

## Minister for Local Government – Questions on Notice

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**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.

### **ANSWER:**

I am advised:

The NSW Government acknowledges the points raised by the Hon. Dr. Cohn. As indicated in Mr Whitworth's testimony during the hearing, the Office of Local Government is not a party to the award and the grant referred to is administered by The Federal Government Department of Education. The Office of Local Government will undertake further investigations to see if further benefit to the state or council-employed childcare workers in NSW can be realised.

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**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.

**ANSWER:**

I am advised:

Ms Brin Anniwell of counsel was retained to act as counsel assisting the Inquiry, following a recommendation from the Commissioner, Mr Ross Glover.

With respect to the appointment of Holding Redlich as the instructing solicitors, Mr Whitworth addressed this in evidence at the hearing – see page 10 of the transcript.

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**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.

## **ANSWER:**

I am advised:

The deed of agreement with RSPCA does not specifically include any funding for capital and/or infrastructure works. The \$20.5 million was designed to increase the number of inspectors and provide additional inspectorate resources.

As indicated by Mr Whitworth in the 5 December 2024 hearing, the Office of Local Government have provided other grants to the RSPCA NSW. These were specific grants administered by the Office of Local Government for capital works and infrastructure projects.

These grants were administered prior to the introduction of the NSW Government's Grants Administration Guide.

They include:

- RSPCA Capital Grant 2019 – 2021 – Yagoona Animal Shelter - \$12M  
(details at <https://www.treasury.nsw.gov.au/news/media-release-perrottet-and-hancock-12-million-rspca-shelter-expansion>)
- RSPCA Capital Works Planning Grant – June 2021 - \$10.5M  
(details at <https://www.olg.nsw.gov.au/wp-content/uploads/2021/03/MMR-Multi-million-dollar-boost-for-RSPCA-NSW-shelters-02032021.pdf>)

The Office of Local Government has in place an acquittal process that involves a formal report to confirm a grant recipient has met their obligations and used the grant funds as intended. These reports are usually approved by the Council General Manager or Chief Financial Officer. A team in the Office of Local Government reviews these acquittals to ensure the grant was spent on what was agreed in the original co-signed funding agreement.

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**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.

**ANSWER:**

I am advised:

This Government honoured the one-off commitment made under the previous Government and grant funding of \$33.6 million was made available to animal welfare and rehoming organisations in 2023.

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**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.

## **ANSWER:**

I am advised:

The Office of Local Government does not have a role in land valuation.

When the City of Ryde Council requested the Minister's consent to commence compulsory acquisition proceedings for TG Millner Field, the request was accompanied by a report to Council from the General Manager which referred to independent valuation advice received by Council.

The Minister considered the advice of the Secretary of the Department of Planning, Housing and Infrastructure (as prepared by the Office of Local Government), which considered the valuation advice contained in the council report and recommended to the Minister that he refuse Council's request on the basis that insufficient funds had been identified to meet the potential land value of the site. The advice also identified it would be the Land and Environment Court and not the Council or the landowner, who would determine the value of the site if agreement on an acquisition amount could not be reached.

Council was asked but was unable to demonstrate, it had the funds available to acquire TG Milner Field, which is why the request to commence compulsory acquisition was refused. Council can reapply if it is able to source and identify adequate funds so it would not be left financially exposed in any Land and Environment Court appeal on valuation.

Information regarding the council compulsory acquisition process is available at <https://olg.nsw.gov.au/councils/land-management/land-acquisition/>.

The financial challenges confronting the City of Ryde Council have been acknowledged by the Office of Local Government. In mid-2024, the Office conducted a review of the City of Ryde to evaluate its financial status. Council has numerous projects it intends to pursue.

However, current financial forecasts suggest that pursuing all of these projects at once is not viable. The financial performance of Council will continue to be monitored.

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**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.

## **ANSWER:**

I am advised:

The compulsory acquisition process is outlined in the below flowchart.

**Compulsory Acquisition Process**  
**Office of Local Government**

