the most appropriate—and I'm searching for the words that were in the briefing note—and the best public-interest outcome in terms of whether we should agree with the council and let them acquire the land despite a Government objection or whether we should uphold the Government objection.

If that was the same sort of issue in another situation, then we'd have to look at what was in the public interest and how far we needed to go down that path. But I was an outside observer with TG Millner Field, and I think the problem has always been wildly different expectations of what the development potential of that land could have been under a council-based proposal and under the landowner's-based proposal and what that would have done with the land valuation.

The Hon. SCOTT FARLOW: Let's go through, in a sense—not abstract or hypothetical—a question of fact: What is the process that a council has to undergo in order to undertake a compulsory acquisition?

BRETT WHITWORTH: There are a number of procedural steps that we ask councils to meet and a number of documents that we ask them to provide. I'll talk about it in broad terms, but we'll also give you a flow chart or something on that. We take that on notice. They are required to seek to negotiate with the landholder the potential acquisition of that land. It's not a mandatory process to undertake a negotiation, because sometimes there is a need for an emergency acquisition of land in which they will come to the Government, but the expectation is that if you can come up with an agreed compulsory acquisition, that is a better outcome. That is the case of the council saying, "We'd like to acquire this land. We have this power and authority. Here's the value that we expect." And then there is a conversation that happens between the landowner and the council.

Where the landowner and the council agree and they're following a compulsory acquisition path, then they seek the Minister's approval on the basis that it's an agreed compulsory acquisition. The Minister then will have the ability to recommend that to the Governor, and the Governor approves it. If it's not an agreed compulsory acquisition, there's a requirement for a PAN, which is a potential acquisition notice, to be issued. Then for a period of time, between that being issued to the landowner and the council coming to the Minister and saying, "We want

an approval to acquire the land," the council must seek the Minister's approval to a potential acquisition notice. So that is a two-stage process. Typically—99 per cent of the time—the council has an identified source of funds, it has at least a reasonable valuation of the land and there's an agreement there.

We will say, "Okay, this is a matter for you to sort out." Because once the land goes to a compulsory acquisition and the Governor approves it, the landholder then has rights under the land acquisition just terms Act to go to the court to get a valuation of that land and an agreed value. We don't tend to want to insert ourselves into that process. But there are certain times when we go, "We just don't think this is in the council's best interest, or the public interest to be pursuing a compulsory acquisition that will then place further threat on the financial capability of that council"—particularly if they end up with a court case telling them that they need to acquire the land and they have no ability to fund that acquisition.

The Hon. SCOTT FARLOW: Mr Whitworth, with respect to Ryde then, we've discussed before in terms of some of the financial issues that Ryde has particularly gone through largely as a result of the Ryde Civic Centre plans there. What's the status of that? Is it a performance audit which is in place?

BRETT WHITWORTH: No, there is no performance order in place for Ryde council but I have written to Ryde to identify the—there have been ongoing conversations with Ryde and there have been various letters that have been sent. Post the election I did write to Ryde council to put on notice the concerns that we had and the expectations that we had about how council was going to manage its finances. You talk about the Ryde Civic Centre; there are various obligations on councils under voluntary planning agreements in terms of they've been given a cold shell for a library, for example, and they now have an obligation to fill that library. There are asset management issues that it has. There's a particular car park that it is concerned about. There's the cost of the Ryde Civic Centre, and the status of that project and whether they can afford to keep going with that.

There's also the TG Millner-fuelled acquisition and, given the extent of the infrastructure development and investment and expectations of development in Macquarie Park, obviously that places a lot of focus of the council on how they need to deliver the infrastructure for the growing community in that area. That council has a lot of pressures on its budget that it needs to be managing carefully. I suppose that's the essence of my letter to it: "You have identified that you need to be practising restraint and being careful in your financial management. I encourage you to continue to do so. Can you continue to provide us with reports on how you are travelling in that environment?"

The Hon. SCOTT FARLOW: They are reporting obligations that are on the City of Ryde Council, effectively?

BRETT WHITWORTH: Yes. I have written to them under section 734A to say, "Here are my concerns. I will be asking for you to provide a report to me later under section 734A against those concerns."

The Hon. SCOTT FARLOW: I will just conclude with a last question. Mr Whitworth, if I was to put any further questions on notice to you with respect to TG Millner, noting your very appropriate conflict of interest that you've outlined before the Committee, would that be able to be answered by somebody who would not necessarily have that conflict of interest to declare?

BRETT WHITWORTH: I had Mr Walther, who was standing in for me, but also I am ably assisted by my secretary, who knows far more than I do about local government matters. So, yes, there will be someone that can answer those questions.

The Hon. SCOTT FARLOW: Thank you. That is all our questions.

The CHAIR: Does the Government have any questions?

The Hon. PETER PRIMROSE: No.

The CHAIR: In that case, thank you for your attendance today. The Committee secretariat will be in touch in the near future if any questions were taken on notice—I can't recall if there were—and with any supplementary questions the Committee may have. Thank you again to all of you for coming. I know how close it is to Christmas, so we really appreciate your time.

(The witnesses withdrew.)

The Committee proceeded to deliberate.