

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

**Tuesday 9 March 2021**

**Examination of proposed expenditure for the portfolio areas**

## **PLANNING AND PUBLIC SPACES**

<b>CORRECTED</b>
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**The Committee met at 09:30.**

### **MEMBERS**

Ms Cate Faehrmann (Chair)

The Hon. Catherine Cusack  
Mr Justin Field  
The Hon. Ben Franklin  
The Hon. Shayne Mallard  
The Hon. Daniel Mookhey  
The Hon. Mark Pearson (Deputy Chair)  
The Hon. Adam Searle  
The Hon. Penny Sharpe  
Mr David Shoebridge

### **PRESENT**

**The Hon. Rob Stokes, Minister for Planning and Public Spaces**

## **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:** Welcome, everybody, to the public hearing for the inquiry into the budget estimates 2020-21 initial hearings. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay respect to the Elders past, present and emerging of the Eora nation and extend that respect to other First Nations people present. I welcome Minister Stokes and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolios of Planning and Public Spaces.

Today's hearing is open to the public and is being broadcast live via the Parliament's website. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. The guidelines for the broadcast of proceedings are available from the secretariat.

All witnesses in budget estimates hearings have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days.

Minister Stokes, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Any messages from advisers or members' staff seated in the public gallery should be delivered through the Committee secretariat. We expect the transcript of this hearing to be available on the web from tomorrow morning. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. All witnesses—except for Mr Betts, who has been affirmed at a previous hearing—will be sworn or affirmed prior to giving evidence. Minister Stokes, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament.

**JIM BETTS**, Secretary, Department of Planning, Industry and Environment, on former affirmation

**MARCUS RAY**, Group Deputy Secretary, Planning and Assessment, Department of Planning, Industry and Environment, affirmed and examined

**ALEXANDRA O'MARA**, Group Deputy Secretary, Place, Design and Public Spaces, Department of Planning, Industry and Environment, sworn and examined

**MARY O'KANE**, Chair, Independent Planning Commission, sworn and examined

**JOHN BROGDEN**, Chief Executive Officer, Landcom, sworn and examined

**BRETT WHITWORTH**, Deputy Secretary, Greater Sydney, Place and Infrastructure, Department of Planning, Industry and Environment, affirmed and examined

**SHAUN SMITH**, Group Deputy Secretary, Corporate Services, Department of Planning, Industry and Environment, affirmed and examined

**The CHAIR:** Today's hearing will be conducted from 9.30 a.m. to 12.40 p.m. with the Minister, with a 10-minute break at 11.00 a.m.; and from 2.00 p.m. to roughly 5.10 p.m. with a 10-minute break at 3.30 p.m. I am sure nobody will object to those very civilised 10-minute breaks in the middle of three-hour sessions. We will have questions from Opposition and crossbench members only, with 15 minutes allocated in each session for Government questions. As there is no provision for any witness to make an opening statement before the Committee commences questioning, we will begin with questions from the Opposition.

**The Hon. PENNY SHARPE:** Morning, Minister.

**Mr ROB STOKES:** Good morning.

**The Hon. PENNY SHARPE:** Minister, in September last year you said, "You can't save koalas if you remove their habitat." Why have you announced overnight that you are weakening koala protections in this State?

**Mr ROB STOKES:** I do not accept the premise of your question. In fact, the new State environmental planning policy [SEPP] will substantially increase protections in the identification and protection of koala habitat.

**The Hon. PENNY SHARPE:** It removes most of rural New South Wales from the koala SEPP, does it not?

**Mr ROB STOKES:** No. I admit that this has happened quite quickly and the information has not circulated fully, so I am very happy to provide some details to assuage your concern there. What has been agreed is that the new SEPP—that is, the koala habitat SEPP, formerly 2019, that was withdrawn—will be remade with application to all areas formerly covered by the State environmental planning policy. In relation to rural zones RU1, RU2 and RU3, which are three of the six rural zones across New South Wales, the provisions of the existing SEPP 44 will continue to prevail unless and until codes can be developed that ensure that there are at least the same protections and, hopefully, much stronger protections for koala habitat in those remaining areas.

**The Hon. PENNY SHARPE:** Minister, this is a very disappointing capitulation to the National Party, is it not?

**Mr ROB STOKES:** Not at all. Straight—

**The Hon. PENNY SHARPE:** Minister, I have watched carefully your comments on this issue over many, many years and particularly in the past six to nine months. You had a very strong position in relation to what you were trying to do to protect koalas and you laid out a very clear position to your colleague the Deputy Premier when it came to what was required. What you have announced overnight is a massive departure from that. You say in your letter of last year—I am sure you have read it before and you have it—that there can be no backing down on this until Local Land Services [LLS] and others have in place strong protections for koalas. All you are telling us today is unless and until and maybe there might be some changes into the future and we are really back to where we started. How can you say that that is not a weakening of koala protections?

**Mr ROB STOKES:** Straightaway because, at law, it certainly is not. It is a strengthening of koala protections. To explain to the Committee, my role as planning Minister is to run the system relating to applications for developments across New South Wales. The reality is development can be a key threatening process to koala habitat by removing—

**The Hon. PENNY SHARPE:** Do you think? Do you think clearing some land—

**The Hon. BEN FRANKLIN:** Point of order: We are right at the beginning. We have the Minister here for three hours. I do not think it is unreasonable to let him finish his sentence.

**The CHAIR:** Yes, we will try to ensure the Minister finishes his sentences. However, we will also expect some pretty robust lines of questioning this morning, as usual. Continue, Minister.

**Mr ROB STOKES:** Thank you. I appreciate you want to move through material, but it is important that I explain this so the Committee is in no doubt about what has been achieved. My role as—

**The Hon. PENNY SHARPE:** It is a massive departure from what your original ambition was and against all of the science that has previously been presented to you, is it not?

**Mr ROB STOKES:** Straight away, if you keep asking me questions I cannot answer the previous question.

**The Hon. PENNY SHARPE:** You take us through how you are protecting koalas by removing the protections on land.

**Mr ROB STOKES:** Straight away, I do not accept the premise. Your premise is completely misconceived. You said that this SEPP removes protections; it does quite the opposite. As I was saying, as planning Minister my role is to administer the system for assessing applications for development across New South Wales. As I was saying, development, urban development, mining development, all sorts of manner of development as described in the planning Act can constitute a threat to koala habitat. It is important that in those areas where there is the significant weight of development activity that we have robust protections to both identify core koala habitat and ensure that decisions are made on the basis of the best available science about those development applications. The settlement achieved yesterday ensures that the new SEPP is in force across all of the relevant areas across New South Wales. As I was saying, there are those areas—RU1, RU2 and RU3—where the provisions of the former SEPP will continue to prevail, so there is no diminution of those environmental protections.

**The Hon. PENNY SHARPE:** But there is no increase in the number of trees that are considered koala trees.

**Mr ROB STOKES:** They remain in force. In relation to the other areas of the State where the vast majority of development effort is concentrated, there are significantly expanded protections. I take you to that letter you are referring to from—what was it, September last year? As you would recall, the main debate and conflict at the time was in relation to the list of trees species in relation to the definition of core koala habitat. Those issues have not been in any sense compromised on. Those definitions remain. There is a single, now unified definition of core koala habitat. There is obviously now a process to determine the new codes that can operate in those remaining rural areas.

**The Hon. PENNY SHARPE:** Just to be clear, Minister, all 123 trees species that have been identified will be incorporated into the new SEPP?

**Mr ROB STOKES:** That is right, and I want to be clear to the Committee, there is no change in relation to the SEPP that was exhibited. When I say no change, certainly there might be—

**The Hon. PENNY SHARPE:** Where it operates is significant.

**Mr ROB STOKES:** Certainly there might be minor corrections in relation to references to local government areas and those sorts of things but in terms of the substantive definitions, the tree species list, the science underpinning the SEPP remains unchanged. Can I tell you, that was the subject of intense negotiation and that has not changed. The idea that there is a diminution of protection—the reality was in key areas of the State, the far North Coast for example, where we have draft koala plans of management, in Tweed for example and in Byron, that could not be resolved, that could not be settled until this matter was settled, they will now be able to be made.

**The Hon. PENNY SHARPE:** That is on you, Minister. Those communities have worked hard on those koala plans of management for years. They have been waiting for your Government to get its act together to find a workable solution. It has taken this long and now it is a very weakened solution in the worst of political fixes that is not actually going to help them.

**Mr ROB STOKES:** With respect, you are arguing against yourself. You cannot have it that in one sense this is weakening, and then you are saying it has taken too long to act on protecting. The reality is in Tweed, Byron

and Wollondilly, where we know that there are koala populations, we are now in a position of being able to finalise those draft koala plans of management to better identify and protect koala habitat based on contemporary science.

**The Hon. BEN FRANKLIN:** Isn't that great news.

**Mr ROB STOKES:** It is great news.

**The CHAIR:** Order!

**The Hon. PENNY SHARPE:** If you want to argue it is great news, you keep going, that will be terrific. Minister, in terms of the RU1, RU2 and RU3 that you say are going to be under the old SEPP 44, how many hectares is that?

**Mr ROB STOKES:** I cannot answer that.

**The Hon. PENNY SHARPE:** Why not?

**Mr ROB STOKES:** I can provide you an answer on notice. I know that there is roughly 802,000 square kilometres in New South Wales. How that converts to hectares and the coverage of different zones, I do not have that on top of my head.

**The Hon. PENNY SHARPE:** Minister, do you not think this is important, given that this is the area that is highly contentious, that you are not able to tell the Committee how much of that area it is?

**Mr ROB STOKES:** Hang on—

**The Hon. PENNY SHARPE:** You are very quick—

**Mr ROB STOKES:** No, this is absurd.

**The Hon. PENNY SHARPE:** —to tell the Committee 95 per cent of development. Of course 95 per cent of development happens around the city, but that is actually not where koalas live. Knowing where this is going to operate and the rules under which it is going to operate I would have thought is fairly important for us to know. I am happy for you to take it on notice.

**Mr ROB STOKES:** You said you were not. You asked me how many hectares, and the answer is I do not know off the top of my head. I do not think it is reasonable that I should know the square hectareage of New South Wales off the top of my head. But I am very prepared to provide that.

**The Hon. PENNY SHARPE:** You are the Minister for Planning and Public Spaces, you do actually know where all the zones are.

**Mr ROB STOKES:** I do know where the zones are.

**The Hon. PENNY SHARPE:** Yes, and you would know how many are zoned under the zonings.

**Mr ROB STOKES:** Quite honestly—

**The Hon. PENNY SHARPE:** I am not trying to be tricky here. It seems fairly fundamental to me, Minister, that you would—

**Mr ROB STOKES:** But you are asking me to recount to you the number of hectares in different zones across New South Wales. I am, again, happy—I am not a walking encyclopaedia.

**The Hon. PENNY SHARPE:** They are impacted by the announcement that you have made overnight.

**The Hon. BEN FRANKLIN:** Point of order: I am fond of Ms Sharpe but, seriously, she is not letting the Minister finish the last 10 sentences that he has started.

**The Hon. ADAM SEARLE:** She was assisting the Minister by framing the information she wanted.

**The CHAIR:** I have heard the point of order. We have a situation where both the Minister and the member are speaking over each other. I ask that the Minister listen to the question and the member allow the Minister to respond. Sound fair?

**Mr ROB STOKES:** Agree.

**The CHAIR:** Proceed, Ms Sharpe.

**The Hon. PENNY SHARPE:** Minister, you said that before any new SEPPs were made you were going to have to have a clear plan in place from LLS. All that you have announced overnight is that there is another plan

for another plan. What is the time frame for that occurring and what are the parameters with which the LLS plan will be made?

**Mr ROB STOKES:** There are two ways to answer that. In relation to those areas of the State—that is, the entirety of the State with the exclusion of those zones that I mentioned—they will now have updated, strengthened laws.

**The Hon. PENNY SHARPE:** But you cannot tell us what they are.

**Mr ROB STOKES:** That is a reality which you cannot quibble with. In relation to those remaining areas, yes, there is a position where the provisions of SEPP 44 will continue to apply. So no reversal, no diminution of those standards—

**The Hon. ADAM SEARLE:** But also no increased protections.

**The Hon. PENNY SHARPE:** But no increased protections.

**Mr ROB STOKES:** Chair, I thought we agreed that we were not going to interrupt each other.

**The Hon. ADAM SEARLE:** It was a follow-up question, Minister.

**The CHAIR:** Let's continue. That was a very quick question. As I said, we can expect robust questioning and it is upon the Minister to answer but not to talk out the time. Continue, Minister.

**Mr ROB STOKES:** I am sorry, I forgot the question.

**The Hon. MARK PEARSON:** Are there increased protections? That is the question.

**The Hon. PENNY SHARPE:** No, there are not.

**Mr ROB STOKES:** Yes, there are.

**The Hon. PENNY SHARPE:** Not in the areas where SEPP 44 operates. It is the same as currently exists. That is the case.

**Mr ROB STOKES:** No, that is not correct. Currently SEPP 44 operates across all these areas. As a result of this agreement, SEPP 44 will be replaced by the former, stronger SEPP right across the State. In relation to those three zones, three of the six rural zones—and remember there are a vast number of zones across New South Wales—the provisions of the former SEPP will continue to apply, unless and until a code can be developed that demonstrates to the satisfaction of the environment Minister that koala habitat is properly identified and protected.

**The Hon. PENNY SHARPE:** Minister, under this new regime is it not the case that farmers will be able to clear and then sell to developers? Is this not the problem that you were trying to address previously?

**Mr ROB STOKES:** No, not at all.

**The Hon. PENNY SHARPE:** What protections are there then for farmers in those zones to clear and then sell to developers creating a loophole?

**Mr ROB STOKES:** In relation to a code, the agreement was that there would be the opportunity to create a new code. In fact, there is an agreement to create a new code.

**The Hon. PENNY SHARPE:** Will there be a new code or not, Minister?

**Mr ROB STOKES:** That is certainly the intention of the agreement. Obviously—

**The Hon. PENNY SHARPE:** So, just to be clear, who is the agreement with?

**Mr ROB STOKES:** Again, you are interrupting me. I cannot—

**The Hon. PENNY SHARPE:** Can I just say: This is a mess of a media release you have announced overnight. We are trying to understand it.

**Mr ROB STOKES:** I am trying to explain it to you.

**The Hon. PENNY SHARPE:** Yes, but you just keep on talking without allowing us to clarify what it is that you are saying. You are saying there is an agreement. Who has made the agreement?

**Mr ROB STOKES:** I point you to the signatories.

**The Hon. PENNY SHARPE:** It is Mr Barilaro, yourself and Mr Kean.

**Mr ROB STOKES:** It is the Government. The Government has concluded that we will remake the SEPP across—

**The Hon. PENNY SHARPE:** But you cannot guarantee that there is going to be a new code for LLS. That is what I am trying to understand. That was a key requirement that you have stood by for the last 12 months. Instead, you have announced in the future we have the opportunity to do a new code. That is not guaranteeing koala protection.

**Mr ROB STOKES:** Hang on, you are trying to again argue this both ways. Here, in relation to the vast majority of area where development occurs across the State, our planning laws have been significantly improved in relation to koala protection. In relation to those remaining areas, there will be no diminution, that is very clear, in relation to the continuing application of SEPP—

**The Hon. PENNY SHARPE:** No change to the status quo.

**The CHAIR:** Order! We will allow the Minister to respond.

**The Hon. PENNY SHARPE:** I am just trying to be clear.

**Mr ROB STOKES:** Chair, I keep getting to this point—

**The CHAIR:** Order! Just allow the Minister to respond. Continue.

**Mr ROB STOKES:** I keep getting to this point, and this is the point at which I get interrupted every time—

**The CHAIR:** I am aware of that, which is why I am saying to continue.

**Mr ROB STOKES:** In relation to those areas where SEPP44 will continue to apply, SEPP 44 will continue to apply until such time as a new code is developed—I think the timeline is provided there in the media release; I think it is April, that we are seeing to conclude that by—and that will be by concurrence with the environment Minister. A lot of the concern that has been expressed by members of the Committee and members of the community at large, are that the codes, as they stand, are not sufficiently robust. This is an opportunity, this is a trigger to address those concerns. Absolutely the codes will need to be robust, and that will have to be to the satisfaction of the environment Minister and also generally of government. I think this sets a context to not only increase protections over the vast majority of areas, we are developing a trigger to improve koala protections in the balance of areas as well.

**The Hon. PENNY SHARPE:** Minister, you previously said that LLS would need to provide details about how koalas will receive robust protection under the Local Land Services Act. That has not been provided, has it?

**Mr ROB STOKES:** This confirms precisely that same position. The existing position, SEPP44, will continue to prevail in those areas unless and until a code can be developed, and it sets a clear timeline for the development of such a code to achieve that objective. Remember, that the koala strategy, which has been endorsed by Government, says quite clearly that the objective of Government is to stabilise and increase the number of the koalas in the wild. So this settlement must, of course, be in concert with that objective which is a Government position.

**The Hon. PENNY SHARPE:** You are calling it a "settlement" rather than a reform because it is clearly a diminution of what your original aspirations were?

**Mr ROB STOKES:** I am not calling it anything other than—

**The Hon. PENNY SHARPE:** You are calling it a settlement, which sounds like a political fix to me.

**Mr ROB STOKES:** Call it what you like—I have had a long history with this as you know. I first introduced the draft—

**The Hon. PENNY SHARPE:** You must be disappointed, Minister.

**Mr ROB STOKES:** I first introduced the draft SEPP back in 2016. It was exhibited. I moved to another portfolio. I came back to the portfolio, sought to finish it off and reintroduced the SEPP. Then, what happened next was a matter of public record. We are now in a position where we have reintroduced the SEPP without amendment across all of New South Wales, of course, with the exception of those three areas—

**The Hon. PENNY SHARPE:** Except for a few, which you cannot tell us how much?



**Mr ROB STOKES:** Except that we have been entirely upfront in relation to those. There is no diminution of protection in those areas, with a new code to be developed within a particular time frame. That will only be made, of course, if it meets the objective of Government which is to stabilise and then increase the number of koalas in the wild.

**The Hon. PENNY SHARPE:** Minister, I listened very carefully to that answer. You are not guaranteeing that the code will be made. Is what you are saying that it is a code that will be made to the satisfaction of the environment Minister? Is that what you are saying?

**Mr ROB STOKES:** The process of making codes under the Local Land Services Act—and it is not an Act under my administration—

**The Hon. PENNY SHARPE:** Which is exactly the point, Minister. It is exactly what The Nationals have always wanted.

**Mr ROB STOKES:** But the important point—

**The Hon. PENNY SHARPE:** And you have capitulated to this. That is actually the absolute point, Minister. That is the point.

**The Hon. SHAYNE MALLARD:** Point of order—

**Mr ROB STOKES:** No, the point is, what I was trying to explain to you.

**The Hon. SHAYNE MALLARD:** Ms Sharpe is heckling the Minister who is trying to answer the question.

**The Hon. PENNY SHARPE:** No, I am just very disappointed.

**The Hon. SHAYNE MALLARD:** You are not allowing him to answer the question.

**The CHAIR:** Yes. I remind members that the point of budget estimates is to ask questions of the Minister. Again, I understand that members do want answers in relation to their questions. Continue Ms Sharpe and try to turn your communication with the Minister into questions, if you are able.

**The Hon. PENNY SHARPE:** It is okay. I do not think he will share how disappointed he is, but I will try. Are you saying today that this code will be made by the LLS by April next year? Is that correct?

**Mr ROB STOKES:** Not by next year, this year.

**The Hon. PENNY SHARPE:** By this year?

**Mr ROB STOKES:** Yes. Ms Sharpe, you made a statement to which I would like to respond. You indicated that I was disappointed. I genuinely think that this is a step forward. Do I think that it is the totality—

**The Hon. PENNY SHARPE:** It is better than The Nationals leaving the Coalition?

**The CHAIR:** Order!

**Mr ROB STOKES:** Do I think this is the totality of what is required to achieve the Government's stated objective of stabilising and then increasing the number of koalas in the wild? Clearly not. It is just one lever. There are many other things that need to be done as well. But in relation to my role, which is overseeing a system to assess applications for development, in the overwhelming majority of areas where development applications actually intersect with the planning system, there are new laws that significantly increase protection of koala habitat.

**The Hon. PENNY SHARPE:** That's great, but let's be real here: the majority of those areas are not where koalas live.

**Mr ROB STOKES:** I am being "real here". The reality is, as I have already said and we now reiterating old territory, in relation to three draft koala plans of management [KPoMs] that are waiting to be made, that could not be made until we are in a position to be able to achieve this reform, settlement or whatever set of words you want to make—

**The Hon. PENNY SHARPE:** "Settlement" is the word you used, Minister.

**Mr ROB STOKES:** Those KPoMs could not be made until we were able to achieve this point. That is a significant step forward. Is it sufficient by itself? Of course not. Is it a step in the right direction? Of course it is.

**The Hon. PENNY SHARPE:** Minister as you know, all of the science tells us that koalas are on track to extinction in the wild in New South Wales by the middle of the century. The chief scientist has done in-depth work about that. Obviously most of the members here were on the committee that did all of that work. How can you save koalas when you continue to allow codes that allow their habitat to be cleared?

**Mr ROB STOKES:** Again, this whole arrangements relates to re-visiting those codes to look at how to better protect koalas. That is exactly the point of what has been agreed: That we reintroduce the SEPP with strong protections for, again, the vast majority of areas where development actually occurs, and in relation to the other areas, ensure that those codes are modernised and fit-for-purpose.

**The CHAIR:** When did you find out that this media release was going to be issued?

**Mr ROB STOKES:** I am sorry, I can't see the media release.

**The CHAIR:** The one that was issued at 5.30 p.m. last night.

**Mr ROB STOKES:** Yes.

**The CHAIR:** A really good time to issue a good news story. When did you find out?

**Mr ROB STOKES:** In relation to the timing of the release, I generally do not get advised of the timing of when releases are going out. I certainly knew that negotiations were underway. I understood that there was a discussion with The Nationals room and then someone from that spoke to a journalist.

**The CHAIR:** Were you informed that this media release and the announcement was going to happen yesterday at 5.30 p.m. before today's estimates? It is an interesting time.

**Mr ROB STOKES:** Obviously my office was involved in drafting a media release. In relation to the timing? Was the timing intentional for this hearing? Well, no.

**The CHAIR:** This kind of looks like—I think it was reported today as a compromise between The Nationals and the Liberal Party. It is anything but a compromise between The Nationals and the Liberal Party. The Nationals pretty much got everything that they asked for and it looks like a bit of a hack job on you as Minister for Planning and Public Spaces.

**Mr ROB STOKES:** Can I say quite categorically: It is not a case that The Nationals, as you say, got everything they want? Generally politics and the art of political contest is about winners and losers. I accept that.

**The CHAIR:** And the losers are the koalas, I think, this time.

**Mr ROB STOKES:** But the art of government is not about winning or losing. The art of government is reaching consensus and listening actively to the range of very diverse views. This is the intersection of a whole lot of very vexed questions and even ideological positions. So the role of planning is to seek to balance all these and come to some sort of consensus approach. That is the whole concept of planning. I do not see it in terms of win or lose. I see it in terms of: Is this a step forward in the right direction toward increasing koala protections? It undoubtedly is.

**The CHAIR:** What we were hoping for last year and at the beginning of this year was a stronger policy to protect koalas. It seems like what has eventuated is, in fact, an erosion of so many environmental protections. For example, why have you removed the ability of councils to have dual consent when it comes to private native forestry? Essentially, this is not about koalas any more. This is about access for the timber industry to private land. You keep talking about development but you do understand the pressures that the timber industry has placed, particularly on The Nationals, but your Government, to be able to access core koala habitat right up and down our coast, have they not?

**Mr ROB STOKES:** The question you asked me specifically was in relation to dual consenting. As planning Minister, part of my role is to ensure that, yes, processes are robust, transparent and clear, and that protections are also clear and certain from the outset, but also to make sure that it is as easy to navigate as possible. If there is a process where you can have a single consent rather than two consents with two sets of conditions, two sets of enforcement agencies and two sets of controls, surely good government is about having a single process rather than multiple processes that are aimed to achieve the outcome?

**The CHAIR:** Minister, if you ask councils about this—I have a number of submissions before me now from various councils that came to the koala inquiry, which I chaired and this Committee inquired into, that talk about how important it is for councils to have the ability to be able to consent to private native forestry [PNF]. We have councils that have undertaken really strong efforts for a couple of decades to protect lands from clearing

and logging. They are incredibly disturbed by this. Are you aware of that? It is not about streamlining, as you say; it is actually about overriding decades of councils' efforts to protect koala habitat in their area. That is what you have done.

**Mr ROB STOKES:** I completely disagree with you. Again, if the Committee has concerns in relation to the codes and the operation of codes, there was no opportunity to revisit the codes until this trigger was created. By all means, let us look at the codes; let us look to clarify them, to strengthen them, to make them clearer, and to make them operate and serve the communities better, and serve the environment better. But without any action nothing was ever going to improve.

**The CHAIR:** Okay. I just wanted to get to the issue of koala plans of management. You have said in the media release that Tweed and Byron shires will be able to finalise their koala plans of management. Why were those two councils chosen? I understand within your department there are potentially other drafts still there, is that correct? Or is it only Tweed and Byron that have approached the Department of Planning wanting to finalise or update their koala plans of management?

**Mr ROB STOKES:** Certainly I was aware of those councils; there may well be others. I understand Armidale might, from memory; Wollondilly, I think, does as well. In relation to the specific list, I could take that on notice.

**The CHAIR:** I have, for example, a submission in front of me from the inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020, actually, from Coffs Harbour City Council. It states:

Council is greatly concerned of the potential impact of PNF to the koala population of Coffs Harbour.

...

*since 2007, private native forestry in the North Coast region has increased significantly. Of the 2,916 PNF agreements approved in NSW between 2007 and June 2015—*

I am saying this because this is important. This is a lot of koala habitat—

*69.4% were in the reporting region, covering 49.7% of the total area under PNF agreements in NSW*

That is a lot of koala habitat that you have just given over to the National Party, which is representing the timber industry. I cannot see how this is not a recipe to drive koalas to extinction. It is not about development. Surely you are aware of that, aren't you, because you yourself have been lobbied by the timber industry?

**Mr ROB STOKES:** A couple of things: It is about development; I do not agree with you that it is not. Secondly, the SEPP 44 continues to prevail until a new code is developed that ensures, to the satisfaction of the environment Minister, that core koala habitat is appropriately recognised and protected. You cannot characterise it as a diminution. By all means you can argue it does not go far enough, but you certainly cannot argue that this is a diminution. It is certainly a step in the right direction. Is it enough? As I said, of course it is not. That is why Government is going to come back with a revised koala strategy to look at what other efforts we are making. I think it is important to recognise the NSW Koala Strategy and the steps that have been taken to date, but clearly a collective effort is required. Again, just to rely on a single SEPP alone was never going to be sufficient.

**The CHAIR:** If it is not the single SEPP alone, which the koala inquiry found—actually, one of the recommendations was to have a whole-of-government approach. If it is not you as planning Minister then the environment Minister's hands are tied, because it is all really up to you as planning Minister or up to the agriculture Minister, really, in terms of Local Land Services. Where else do the protections for koalas come in? We have waited several years under the Biodiversity Conservation Act 2017 for the Native Vegetation Regulatory Map to be produced. It covers a vast area of New South Wales. Heaps of koala habitat is being cleared right now because of the resistance by National Party Ministers to protect core koala habitat. In fact, the majority of people in New South Wales, who want koalas protected, were desperately hoping the Liberal Party could stand up to the National Party—and you have not. They have won. How can we have any faith, Minister?

**Mr ROB STOKES:** Again, Chair, I do not agree—as you would anticipate—with your characterisation of where we are at. Your point of a whole-of-government strategy is absolutely correct, and that is what the NSW Koala Strategy seeks to do: It works across government. As I commented, of course as planning Minister I have a key role to play. That main lever is, of course, the Koala Habitat Protection State Environmental Planning Policy but, as I said, that is one of the key levers in relation to private land. There is also private land conservation agreements under the Biodiversity Conservation Trust and then, of course, there are protections on public lands as well. But it needs to be a coordinated approach; this is just one of the levers. It was clear in the New South Wales chief scientist's report that land use planning laws were one of the levers that were available, and that is precisely what the SEPP is and is precisely what it has delivered.

**The CHAIR:** I have a media release in front of me from the North East Forest Alliance, which states that "North Coast Council zoning currently prohibits logging of 167,000 hectares and requires development consent for logging over 600,000 hectares, all of which will go." Is that a correct statement?

**Mr ROB STOKES:** Again, I would have to take that—I can refer through to the Secretary. I have taken a few of these on the technical details. I might refer you to the Secretary.

**The CHAIR:** It is a significant change, is it not, and if you are not aware whether 600,000 hectares of land for logging will now be able to be logged without development consent and you are not sure whether that is the case—

**Mr ROB STOKES:** No, I am not suggesting that. I am just suggesting, in relation to technical details, I have someone who can assist you and I would refer your question to them.

**The CHAIR:** Is that Mr Ray?

**Mr RAY:** Chair, I would have to take on notice the exact figures. I would have to take that aspect on notice.

**The CHAIR:** Okay, let us forget the exact figures, then. north coast council zoning currently prohibits logging—we are talking private native forestry, of course—of a certain amount and requires development consent for logging of a certain amount. Therefore, is it true that, for example, 600,000 hectares—it is hundreds of thousands of hectares, definitely. I have seen a number of submissions from very reputable sources that talk about the extent of private native forestry plans that are up for logging. I have talked about it before. I have heard from landholders who are incredibly desperate in terms of money. We have logging contractors who have been locked out of State forests. You are aware, Minister, I am sure, of State forests now not being able to provide the timber for wood supply agreements for Boral, and a heap of logging contractors are now going to private land. That is the point in terms of koala habitat now being opened up.

What you have done with this—and I am not sure whether you consulted anybody who has expertise in this—what you have essentially done is said to a range of different logging contractors that they can now move onto private land. People have been offered \$30,000 for logging contractors to come onto their private land. The logging contractors come in, flog the crap out of the land, they are offered \$8,000 and the logging contractors say, "Sorry, we didn't find what we could get." Mr Ray or the Minister, are you aware that hundreds of thousands of hectares containing core koala habitat will now be open without councils having any say whatsoever?

**Mr ROB STOKES:** I will just provide a preliminary comment and then refer to Mr Ray for the detail. I think the point that needs to be made here is the continuation of SEPP 44 in those areas until new protections can be identified means that the current position is secured. Okay? So we are not talking about the diminution of environmental values in any of these areas. We are talking about having set a baseline to ensure that in other areas we can substantially increase protection so that those areas, provided that a suitable code can be developed that can cross over to a single approvals system, which will be much clearer, much less complex for landowners, and provided that is able to secure the same environmental outcomes, then surely I cannot see how that is a bad thing. I will refer you to Mr Ray on the details.

**Ms CATE FAEHRMANN:** That is okay. I can go to you later today, Mr Ray. So therefore if you say that no environmental protections will be removed, why have you, the Minister for Planning and Public Spaces, issued a new section 9.1 direction to ensure that only the Minister and not councils will be empowered to rezone land use for primary production to an environmental zone, or to rezone land currently in rural zones 1, 2 and 3 to other rural zones. Why are you removing the power of councils, many of whom want to protect more of their land for environmental purposes? Why are you removing their ability to do that? Surely it is not about increasing environmental protections.

**Mr ROB STOKES:** Well, certainly I am not about removing the ability to create E zones or to change rural use zones. I am merely restating, which is in fact already the case, that before councils can change any zone it has to be approved by the Minister for planning. And I would invite—I would use the occasion of this Committee—to invite councils, if they have specific land where they would like to change a zoning, by all means come and talk to me about it. On the basis of the proper process and proper exhibition and proper studies, then of course I would be happy to consider that. Any suggestion that I am not open to considering or making environmental zones—well, again, I would point you to the Cumberland Plain Conservation Plan. I am well aware of how fraught the process of environmental zoning is but I am also aware that it is a valuable tool and, where it is necessary, it should be used.

**The CHAIR:** Yes. We might get to the Cumberland Plain Conservation Plan later. Mr Field?

**Mr JUSTIN FIELD:** Thank you, Chair. Good morning, Minister.

**Mr ROB STOKES:** Good morning.

**Mr JUSTIN FIELD:** Can I just confirm that this new koala SEPP 2021 that you say will cover 95 per cent of land that is subject to development—not where koalas live, but subject to development—

**Mr ROB STOKES:** Where development applications are lodged.

**Mr JUSTIN FIELD:** Sure. But that SEPP is not a red line—cannot remove koala habitat—it is still just an advisory, essentially to a decision-maker.

**Mr ROB STOKES:** In relation to the specific—you know, we are getting into legal specifics and it is highly technical.

**Mr JUSTIN FIELD:** It is quite simple, though, right? You cannot prevent koala habitat from being removed.

**Mr ROB STOKES:** Planning law, the nature of planning law, is it provides matters for consent authorities to take into account in making a decision. I will refer you to Mr Ray for the specifics.

**Mr JUSTIN FIELD:** The old SEPP did that and we have still seen koala habitat removed. It is relatively simple. It does not prevent koala habitat from being removed. Correct?

**Mr ROB STOKES:** Again, I would have to, certainly, as I understand—and this is why I am referring to Mr Ray, just to make sure I am getting my law right—it would require consent. Is that it?

**Mr RAY:** Yes. Obviously there are protections. The Chair referred to the fact that there are zones and protections in various different zones within the system that would prevent the removal of koala habitat, but in other cases where the SEPP operates—and the SEPP operates in relation to when there was a development consent under certain circumstances—it then provides those matters for consideration by the Minister.

**Mr JUSTIN FIELD:** Sure.

**Mr RAY:** So, you know, in some circumstances the planning system operates to prevent removal of koala habitat. In other circumstances—the circumstances governed by the SEPP—you have got a development application, then those matters are matters for consideration.

**Mr JUSTIN FIELD:** My point being that the SEPP on its own does not prevent removal of koala habitat. Correct?

**Mr RAY:** On its own, no.

**Mr JUSTIN FIELD:** Thank you. Minister, you seem to be putting a lot of stock into SEPP 44 remaining in place until such time there is a review of the codes. I assume we are explicitly talking about the PNF code, correct? Why do you have so much confidence, with the National Party in charge of the PNF code review, that that outcome is going to be one that is better for koalas and for the protection of koala habitat than what we have currently got?

**Mr ROB STOKES:** Well, certainly, if it is not then SEPP 44 will remain in place.

**Mr JUSTIN FIELD:** Who will make that decision?

**Mr ROB STOKES:** That is the current decision and ultimately I have the executive authority under the—

**Mr JUSTIN FIELD:** Until there is another tantrum, perhaps?

**Mr ROB STOKES:** I have the executive authority under the planning Act in relation to advising the Governor about making SEPPs.

**Mr JUSTIN FIELD:** So it is your decision.

**Mr ROB STOKES:** In relation to SEPPs, at law SEPPs are a delegated piece of legislation that are made by the Governor on my advice.

**Mr JUSTIN FIELD:** So you will not remove it unless you are confident that Adam Marshall and Matt Kean have come to the right decision here and ensured better protection for koalas and koala habitat.

**Mr ROB STOKES:** I want to make it very clear to the Committee, crystal clear to the Committee, that I would not consent to remove SEPP 44 protections unless I was satisfied—and remember I also have got the environment Minister here who has a concurrence power under the Local Land Services Act—that the codes provide a level of protection that is at least as good as, and preferably much higher than, currently prevailing under SEPP 44.

**Mr JUSTIN FIELD:** But you could be overridden by Cabinet. Correct?

**Mr ROB STOKES:** I am talking about my position as a member of Cabinet.

**The Hon. PENNY SHARPE:** What do you think has happened so far?

**Mr JUSTIN FIELD:** So, if you do not agree, you will resign as Minister if Cabinet forces you to remove koala SEPP 44?

**Mr ROB STOKES:** Look, I am a member of the Government. I am not going to comment on hypotheticals, but I have made very clear my position.

**Mr JUSTIN FIELD:** But that is where we are getting too, right? Because there is going to be a tantrum. I mean, I think we all know where this ends up. There will be a National Party tantrum because you will not agree and we are back into the chaos and it is your job or The Nationals way.

**The Hon. SHAYNE MALLARD:** Point of order: Seriously, we are going right out with a hypothetical view and I cannot quite see how the Minister's career—

**Mr JUSTIN FIELD:** I am happy to move on, Chair.

**The Hon. SHAYNE MALLARD:** —or resigning is in the budget papers.

**The Hon. PENNY SHARPE:** Do not take up his time. He is moving on.

**The CHAIR:** It has been asked at many budget estimates before about whether Ministers will resign over controversy so I think the question was potentially in order—

**Mr JUSTIN FIELD:** I am happy to move on, Chair.

**The CHAIR:** —but continue.

**Mr JUSTIN FIELD:** Thank you. Minister, have you received a request for the Warragamba Dam wall raising proposal to be declared critical State significant infrastructure [CSSI]?

**Mr ROB STOKES:** At this point my understanding is that remains with the department. I do not believe any request has been made but I am happy to be corrected on that.

**Mr JUSTIN FIELD:** So you are aware that one is being considered?

**Mr ROB STOKES:** No. I am actually—that is what I am saying; as far as I am aware, no.

**Mr JUSTIN FIELD:** Mr Betts, could you just clear this up because last week I asked you about this? I said—well, there was a double negative because we had had some questions just before.

**Mr ROB STOKES:** Certainly, nothing has come to me.

**Mr JUSTIN FIELD:** I had asked you essentially if you are aware of an application coming to designate the project as critical State significant infrastructure and you said, "I am not." Is that still your position?

**Mr BETTS:** Correct.

**Mr JUSTIN FIELD:** Okay. Minister, do you think it is appropriate for your officials to communicate with each other and with other agencies in relation to major projects like the Warragamba Dam wall through encrypted messaging services like WhatsApp?

**Mr ROB STOKES:** In relation to the manner in which public servants communicate with each other, I do not have a view. I look at the outcomes. Certainly, as long as all legal processes are followed I do not really have a view as to how or what medium of communication is used. Obviously if it is in relation to any matters of which note should be taken, then obviously those matters should be kept in accordance with the relevant legislation.

**Mr JUSTIN FIELD:** But it is your opinion—or I think it might be a matter of policy—that encrypted messages, including via services like WhatsApp are still subject to the Government Information (Public Access) Act [GIPAA] and subject to Standing Order 52 and the like?

**Mr ROB STOKES:** Yes.

**Mr JUSTIN FIELD:** Have you provided any direction, Minister, to your staff to label messages or correspondence relating to projects—and we will use the Warragamba Dam wall raising project as an example—as "Cabinet in confidence"?

**Mr ROB STOKES:** No.

**Mr JUSTIN FIELD:** Mr Betts, have you ever provided such a direction to your staff to label certain messages relating to that project as "Cabinet in confidence" or subject to Cabinet secrecy?

**Mr BETTS:** No, and I do not need to because there are standing protocols about the way in which documents which are intended for deliberation by Cabinet are to be labelled.

**Mr JUSTIN FIELD:** We might come back to that. Thank you, Mr Betts. Thank you, Chair.

**The CHAIR:** Thank you. We will move to the Opposition. Mr Adam Searle?

**The Hon. ADAM SEARLE:** Thank you, Madam Chair. Minister, your rushed announcement of the settlement of the koalas SEPP issue last night was to distract from unwelcome reports about your ministerial office, was it not?

**Mr ROB STOKES:** Absolutely not.

**The Hon. ADAM SEARLE:** You have seen the report in today's *The Australian*. They are very concerning allegations. What is your response to these issues?

**Mr ROB STOKES:** I am obviously aware of the anonymous allegations published regarding my office in a leading newspaper today. As they are rumours and smear based on innuendo, I will not provide commentary as to do so would only compound the hurt that these allegations have already caused. I can, however, comment on facts, and the facts are I certainly do not support bullying or intimidation, including via anonymous smear campaigns in newspapers, and I can say in relation to the culture in my office there is a great culture. They are supportive of one another. They are ably led, they are professional, they are competent, they have my support, they provide great service to the people of New South Wales. I, frankly, could not be prouder of them.

**The Hon. ADAM SEARLE:** Thank you for that, Minister. What is the staff establishment of your office? How many positions are there?

**Mr ROB STOKES:** I think, from memory, there are around 10 and then there are some departmental liaison officers [DLOs] as well.

**The Hon. ADAM SEARLE:** We will leave the departmental liaison officers to one side. It is correct, though, that 13 members of your ministerial staff have left your office over the last year or so? Is that correct?

**Mr ROB STOKES:** I would have to take that on notice—

**The Hon. ADAM SEARLE:** Please do because that is quite a big turnover in a staff of 10.

**Mr ROB STOKES:** I assume that those figures are including departmental liaison officers as well.

**The Hon. ADAM SEARLE:** They do not.

**Mr ROB STOKES:** Okay. Again, I am happy to assist the Committee in relation to its inquiries but I would say quite honestly that these are allegations based on innuendo and smear and really there is not terribly much I can do to assist the Committee. I certainly do not want to compound any hurt that has already been caused by anonymous allegations.

**The Hon. ADAM SEARLE:** I understand that, Minister, but nevertheless I will ask some questions. I think you have said there are about 10 positions in your office and if it is the case that 13 members of your staff have left in a year or so, that is more than 100 per cent turnover when the public sector turnover rate is between 5 per cent and 8 per cent. Is that level of exodus from your office not of some concern to you?

**Mr ROB STOKES:** A couple of things. Again, I am not going to go into individual circumstances. Obviously I am aware of individual circumstances—why people move on; people move on for a variety of reasons—but I will say every time—

**The Hon. ADAM SEARLE:** But so many?

**Mr ROB STOKES:** No, let me finish; this is important. What I will say is that every time—and I have had the privilege of being a Minister for about seven years and during that time I have had a number of portfolios—and generally at the midpoint in the term of a government, particularly when I change portfolios, obviously people who have been focused on a particular portfolio issue will naturally seek to move on. That is normal process and staff generally often are younger, ambitious, capable people and they have generally not stayed, and this is I think the ordinary practice in political offices. Some people stay for a long period of time; some people stay for a shorter period of time. But to make any imputation that there was a particular reason driving—as you call it—a mass exodus I think would be misleading. But I certainly do not want to comment further in relation to the reasons that individuals might have.

**The Hon. ADAM SEARLE:** Of the 13 who have left your office in recent times, no fewer than five have ended up being employed in one department in your portfolio. That is enough former staffers from your office to establish a branch of the Liberal Party. How has that happened—I mean, five staff? I mean, one, maybe two in your portfolio, but five in one agency. It looks like a stack of your department by your office. Why has that happened and is it to provide a safe haven for staff leaving your office for other reasons?

**Mr ROB STOKES:** I absolutely reject that assertion, Mr Searle. I absolutely reject that assertion. To even suggest that I have had anything to do with the appointment of any of my staff in another office is absolutely untrue. In relation to the various people from my office who have gone on to a variety of new roles, in relation to the ones who have applied for roles in the department and the processes that they have gone through, in fact, I can inform the Committee that I did not even know members of staff were applying for roles until I understood they had gone through a process and received an offer. That was the first I knew of it. But I am happy to refer you to the secretary who can provide further details.

**Mr BETTS:** And that is appropriate since the Minister has no involvement in public service appointments. They are matters for me, as secretary of the department under the Government Sector Employment Act, and I can confirm that every former member of the Minister's office who is currently engaged within the department—and you have mentioned a number of five or six out of a total establishment within the department of over 8,000—all of those appointments have complied with the requirements stipulated by the Parliament in the Government Sector Employment Act. And I am the secretary under oath telling you that there is nothing to see here in terms of any improper process associated with those appointments.

**The Hon. ADAM SEARLE:** We might come back to you, Mr Betts, on those issues a little bit later.

**Mr BETTS:** Please do.

**The Hon. ADAM SEARLE:** Back to you, Minister. You say that you do not tolerate bullying in your office and there were no formal complaints or grievances lodged within your office. Have any former or current staff members raised with you directly concerns about actions or attitudes or behaviours of a senior person in your office?

**Mr ROB STOKES:** Mr Searle, as you would appreciate, if in fact such conversations had occurred, I would certainly not be at liberty to disclose them to you or this Committee. I operate under a legislative duty to provide a safe workplace to everyone in my office and I will continue to do so.

**The Hon. ADAM SEARLE:** Are you confirming that these matters have been raised with you and you are just not prepared to talk about them?

**Mr ROB STOKES:** No, that is not what I said at all.

**The Hon. ADAM SEARLE:** I am putting it to you that a number of existing—

**Mr ROB STOKES:** And I have answered your question.

**The Hon. ADAM SEARLE:** A number of your former staff did directly raise with you concerns about another senior member of your staff. Is that correct?

**The Hon. BEN FRANKLIN:** And the Minister has said that he has answered the question.

**The Hon. ADAM SEARLE:** Well I am entitled to ask.

**The Hon. BEN FRANKLIN:** And he is entitled to answer in any way that he wants.

**The Hon. ADAM SEARLE:** Yes, but you are not entitled to answer for him, Ben.



**The CHAIR:** Order! Direct your comments through the Chair or to the Minister.

**The Hon. BEN FRANKLIN:** I am not answering for him. He answered for himself and he did so rather well.

**The CHAIR:** Order! Continue, Mr Searle.

**The Hon. ADAM SEARLE:** Minister, I put to you that former staff have raised with you directly concerns about another senior member of your staff. Is that correct?

**Mr ROB STOKES:** And I have answered your question.

**The Hon. ADAM SEARLE:** Okay. Let the record show that the Minister has failed to give a responsive answer.

**Mr ROB STOKES:** Mr Searle, that is not—you can ask your question again and I will answer it.

**The Hon. ADAM SEARLE:** He just will not answer the question.

**The CHAIR:** Order! We are not in a courtroom.

**The Hon. ADAM SEARLE:** No, but the Minister has been asked a direct question. He is entitled to answer it—

**The Hon. MARK PEARSON:** And he has not.

**The Hon. ADAM SEARLE:** —but he has not responded.

**The CHAIR:** Let the record show that we have an answer; that is it.

**Mr ROB STOKES:** I will answer it again for you because it is—

**The Hon. ADAM SEARLE:** Have they raised concerns with you or not, Minister? Yes or no.

**Mr ROB STOKES:** Again, Mr Searle, as you would be very well aware, I have a statutory obligation to provide a safe workplace for all of the people who work for me. I take that obligation very seriously and what you are asking me to do would be to go against that obligation. I have already said that I do not support bullying. If I were to answer your question, I may very well be engaging in it.

**The Hon. ADAM SEARLE:** Looking at your staff turnover, you have only got two staff members who have been with you for any substantial period of time—your chief of staff and a senior policy advisor. Which one of them is the senior staff member that is the subject of—

**Mr ROB STOKES:** Mr Searle, which one of them are you seeking to bully?

**The Hon. ADAM SEARLE:** I am not seeking to bully anyone. I am just trying to get to the bottom of this. Minister, there is clearly a problem in your office. Thirteen of your staff have left; five of them have ended up in the department.

**The Hon. BEN FRANKLIN:** Point of order, Madam Chair—

**The Hon. ADAM SEARLE:** I am asking you what you know about these matters and you are not answering the question.

**The Hon. BEN FRANKLIN:** The Minister has made it very clear what his response is and this line of questioning is outrageous when he is now actually going to individual staff members.

**The CHAIR:** Order! A point of order has been taken.

**The Hon. BEN FRANKLIN:** It is outrageous. This is way beyond what the remit of this Committee is. To actually make unfounded allegations about staff members in the Minister's office is appalling and a total dereliction of his responsibility as a member of Parliament.

**The Hon. ADAM SEARLE:** I am pressing the Minister about a matter of—

**The Hon. BEN FRANKLIN:** I ask that you rule that question out of order.

**The Hon. ADAM SEARLE:** It is not out of order.

**Mr JUSTIN FIELD:** To the point of order: Maybe I would not have put it the way the Hon. Ben Franklin put it but I do think that there are issues with pointing to specific staff members. Given everything that has been in the public realm recently about the nature of the parliamentary process and the experience of staff, I

think we have to have some degree of awareness of the impact of our questions on those staff. There is nothing we should know in terms of the employment conditions in the office. That is actually a matter for the Minister or the secretary or potentially this place. I am not sure that this is the line of questioning that this Committee should endorse.

**The CHAIR:** Yes, I agree that we do not want this Committee to stray into what is potentially adverse mention of particular staff members. I advise the member to try and direct his questions without the need to identify individual staff.

**The Hon. ADAM SEARLE:** Minister, has the Premier's office raised with you any of the matters canvassed in today's report?

**Mr ROB STOKES:** Mr Searle, let me be very clear here in relation to your line of questioning. As I think I have made abundantly clear—and I will say it again for the record and so you are very clear—as I have said, I have obligations, as frankly so do you, in relation to the treatment of staff and support to staff and ensuring that we provide a safe workplace. If you are asking me to provide details of any conversations that may or may not have occurred, straightaway you are simply asking me to actually neglect my own obligations at law and I simply will not do that. I have said to you that I will not tolerate bullying in my office and that is my position. That has always been my position; that will continue to be my position.

I have already said, for the benefit of the Committee, that I have a great office. It is a harmonious workplace. Sure, from time to time there are stressors as there are in any workplace. But the people who work with me and who support my efforts, I absolutely support them. They are a terrific bunch of people. They support one another, they are collaborative, they are expert, they are ably led, they provide great advice to me and great support and public service to the people of New South Wales. The way in which I actually think you are trying to impugn them is beneath this Committee.

**The Hon. ADAM SEARLE:** I am not trying to impugn your staff members, Minister.

**Mr ROB STOKES:** I think that is precisely what you are trying to do.

**The Hon. ADAM SEARLE:** I am asking some questions about what is a very disturbing report in the media today. I am not getting into the details—

**Mr ROB STOKES:** Which is entirely based on innuendo and, as I can see, a single anonymous quotation.

**The Hon. ADAM SEARLE:** Are you saying that there is nothing in this story and that there are no issues of this kind at all in your office?

**Mr ROB STOKES:** I am telling you—and I have been very clear with you—that the culture within my office is a great supportive, collaborative culture.

**The Hon. ADAM SEARLE:** That is not quite the responsive answer. Are you saying that none of the allegations in that newspaper article have occurred?

**Mr ROB STOKES:** I think I have actually been very open with you in relation to this matter. As I have indicated, I have obligations to protect everybody. When I say "protect", I mean to provide a safe workplace for everybody. I am telling you quite clearly—and for the information and posterity of *Hansard*, because I am very well aware that this is where this ends up—that I have a terrific office. I support every single one of them. They provide great service, they support one another, they are wonderful, kind, thoughtful, wise and compassionate people, and I support them. I think they provide an amazing service. I note the comments of Mr Field. With the sorts of situations we are seeing in Canberra, can I say that in my office we do not tolerate any of the sort of conduct that there are allegations about from that anonymous source in the newspaper today. The culture in the office is a great culture, a supportive culture, a learning culture and it will continue to be so.

**The Hon. ADAM SEARLE:** Is that a yes or a no—have you discussed these issues with the Premier's office in the past?

**Mr ROB STOKES:** Mr Searle, you are seeking to cross-examine. I am providing very open answers and very clear answers to your line of questioning. If I seem emotive, it is because I am—as I would hope you would be—fiercely loyal and protective to everyone who has worked for me. I have had the opportunity to work with incredible people over my entire period as a Minister. They have all been great teams, but I have got to say that the current team I work with are extraordinary. I would lie in front of a bulldozer for any one of them because they are an incredible bunch and they are a brilliant bunch of people. They are highly expert. Many of them would

be known to members of this Committee who have worked with them. Certainly, if you have any concerns about their engagement with your officers, you have never raised them. Straightaway, I think they are a great bunch of people. I think I have been very clear in my answer.

**The Hon. ADAM SEARLE:** In your response, you say there were no formal complaints. That implies that there have been other complaints, less formal. Are you able to confirm that, at least?

**Mr ROB STOKES:** No, it does not at all.

**The Hon. ADAM SEARLE:** How are complaints in your ministerial office handled if there were any? What is the process?

**Mr ROB STOKES:** You are asking me to comment on a hypothetical.

**The Hon. ADAM SEARLE:** I am asking you to comment on the formal process in place in your office were a complaint to be made.

**Mr ROB STOKES:** What I can say is all of my staff are aware of their rights under work health safety laws, regulations and policies, and they are also aware of their obligations under the same workplace laws, policies and regulations. Those regulations and policies would be followed in full if such a complaint was made.

**The Hon. ADAM SEARLE:** Going to the issue of the former staff members who have now gone to the department, Minister, can you or the secretary confirm that every one—is it five or is it six? I was not entirely sure.

**Mr BETTS:** Six.

**The Hon. ADAM SEARLE:** Were each of those positions advertised publicly?

**Mr BETTS:** No. All of them were compliant with government sector employment legislation and four of them were externally advertised. Two of them were temporary appointments which, within the context of the Government Sector Employment Act, can be given to people on that fixed-term basis subject to the completion of what is called a suitability assessment, which is undertaken impartially by our HR function within the department.

**The Hon. ADAM SEARLE:** In relation to those two temporary appointments, how do those positions come to be created, Mr Betts? Were they existing positions or not?

**Mr BETTS:** They were vacant positions, by definition. I believe that they were pre-existing positions which had fallen vacant. But I can take that on notice.

**The Hon. ADAM SEARLE:** Please do. So four were externally advertised.

**Mr BETTS:** Correct.

**The Hon. ADAM SEARLE:** Were all four of those subject to merit selection processes?

**Mr BETTS:** They were all subject to merit selection processes; all six of them. Four of them were externally advertised and subject to shortlisting and interview, often with more than 10 people applying for those roles.

**The Hon. ADAM SEARLE:** In relation to the four that were publicly advertised, did all of the successful applicants make their applications within the time frame advertised or were any accepted late?

**Mr BETTS:** Yes, they did make them within the time frame advertised.

**The Hon. ADAM SEARLE:** All of them?

**Mr BETTS:** Yes. The statement in *The Australian* this morning is factually incorrect.

**The Hon. ADAM SEARLE:** That is important.

**Mr BETTS:** Along with a few other statements in *The Australian* this morning.

**The Hon. ADAM SEARLE:** Mr Betts, which other statements were incorrect?

**Mr BETTS:** There is an implication that complaints were made to the department—informal complaints were made to the department. That is factually incorrect.

**The Hon. ADAM SEARLE:** You did not receive any complaints.

**Mr BETTS:** Correct.

**The Hon. ADAM SEARLE:** But any complaints relating to the Minister's offices would be handled by the Minister's office and the Premier's office. That is the process, is it not?

**Mr BETTS:** That is the process for any Minister's office, yes.

**The Hon. ADAM SEARLE:** You would only have oversight of complaints made concerning departmental staff.

**Mr BETTS:** Correct.

**The Hon. ADAM SEARLE:** That would be DLOs or people from your department who might be on secondment to a Minister's office.

**Mr BETTS:** Yes, or, theoretically, people who had interacted with the Minister's office—

**The Hon. ADAM SEARLE:** Within the department.

**Mr BETTS:** Yes. But I have received no such complaints.

**The Hon. ADAM SEARLE:** In relation to those two positions, you have taken on notice whether they are pre-existing positions or whether they were created specifically for this purpose.

**Mr BETTS:** Yes.

**The Hon. ADAM SEARLE:** How did those two staff members come to be selected? If those two positions were not advertised externally, were they advertised internally within the department so other people were aware of them?

**Mr BETTS:** That would be the normal course. But I would need to take that on notice.

**The Hon. ADAM SEARLE:** Again, in relation to those two positions, were there competitive selections—i.e. multiple candidates considered for either of those two positions?

**Mr BETTS:** There is no requirement under the Government Sector Employment Act to undertake that where it satisfies the terms of the legislation that it is a temporary appointment. But I can get you on notice more details about how the process was actually run.

**The Hon. ADAM SEARLE:** Yes. I understand, I guess, there are the legal requirements and then within that there are a range of options, including external advertising. Can you tell the Committee why it was that—in relation to those two positions, which were not externally advertised—the decision to not externally advertise was undertaken? Was that your decision?

**Mr BETTS:** Yes. Ultimately, it would be my decision, yes, in the sense that—

**The Hon. ADAM SEARLE:** But was on recommendation from somebody else.

**Mr BETTS:** Yes. It would be on recommendation from the hiring manager on the advice of our HR department. I have to say, we probably recruit around 500 people a year into a department with a complement of over 8,000 people. Often where positions are created on a temporary basis we take advantage of the opportunity to match the person to the vacancy when people are looking for progression within the department or looking for new opportunities. That is permitted under the legislation and not every position has to be externally advertised, which has a cost and time delay associated with it. But it is all—just to re-emphasise—merit based as defined by you, by the Parliament, through the Government Sector Employment Act.

**The Hon. ADAM SEARLE:** Again, in relation to those two positions, I think you talked about positions being specifically created, but we are not clear whether these were created or whether they were otherwise vacant.

**Mr BETTS:** I have said that I will take that on notice, but I am confident that they were pre-existing positions.

**The Hon. ADAM SEARLE:** Can you tell us which parts of the agency those two positions were from?

**Mr BETTS:** Yes. One was in the office of the Crown Land Commissioner and the other was in the green and resilient spaces group.

**The Hon. ADAM SEARLE:** We might have to leave it there and return.

**The CHAIR:** Minister, back to koalas. The koala plans of management for Tweed and Byron, you said in the media release last night, have been approved. That is not all of the koala plans of management before your department that are waiting for approvals. There is one that has been put in to your department by Clarence council for their comprehensive koala plan of management for Ashby, Iluka and Woombah. They say, "This was despite the plan being rejected by DPIE". The council approved these plans but they were rejected by the Department of Planning and Environment [DPIE] "due to the differences in recognised preferred koala feed trees for the Clarence and those listed on SEPP 44." They also say in this submission:

This excluded the majority of our Council area from being identified as 'core koala habitat' under that SEPP (now replaced by the Koala SEPP). The inability to formally recognise areas ... is a hindrance to protecting the local koala populations from development.

**The Hon. BEN FRANKLIN:** Chair, just to assist: It is Clarence Valley Council, not Clarence Council.

**The CHAIR:** Thank you. That means that Clarence Valley Council—where does their koala plan of management now fit? It was not in the LLS legislation, it is not here, it has not been approved.

**Mr ROB STOKES:** I will take it on notice. What I can say, and I need to clarify: I did not say that those koala plans of management for Byron and Tweed had been approved. It now clears the way for them to be approved. They were held in abeyance until this matter could be resolved, that is my understanding.

**The CHAIR:** Until what matter could be resolved?

**Mr ROB STOKES:** Until the matter of reintroducing the new SEPP could be done, these koala plans of management could not be concluded.

**The CHAIR:** Who recommended that Byron and Tweed koala plans of management be included in here to be finalised? Who made that recommendation to exclude Clarence Valley, for example?

**Mr ROB STOKES:** Again, I will take that on notice in relation to the status of Clarence Valley. You are making an assertion that I will have to get advice on.

**The CHAIR:** But Minister, in this media release these are the dot points that have—these are the important parts of the media release, which I am assuming you have agreed to, looked over.

**Mr ROB STOKES:** Yes.

**The CHAIR:** You knew how controversial this would be. The question is: Surely you know why Tweed and Byron Shire is here and why others are not.

**Mr ROB STOKES:** I see what you are getting at and I can answer your question. Please understand, Chair, I am not suggesting for one moment that this achieves complete koala protection across New South Wales—of course it does not. However, it certainly ensures a greater measure of protection than was available a week ago. It is a step forward in relation to koala protection. Does it resolve all existing draft koala plans of management? No. Does it ensure a pathway so that some of them can be resolved and made? Yes, and that is good news.

**The CHAIR:** The reason it does not resolve all the issues around koala plans of management, though, has to be that local councils want to protect koala habitat and some local councils and your department cannot sign off on it because that is controversial because that koala habitat is potentially open to development, isn't it?

**Mr ROB STOKES:** No.

**The CHAIR:** That is the only reason, surely.

**Mr ROB STOKES:** Again, you are asking me about a technical matter. I do not want to mislead the Committee so I will take it on notice.

**The CHAIR:** It is a policy matter, actually. The policy is that councils have been trying to develop these protections—and this is what the koala inquiry found—and some have been before your department for a long time. They consistently get blocked by your department. If you have had before you the recommendations for two, Tweed and Byron, did you inquire as to whether that covers all councils that have koala draft plans of management before your department?

**Mr ROB STOKES:** A couple of things, I also understand there is one in relation to Wollondilly. Please let me make it clear: I am not suggesting that all of these matters can be resolved under the resolution that was achieved yesterday but I am suggesting that some of them can be, and that is a powerful reason as to why I would take the action to make the SEPP across New South Wales and achieve that agreement: so that those koala plans of management could be made.

**The CHAIR:** Minister, again going back to private native forestry, are you aware of the relaxed prescriptions for private native forestry compared to State forest logging?

**Mr ROB STOKES:** Yes. I obviously have an understanding in relation to how these processes work. I am not the relevant portfolio Minister, so if you want to ask specific questions in relation to them, I refer you to the specific portfolio Minister. But I am aware, in broad terms, of the matters you are alluding to, yes.

**The CHAIR:** It is quotes from the media release like:

"The new Sepp will help us achieve the NSW Koala Strategy's objective of stabilising, then increasing the populations of koalas in the wild."

When the current private native forestry prescriptions do not require loggers to look for koalas before they log. Are you aware of that? How can that stabilise koalas in the wild?

**Mr ROB STOKES:** Because, as I have already said to the Committee, it is certainly a significant advance forward in those areas to which the entirety of the SEPP applies.

**The CHAIR:** But the original koala SEPP was going to try to prevent this. That was the whole point.

**Mr ROB STOKES:** In relation to those three rural zones to which SEPP 44 continues to apply, a new code would have to provide at least the same protections and an opportunity exists to create much greater protections in relation to those areas. I can completely accept if you are arguing that we could be doing more, of course we can and that is why we are coming out with a revised koala strategy. But your indication seems to suggest this is a great leap backwards, which is simply demonstrably not true.

**The CHAIR:** But you cannot sit here today and commit—give us a 100 per cent guarantee—that the new code for private native forestry is going to do more to protect koalas because you cannot even commit that there will be a new code.

**Mr ROB STOKES:** The only basis upon which there would not be a new code is because a new code could not be developed to ensure there is a greater level of protection, in which case you fall back on the existing SEPP 44, which already provides a measure of protection. Should there be more protection? Yes, and that was why we went through the effort of preparing the new SEPP in the first place. But it does provide a basis for having—it provides a trigger to look at those codes which, as you have indicated, could be vastly improved. Why should we not take the opportunity to create that trigger so that the Minister responsible for the LLS Act and the Minister for the environment can have that discussion to see what we can do to modernise those codes to make sure that better protections for koalas and koala habitat are provided.

**The Hon. MARK PEARSON:** Are aware that the Deputy Premier refers to koalas as "tree rats"?

**Mr ROB STOKES:** I have read those media reports.

**The Hon. BEN FRANKLIN:** Which he has denied ever saying.

**The Hon. MARK PEARSON:** When you say in your statement that koalas will be protected in the wild, does "the wild" include private land with koala habitat?

**Mr ROB STOKES:** Yes.

**The Hon. MARK PEARSON:** So why is it so exciting for the Deputy Premier to say that we are now not going to get tied up in red tape? Surely the red tape was a protective measure, though poor in many ways, but at least it was and is a protective measure. It is called red tape because it is inconvenient but it is a protective measure to protect koalas, is it not?

**Mr ROB STOKES:** I honestly cannot speculate as to what the Deputy Premier meant, you would have to talk to him.

**The Hon. MARK PEARSON:** But you know what the "red tape" refers to, don't you?

**Mr ROB STOKES:** I want to be clear here: "Red tape" should not be taken as a reference to any regulation whatsoever. "Red tape" should be taken as a reference to unnecessary or unnecessarily complicated regulation. Of course we want robust, clear rules and protections for matters of the public good. That is one of the reasons government exists: to provide that measure of protection for things that are important to all of us, like biodiversity, clean air, clean water and so on and so forth. So measures aimed to protect those things cannot and should not be characterised as "red tape".

**The Hon. MARK PEARSON:** Well, they have been characterised by the Deputy Premier as "red tape".

**Mr ROB STOKES:** Again, I cannot put words in his mouth and I cannot point to what he was meaning. But I assume what he meant—which is certainly what we have agreed—is in relation to where there might be unnecessary or unnecessarily complicated or unclear regulation that should be replaced by clear and simple regulation that is usable for landowners.

**The Hon. MARK PEARSON:** On private land, with this apparently new code of practice that is going to be in place, where there is koala habitat or potentially koala habitat, who is going to assess as to whether there are koalas living there or koalas relying on those trees for feed? Who is going to do the assessment before the clearing commences?

**Mr ROB STOKES:** As I have indicated, SEPP 44 continues to apply in those areas unless and until—it is clear the intention of the announcement is to develop a new code. I cannot speculate as to the content of the code, but what I can say is the code, in order to pass into force, would require the concurrence of the environment Minister and it would have to be consistent with the objective of the Koala Strategy.

**The Hon. MARK PEARSON:** Who are the stakeholders who are going to be creating this code?

**Mr ROB STOKES:** Ultimately, the code is created under the Local Land Services Act. The precise process under that legislation—again, it is not an Act under my administration, so I cannot point to it. But I have made it very clear to my department that if the advice is that such a code would diminish or seek to diminish koala protections, then it would not receive my support.

**The Hon. MARK PEARSON:** So how many species of trees are now allocated to be koala habitat or koala feed trees?

**Mr ROB STOKES:** I would point you to the Koala Habitat Protection State Environmental Planning Policy, which divides the State into different regions. There is a total of 123 trees in the Central Coast region, for example. I think there are 61 trees up toward the North Coast, and then it goes down to 42 trees. It depends from region to region. In the Far West of the State, I think there are only nine trees on the list. Those are a list of the trees that are used by koalas, and that has been subject to peer review.

**The Hon. MARK PEARSON:** Are you aware that this Committee spent about eight months inquiring into koala habitat?

**Mr ROB STOKES:** Very aware.

**The Hon. MARK PEARSON:** Are you aware of the recommendations, which were—and we had bipartisan support for all those recommendations?

**The Hon. PENNY SHARPE:** Almost all—98 per cent of them.

**The Hon. MARK PEARSON:** Ninety-eight per cent.

**The Hon. BEN FRANKLIN:** It was not 98 per cent either.

**The CHAIR:** Okay. We have made the point.

**The Hon. MARK PEARSON:** Don't you think this decision by the Government yesterday afternoon shows utter contempt for this Committee, and its recommendations, its process, its purpose? The incredible investigative study and analysis that we did for eight months is just flicked aside, and the Government goes marching off with somebody who thinks koalas are tree rats. It caves into his persuasion and completely ignores the major recommendations of this Committee, which the Parliament established to inquire into these extremely complex issues and come up with recommendations—most of which are supported by the Government and all of the members of this Committee—and this Government is now just showing utter contempt.

**Mr ROB STOKES:** As you would expect, I disagree with your characterisation. That is certainly not my opinion. I am actually incredibly supportive of the work that the Committee did and grateful for the work that the Committee did, because it did provide both a context and a framework for decision-making. The Koala SEPP itself went through a very strong process of community engagement and participation. From memory, I think there were more than 2,000 submissions, if I am correct, in relation to that, of which more than 80 per cent, I think, supported the objectives of the SEPP. It was made in light of that participation. I would say that the SEPP does actually sit in concert with the recommendations of the Committee.

**The Hon. MARK PEARSON:** It does not, Minister. You know that.

**Mr ROB STOKES:** I would disagree with you there, because from memory, the Committee was supportive of a land use planning trigger through the form of a State Environmental Planning Policy, which is precisely what has been introduced.

**The CHAIR:** Minister, this latest announcement, the new SEPP, how much did you get out of this that the Local Land Services bill—like, how much more do you think you achieved to protect koalas than the Local Land Services bill that was referred to an inquiry at the end of last year? What are the changes you advocated for that are in here?

**Mr ROB STOKES:** As you would appreciate, there are a lot of moving parts here. I think the best way to answer your question is to take it on notice and provide some reflective comments on that.

**The CHAIR:** You cannot sit here in any way and say the key parts of this new SEPP, what you went to the table with to negotiate and what outcomes you got—you said it was a compromise, and I understand between the Liberal and the National parties, I am sure there is a lot of that. What did you bring to the table?

**Mr ROB STOKES:** I did not actually use the word "compromise".

**The Hon. PENNY SHARPE:** Settlement.

**Mr ROB STOKES:** It was seeking—what is a better word—a consensus as to a way forward. In relation to a comparative analysis between what was provided for in this approach as opposed to the former approach, I have not undertaken that assessment. I think it is a valuable assessment to do and I have undertaken to do that on notice.

**The CHAIR:** I have an email in front of me that was revealed during a call for papers to the upper House. It is dated 16 September, the email. It is a response to an inquiry by the ABC, and it says to attribute the questions to the department—the responses to the Department of Planning, Industry and Environment. One of the responses was in relation to a question, which said:

Timber NSW is calling on the government to remove RU1 and RU2 zones so that the SEPP doesn't apply to these zones. They say that it will solve the issues. What would that mean? Would that equate to an unwinding of conditions that have applied under SEPP 44 up until new SEPP came into force in May?

The response here from the department is—this is in September last year:

The aim of the SEPP is to reverse the decline of koala populations in NSW.

Excluding RU1 (Primary Production) and RU2 (Rural Landscape) zoned land from the SEPP would exclude more than 80% of the land in each LGA, on average, that the SEPP applies to, rendering the SEPP ineffective and koalas unprotected.

How has your department changed its response since that? Because that certainly implies in September you thought that what is here before us today, what you announced last night, will render "the SEPP ineffective and koalas unprotected".

**Mr ROB STOKES:** Chair, in relation to the matters in the press release that went out yesterday, that was as a result of a negotiation. Yes, I did take advice from the department in relation to it, and the department's advice was that the agreement that was reached was consistent with the objectives of the NSW Koala Strategy in terms of assisting in stabilising and increasing the numbers of koalas in the wild. That was the department advice. On the basis of that advice, I agreed that we could therefore then reintroduce the SEPP to better identify and protect koala habitat across New South Wales. As I have already said, is it everything? No, it is not. But to suggest that it is a backward step is simply not the case. It is a forward step.

**The CHAIR:** Are you suggesting that this correspondence to the ABC dated 16 September 2020 that says these responses are to questions that the ABC North Coast put to the Department of Planning, Industry and Environment—are you suggesting that they are now incorrect?

**Mr ROB STOKES:** No, I am not suggesting that at all. I do not have the benefit of that correspondence in front of me, but what I can say is that the negotiation that I undertook and the agreement that was reached, I was advised by the department, who was actually in the room with me, that this settlement achieved an increase in koala habitat protections across New South Wales. On that basis, I felt it was clearly a step forward and therefore, as planning Minister, of course I would endorse that approach. That is why we are where we are in relation to a new SEPP that better identifies and protects koala habitat.

**The CHAIR:** Do you think you have received the right advice from your department then, given that just three months ago your department was essentially saying that what was released and announced last night, the new SEPP, basically says it will be ineffective and koalas will remain unprotected?



**Mr ROB STOKES:** Chair, again, I do not have the benefit of the correspondence. The best way for me to provide a considered response—you are suggesting, effectively, that I am receiving contradictory advice from the department. I do not believe that is the case, but I am happy to provide a considered comment in relation to that correspondence. The correspondence was not correspondence to me; it was not advice to me. The advice to me, I am telling you, yesterday was that this settlement was consistent with the NSW Koala Strategy. Is it sufficient by itself to protect koalas in the wild? Of course not. But is it a step in terms of increasing protections and increasing the rigour of assistance undertaken before development is undertaken? Of course it is.

**The CHAIR:** So the advice was provided to you yesterday by your department. That was all A-OK, is that what you are saying?

**Mr ROB STOKES:** No, I am saying—

**The CHAIR:** That is when you received the advice?

**Mr ROB STOKES:** What I am saying is that, as you would expect, these sorts of negotiations are iterative and ongoing. Certainly, the advice from the department was, as I have stated, that the agreement around remaking the SEPP was an agreement that was consistent with the NSW Koala Strategy's objective of stabilising and increasing the numbers of koalas in the wild.

**The CHAIR:** We will move to questions from the Opposition.

**The Hon. BEN FRANKLIN:** Chair, with respect, I thought we were breaking.

**The CHAIR:** Yes, we will now break for 10 minutes and go to questions from the Opposition when we return at 11.10 a.m.

**(Short adjournment)**

**The CHAIR:** We will kick off with 20 minutes of questions from the Opposition. Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Thank you, Chair. Greetings to you, Minister. Greetings to you, Mr Secretary. Thank you for taking my questions this morning. Minister, can I firstly ask some technical questions. You are required to execute any voluntary planning agreement [VPA] entered into by your department, is that correct?

**Mr ROB STOKES:** In relation to technical matters, just to be clear, I will take advice.

**The Hon. DANIEL MOOKHEY:** Mr Secretary, the case with voluntary planning agreements is that they are formally entered into by the Minister, that is correct?

**Mr WHITWORTH:** Mr Mookhey, I will take that. I am the Minister's delegate for voluntary planning agreements, so I execute the voluntary planning agreements.

**The Hon. DANIEL MOOKHEY:** Under a delegation from the Minister?

**Mr WHITWORTH:** Under a delegation from the Minister.

**The Hon. DANIEL MOOKHEY:** And does that same process apply to public benefit orders?

**Mr WHITWORTH:** I would need some more specifics around what a public benefit is. I deal with—

**The Hon. DANIEL MOOKHEY:** Public benefit offers.

**Mr WHITWORTH:** We deal with voluntary planning agreements.

**Mr ROB STOKES:** That is not a term.

**The Hon. DANIEL MOOKHEY:** Well, I am reading a planning note about planning agreements which are described as "public benefit offers" but maybe we are talking about the same thing.

**Mr ROB STOKES:** I think that goes to the context of the language of the Act. Where there is an offer by a developer to provide works or a requirement to provide cash for infrastructure, that is encapsulated in a voluntary planning agreement if it is not already encapsulated in a development contract.

**The Hon. DANIEL MOOKHEY:** Just to be very clear, we are talking about offers developers may make to acquit their responsibility to provide section 94 contributions to either the State Government or to local government, and you are saying that it is a matter which is treated in voluntary planning agreements?

**Mr WHITWORTH:** You have blended together a number of concepts there. It is not necessarily a section 94 because that section does not exist. We have a range of contributions sections—section 7.11 and 7.12. There were revisions about State infrastructure—

**The Hon. DANIEL MOOKHEY:** I think 7.11 and 7.12 are the ones I am talking about, the 7.11 and 7.12 contributions.

**Mr WHITWORTH:** They are local government contributions and so they would then be subject to voluntary planning agreements between the council and the developer.

**The Hon. DANIEL MOOKHEY:** What about the ones to do with the State?

**Mr WHITWORTH:** There would be situations where the State would deal with voluntary planning agreements if there was a satisfactory arrangements clause that was identified in an environmental planning instrument, or if there were works in kind that were to be provided that was either consistent or in addition to a State infrastructure contribution, or if there was a broader offer by the developer.

**The Hon. DANIEL MOOKHEY:** The instrument in which such an agreement would be reflected would be a VPA, is that correct?

**Mr WHITWORTH:** That is correct.

**The Hon. DANIEL MOOKHEY:** And that would follow all the VPA processes of disclosure, that is correct as well?

**Mr WHITWORTH:** The voluntary planning agreement has a legislative and a regulatory process.

**The Hon. DANIEL MOOKHEY:** Indeed, but any offer that is made under a VPA presumably you are following the VPA process as prescribed in law?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Minister, when you resumed your ministry in planning, were you advised that your department was negotiating a voluntary planning agreement to cover Rhodes?

**Mr ROB STOKES:** Just in relation to the specifics, I cannot recall. Perhaps Mr Whitworth can provide detail. Off the top of my head I cannot remember.

**The Hon. DANIEL MOOKHEY:** You cannot recall whether you were advised at that time?

**Mr ROB STOKES:** I cannot recall, but Mr Whitworth may be able to assist.

**Mr WHITWORTH:** Generally, when governments come in there is a broad range of briefings. At the time that the Minister became the Minister, we did have a briefing session where we talked about a number of rezonings. Rhodes was one of the rezonings that was on foot, but we covered a large number of rezonings at that time.

**The Hon. DANIEL MOOKHEY:** So presumably it was mentioned to you, Minister, in the context of a broader briefing about where the department was up to when you resumed the ministry.

**Mr ROB STOKES:** Yes. One of the challenges that confronted me on resuming the ministry was dealing with the number of, I guess, precincts that the department was specifically involved in leading. From memory, there were more than 50, so one of the first tasks was actually rationalising those to make sure that our effort was concentrated to get outcomes. It would have been in the context of that discussion, I would imagine.

**The Hon. DANIEL MOOKHEY:** You say you were rationalising in order to get outcomes. In layman's speak, were you providing views as to what you think should be prioritised?

**Mr ROB STOKES:** Certainly not specifically for what should be prioritised, but that we should identify priorities. I think the challenge was the focus on what were, at one point in time, named priority precincts. They had grown to more than 50. I make the observation that when you have got more than 50 priorities, you do not have any. So it was very necessary to direct that effort to make sure that we were getting outcomes.

**The Hon. DANIEL MOOKHEY:** I agree with you that 50 seems to be abusing the definition of "priority", so I understand that. Did you say that the Rhodes East area should therefore continue on in terms of the process that you just described, or was that one of the ones that you thought should have been rationalised out of the process?

**Mr ROB STOKES:** From recollection, I thought it was important to bring, from memory, this matter before government for a decision because, ultimately, there are a range of stakeholders within government—a range of agencies. Ultimately, the point of government getting involved in a particular precinct is where there are so many moving parts that it is virtually impossible for a council to do that by themselves. I guess, to coin an economic term—we talk about market failure—where there is planning failure, that is where the State steps in to intervene and assist. That is why those precincts were chosen. That was a Government decision, not a decision by me specifically.

**The Hon. DANIEL MOOKHEY:** Just to be clear, when you say that you thought that the matter needed to be brought before government, what specific matter did you think: the precinct planning process or the voluntary planning agreement process?

**Mr ROB STOKES:** Both the process for identifying precincts and the process for identifying what was truly important—again, to get back to that idea of what should be led by council and what should be led by the State and to ensure that we did not have so much to do that we did not do anything, which I think was the challenge.

**The Hon. DANIEL MOOKHEY:** After you brought it to government for decision-making, the result of that, effectively, was the release of the draft strategy, which took place last year. Is that correct?

**Mr ROB STOKES:** Well, this was not just in relation to Rhodes; it was in relation to a whole range of precincts.

**The Hon. DANIEL MOOKHEY:** But specifically the Rhodes process?

**Mr ROB STOKES:** In relation to Rhodes and the process there, I will refer you to the secretary.

**The Hon. DANIEL MOOKHEY:** No, it is more a case of the draft Rhodes place strategy that was released last year—in August, I believe—that was the result of the rationalisation process and the priority process that you suggested the department follow. Is that correct?

**Mr ROB STOKES:** Yes, in terms of this was one of the precincts that the State chose to continue leading and that strategy was a consequence of that decision.

**The Hon. DANIEL MOOKHEY:** From the time you resumed the ministry to the time that the draft place strategy was released, did you ever tell your department to cease negotiating any voluntary planning agreements with anyone?

**Mr ROB STOKES:** No, and I would not. Unless I was aware of something that would raise a concern there, those matters are delegated under standing delegations and it would not be usual for me to intervene.

**The Hon. DANIEL MOOKHEY:** So it is not usual for the Minister to intervene at that level?

**Mr ROB STOKES:** Not on an—

**The Hon. DANIEL MOOKHEY:** Or for you, as Minister, to intervene?

**Mr ROB STOKES:** In my practice, would I seek to intervene in a specific VPA negotiation? No.

**The Hon. DANIEL MOOKHEY:** Would you be expecting your office to be apprised of how VPAs are being negotiated and of progress reports on specific VPA negotiations?

**Mr ROB STOKES:** There is a lot of detail. There are a lot of VPAs.

**The Hon. DANIEL MOOKHEY:** On the Rhodes one, would you expect your office to be apprised regularly by the department on the status of negotiations about a VPA in Rhodes?

**Mr ROB STOKES:** In relation to VPAs with specific developers, no, I would not. Ultimately, my job as planning Minister is to make sure that the process achieves outcomes and that the process is followed according to law. In relation to negotiations with individual developers, frankly, that would not be something that I would necessarily want, certainly, my ministerial office directly engaged in—for obvious reasons.

**The Hon. DANIEL MOOKHEY:** You would like your ministerial office to have some distance from those negotiations. Is that correct?

**Mr ROB STOKES:** I think, appropriately, when you delegate a matter, you delegate that matter and you do not seek to involve yourself in it.

**The Hon. DANIEL MOOKHEY:** So it is not the case that you have been receiving regular updates about the negotiations of a VPA for Rhodes?

**Mr ROB STOKES:** No.

**The Hon. DANIEL MOOKHEY:** To the best of your knowledge, you have not received any briefs? Your office has not been kept in the loop? I will do it in two parts. You have not received any briefs about VPAs for Rhodes specifically?

**Mr ROB STOKES:** Well, I have certainly—

**The Hon. DANIEL MOOKHEY:** Written briefs.

**Mr ROB STOKES:** —received briefs. If they go to the specifics in relation to VPAs, I certainly cannot recall.

**The Hon. DANIEL MOOKHEY:** But you are not receiving regular briefs?

**Mr ROB STOKES:** I will—

**The Hon. DANIEL MOOKHEY:** Just to be clear. You can pass it on, of course. I just want to be precisely clear so we can get the appropriate response.

**Mr ROB STOKES:** Yes.

**The Hon. DANIEL MOOKHEY:** But you are not getting, for example, "The department has had a meeting with a developer and this is the result of the meeting; these are the concerns that were raised by the developer; this is how the department is responding". Are you getting that level of detail?

**Mr ROB STOKES:** Not to that level of specificity. Why I can say that is, ultimately, many of these precincts have so many landowners involved that it would not be possible to engage in that level of specificity. But I will refer you to the secretary—

**The Hon. DANIEL MOOKHEY:** Of course, I am happy to hear from anyone else.

**Mr ROB STOKES:** —if I have got any further detail.

**Mr BETTS:** We tend to keep our briefings for the Minister on the progress of the State-led rezonings at a relatively high level. They are relatively frequent briefings but we would not tend to involve the Minister in levels of abstruse detail around the content of those VPAs.

**The Hon. DANIEL MOOKHEY:** What about the Minister's office?

**Mr BETTS:** What goes to the Minister goes to the Minister's office. Mr Whitworth might want to add more detail to that.

**The Hon. DANIEL MOOKHEY:** But it is not the general practice that you receive that level of granular detail?

**Mr ROB STOKES:** I mean, I can speak to practice. I have a weekly meeting with the department where one of the standing items is progress on precincts—so how we are going. If there are particular sticking points that they believe are germane for me to be aware of, they will alert me in that course of events. But in relation to the nature of specific negotiations, that would be a level of specificity that would not be provided to me.

**The Hon. DANIEL MOOKHEY:** In those weekly meetings that you just described, have you ever been notified that there have been any impediments that required the Minister's attention in respect of any VPAs for Rhodes?

**Mr ROB STOKES:** Well, I can say that I have not sought to intervene. I think that would probably answer part of your question. In relation to just ensuring that I am not missing any details, I will refer to the secretary to—

**The Hon. DANIEL MOOKHEY:** The question was not whether you sought to be notified, but whether you were notified.

**Mr ROB STOKES:** I do not have all the—there are weekly briefings and there is a lot of information in them, so I will refer to the secretary.

**Mr BETTS:** As the Minister says, there is a lot of information provided. I do not recall any discussions in which we sought ministerial direction or advice in relation to the details of VPAs, but the best thing is to take it on notice rather than misleading you.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Mr Secretary. Is the department currently negotiating a VPA in Rhodes?

**Mr ROB STOKES:** I will refer you to my delegate.

**Mr WHITWORTH:** Yes, we are.

**The Hon. DANIEL MOOKHEY:** Is that with Billbergia?

**Mr WHITWORTH:** It is with a number of parties. Billbergia is one of those parties. There are other VPAs in Rhodes that are being discussed as well.

**The Hon. DANIEL MOOKHEY:** But you are negotiating one with Billbergia and Prolet. Is that correct?

**Mr WHITWORTH:** That is correct, but with those—they are legal agreements, so I would also like to make sure, so that we are not confusing the Committee, that we can take that on notice, if you like, as to the precise parties.

**The Hon. DANIEL MOOKHEY:** Could you?

**Mr ROB STOKES:** Mr Mookhey, I can provide some further detail, which is to say that in the ordinary course of these sorts of briefings—I get about two a week—the department would flag items like VPAs but would not provide details on the VPAs.

**The Hon. DANIEL MOOKHEY:** Specifically, Minister, can you come back to us as to whether or not at any point it has been flagged with you that your department is negotiating a VPA with Billbergia?

**Mr ROB STOKES:** Certainly.

**The Hon. DANIEL MOOKHEY:** By the bye, Mr Whitworth, I checked the VPA disclosure register and there is no reference made to this at any of the levels there—notification, under consideration, draft for feedback or execution. Even at the notification level it is not listed. Do you know why it is not listed there?

**Mr WHITWORTH:** Because it has not been notified.

**The Hon. DANIEL MOOKHEY:** So it is still at that stage prior to the legal threshold for notification. Is that correct?

**Mr WHITWORTH:** Yes, that is correct.

**The Hon. DANIEL MOOKHEY:** Are those negotiations ongoing?

**Mr WHITWORTH:** They are ongoing. I am not involved in the detail of those negotiations because, as the Minister's delegate, I do want to get some space between myself and the actual detail. But those negotiations are ongoing, but I think the tempo has slowed.

**The Hon. DANIEL MOOKHEY:** Okay. We might pick that up this afternoon. Minister, have you had any direct contact with Billbergia about their VPA?

**Mr ROB STOKES:** No.

**The Hon. DANIEL MOOKHEY:** Do you recall seeing any correspondence from Billbergia about their VPA?

**Mr ROB STOKES:** I am happy to take that on notice, to the extent that I am able to provide that correspondence to the Committee, if it exists.

**The Hon. DANIEL MOOKHEY:** I might be able to provide it to you now. I might be able to help you. Do you recall ever seeing that?

**Mr ROB STOKES:** It is dated 1 May last year. I do not recall its contents, so I will probably have to take these questions on notice, but I am happy to give it a go.

**The Hon. DANIEL MOOKHEY:** Of course, if you could. Do you mind taking that on notice? Are you aware whether or not after sending that letter Billbergia made contact with your office?

**Mr ROB STOKES:** No, I am not aware.

**The Hon. DANIEL MOOKHEY:** Are you aware about whether or not they specifically got in touch with Mr Loomes, who I believe at the time was working for you, about that correspondence?

**Mr ROB STOKES:** No, I am not.

**The Hon. DANIEL MOOKHEY:** Did Mr Loomes at any point discuss that correspondence with you?

**Mr ROB STOKES:** Not to the best of my recollection, no.

**The Hon. DANIEL MOOKHEY:** Are you aware about whether or not Billbergia asked Mr Loomes to discuss that correspondence with you?

**Mr ROB STOKES:** How could I be?

**The Hon. DANIEL MOOKHEY:** There is a reason you might be. I pass you another document.

**The Hon. SHAYNE MALLARD:** Will you give him time to read it?

**The Hon. DANIEL MOOKHEY:** Sure. We can give you reading time.

**Mr DAVID SHOEBRIDGE:** It is called the Anderson pause.

**The Hon. DANIEL MOOKHEY:** It is the Anderson time. I want to be very clear here: I am certainly not making any implications about you or your staff at all. There is correspondence here that has been sent from Billbergia to your adviser. They say:

As discussed with my colleague, thank you in advance for your assistance in bringing the contents of this correspondence to the Minister's attention and actioning appropriately.

I also refer to the email below from Rick Graf to Katie Stevenson requesting a meeting with Minister Stokes at his earliest convenience.

Billbergia was in contact with your staff?

**Mr ROB STOKES:** Yes.

**The Hon. DANIEL MOOKHEY:** To the best of your recollection, did Mr Loomes ever mention this correspondence to you, or did Billbergia get that wrong in their email?

**Mr ROB STOKES:** Sorry, where are you referring to in the email?

**The Hon. DANIEL MOOKHEY:** If you scroll down to the email from Louise Camenzuli, sent Wednesday 1 May 2019:

Dear Tom,

As discussed with my colleague, thank you in advance for your assistance in bringing the contents of this correspondence to the Minister's attention ...

**Mr ROB STOKES:** I see. I do not wish to contradict a member of staff, so I honestly cannot recall. I am certainly aware of the issues surrounding Rhodes in terms of the overall objective to get a great precinct in that area. But in relation to a meeting with Billbergia, I advise the Committee I have not. It would not be abnormal for my office to deal with representations.

**The Hon. DANIEL MOOKHEY:** Of course, and it is not at all uncommon for you to deal with requests and for people to ask that your staff bring matters to your attention. To the best of your recollection, Mr Loomes did not do that?

**Mr ROB STOKES:** The challenge is, it says, "thank you in advance for your assistance". Actually, "thank you in advance for your assistance in bringing the contents of this correspondence to the Minister's attention". So it is not suggesting he has actually done it.

**The Hon. DANIEL MOOKHEY:** No, it is not. I am just wondering whether or not, to your recollection, anything did take place? I am not suggesting this is proof that it did. I am asking you whether it did?

**Mr ROB STOKES:** Okay. And the reason I was cautious was because I thought you were suggesting that he had.

**The Hon. DANIEL MOOKHEY:** No.

**Mr ROB STOKES:** To the best of my recollection, that did not occur.

**The Hon. DANIEL MOOKHEY:** To the best of your recollection, did your chief of staff ever talk to you about a meeting request from Billbergia?

**Mr ROB STOKES:** It could well have. We get meeting requests, obviously all the time. I cannot possibly entertain all of them. And often it is appropriate, for a whole range of reasons, that they be delegated to an adviser, senior adviser or chief of staff, as the case may be. But I cannot recall a particular discussion. That is not suggesting it did not happen; I just cannot recall.

**The Hon. DANIEL MOOKHEY:** Do you mind checking, on notice?

**Mr ROB STOKES:** Again, there would probably be no way for me, it would have been a—

**The Hon. DANIEL MOOKHEY:** Could you not just ask your chief?

**Mr ROB STOKES:** We have a regular meeting in the office with my personal assistant and chief where we go through meeting requests. But certainly if there are any records I am happy to furnish them. I am just not sure that such records would exist.

**The Hon. DANIEL MOOKHEY:** Sure, Minister, I appreciate you checking. How many conversations have you had with Mr John Sidoti, the member for Drummoyne, about planning and Rhodes since he resumed the ministry?

**Mr ROB STOKES:** As I recall, there was one meeting with the local member, with the local council and with departmental officers to provide a briefing—as we would do in the ordinary course of events with any local member, which is quite appropriate in relation to progress on the Rhodes plan.

**The Hon. DANIEL MOOKHEY:** Did that meeting take place on 30 June 2020?

**Mr ROB STOKES:** I take that on notice.

**The Hon. DANIEL MOOKHEY:** It is in your ministerial diary. You can take it on notice but, to be clear, I think I am referring to the same meeting; it is not a separate meeting. There is only one meeting.

**Mr ROB STOKES:** No, no. That is from my recollection. Look, if there are any additional meetings that I cannot recall I will furnish on detail. But you have the details of my diary, so there you go.

**The Hon. DANIEL MOOKHEY:** Is that the only time you have spoken to Mr Sidoti, to your recollection?

**Mr ROB STOKES:** To the best of my recollection, yes.

**The Hon. DANIEL MOOKHEY:** He has not called you up on the phone, hit you up in a corridor, spoken to you after the party room, nothing like that?

**Mr ROB STOKES:** Generally, in relation to particular precincts, as you would appreciate, I am generally fairly cautious with those sorts of incidental meetings. I cannot say categorically that someone might not have sought to approach me. I would have, in the ordinary course of events, said, "Contact my office and make a time". So there would be a record of such an approach.

**The Hon. DANIEL MOOKHEY:** Did he express opposition to your decision-making in this matter, in the Rhodes East matter?

**Mr ROB STOKES:** Not that I recall. The point of the meeting was more to provide advice.

**The Hon. DANIEL MOOKHEY:** Did he oppose your draft Rhodes strategy that you released last year?

**Mr ROB STOKES:** I am not sure that he put in a submission.

**The Hon. DANIEL MOOKHEY:** I am not saying whether he put in a submission. Has he opposed it with you?

**Mr ROB STOKES:** What I meant was a submission would be where you put in your opposition. If you are suggesting did he ever have a conversation with me—

**The Hon. DANIEL MOOKHEY:** Well, did he oppose it in the meeting you had with him?

**Mr ROB STOKES:** Not to my recollection of that meeting. I do not think he made any—sorry, were you in the meeting with me?

**Mr WHITWORTH:** I was not in that meeting but I can also confirm that Mr Sidoti has not made a submission to the draft Rhodes strategy.

**The Hon. DANIEL MOOKHEY:** I have got a letter from him slamming Rhodes. Did he slam Rhodes in the meeting he had with you on 30—

**Mr ROB STOKES:** Not to the best of my recollection. But, again, that was not the purpose of the meeting. It was to provide information. It may well have been the case that he went away from that meeting and distilled a position. The purpose of the meeting was to advise where the process was up to.

**Mr DAVID SHOEBRIDGE:** Minister, you are aware of the Precinct Support Scheme.

**Mr ROB STOKES:** Yes.

**Mr DAVID SHOEBRIDGE:** One of its purposes is to provide additional green open space for communities that are impacted by intense development.

**Mr ROB STOKES:** In precincts, yes.

**Mr DAVID SHOEBRIDGE:** That is probably its primary purpose.

**Mr ROB STOKES:** Not just additional open space. I have Ms O'Mara here whose team is responsible. You do not want to go there?

**Mr DAVID SHOEBRIDGE:** Not in extreme detail, but access to and additional green open space—those two points.

**Mr ROB STOKES:** If there is a brief statement as to the purposes of the Precinct Support Scheme, I will refer you to Ms O'Mara.

**Mr DAVID SHOEBRIDGE:** I do not need detail that is available publicly read onto the record, Minister.

**Mr ROB STOKES:** Okay. It is basically about civic improvement to public spaces to support communities where there is a focus on development outcome.

**Ms O'MARA:** Can I just add, to fund local infrastructure including open space projects.

**Mr ROB STOKES:** Including open space.

**Mr DAVID SHOEBRIDGE:** Cool. There are now two communities that are very put off—

**Mr ROB STOKES:** I am very sorry?

**Mr DAVID SHOEBRIDGE:** Put off, opposed to, the funding that your department has made available under the Precinct Support Scheme. One is the community in Banksia surrounding Gardiner Park where the Precinct Support Scheme is funding a synthetic oval. The other is the community in Greenwich in Lane Cove Council surrounding Bob Campbell Oval where, again, another synthetic oval is being put in. Given there is such strong opposition from those two local communities, can you tell the Committee how it was that you or your delegate were satisfied that appropriate consultation had occurred before these projects were funded?

**Mr ROB STOKES:** I will refer you to Ms O'Mara to provide details in relation to both of those projects.

**Ms O'MARA:** The information I have, Mr Shoebridge, is that the council put forward the suggestion around how that funding was to be expended and we would typically defer to the council about what is best for their local community. Our role in that process is to ensure that the funds are appropriately expended.

**Mr DAVID SHOEBRIDGE:** But one of your department's assessment criteria—and I think in the case of Bob Campbell Oval it was a Mr White, who is the Manager of Infrastructure Coordination—that needs to be satisfied is that appropriate consultation has occurred within the community. In neither case were the details about synthetic ovals communicated to the surrounding community before the council put their grants application schemes in. So how was your delegate satisfied about that?

**Mr ROB STOKES:** Well to kick off, it would be my expectation obviously that the terms in relation to assessing grant applications be followed. As Ms O'Mara has identified, the council is the democratically elected voice of the people. As to how that process occurred, I refer you to Ms O'Mara.

**Mr DAVID SHOEBRIDGE:** The reason I ask is, there is a separate, distinct requirement under your own guidelines that the delegate be satisfied about this.

**Mr ROB STOKES:** It would be my expectation that that is followed.



**Mr DAVID SHOEBRIDGE:** Will you take it on notice how on earth the delegate was satisfied in those two cases?

**Ms O'MARA:** I am happy to take it on notice. I do have some detail that some members of the community raised concerns and that the community has been advised that the department is unable to dictate the preferred use of turf. I will take on notice the specific details relating to that.

**Mr DAVID SHOEBRIDGE:** As the Minister for public spaces, can you advise how many of these synthetic ovals have now been approved, or are in the process of being constructed, across Greater Sydney?

**Mr ROB STOKES:** Sure, I can provide those details on notice.

**Mr DAVID SHOEBRIDGE:** Do you or your department have any advice about the numerous studies that show the impacts of these synthetic turf ovals on the environment, especially pollution from microplastics and from toxic run-off from these synthetic ovals, especially in cases where they are right next to waterways? Do you have any advice about that?

**Mr ROB STOKES:** Sure. I am aware, and I have actually read a couple of studies in relation to this matter. Obviously playing fields are subject to intensive use and one of the benefits of synthetic ovals is that they require a far lesser use of land for those active sporting needs than fertilising vast, and alienating vast, swathes of open space for that purpose. If you can actually focus that in a much more concentrated way—I mean, there are environmental externalities associated with sporting fields generally—on a surface that is capable of being used much more regularly that can actually have some positive environmental effects as well. But I am happy to take it on notice and get you some further information.

**Mr DAVID SHOEBRIDGE:** Minister, you know that most of the time synthetic fields end up being fenced off from the community and are only available for organised sports. So casual use, dog walking, taking your kids across the park are often excluded from synthetic ovals.

**Mr ROB STOKES:** Yes, and part of the reason to enable this is so you can have more intensive use of that land so that other land does not need to be excluded at other times. You can actually allow for much more efficient usage of public open space to meet the needs of a broader range of the community.

**Mr DAVID SHOEBRIDGE:** Tell that to the residents surrounding Gardiner Park, who are going to be excluded from their local oval if the construction continues. Tell that to the residents around Bob Campbell Oval, who are going to be excluded from their oval. They were not put on notice about this. They were not told about the exclusion that would happen before your Government approved millions of dollars to create these synthetic ovals.

**Mr ROB STOKES:** Again, those decisions in relation to those projects were made by the relevant local councils. I would encourage members of the public to engage with councils. Our role is to provide funding support in accordance with the parameters of that grant fund.

**Mr DAVID SHOEBRIDGE:** Minister, instead of getting greater access to green open space, both of those projects will exclude the local community in circumstances where, in both cases, the community is well over 25 minutes walk from where the intense development is being created. They are just getting harmed by this precinct funding, are they not?

**Mr ROB STOKES:** Again, project selection is ultimately a matter for local councils. If people have concerns, obviously, in relation to the selection of projects it is a matter for councils. Our role is to provide that grant funding to assess those applications in accordance with the parameters of the grant funding and to make sure it is acquitted in accordance with the terms of the grant.

**Mr DAVID SHOEBRIDGE:** On Sunday at the Mirvac development out at 55 Coonara Avenue, West Pennant Hills, the developer admitted that they had found 18 of the endangered Dural land snails on the site. They are a rare species listed as endangered under the Commonwealth Environment Protection and Biodiversity Conservation Act [EPBC Act]. Will you be requiring a referral under the Commonwealth EPBC Act before any development occurs on that site?

**Mr ROB STOKES:** I am happy to take that on notice and would obviously acquit my responsibilities under relevant legislation.

**Mr DAVID SHOEBRIDGE:** You say that you have got a target for increasing the amount of green canopy in Sydney. You say you want a 40 per cent target. Is that right?

**Mr ROB STOKES:** I am sorry, what is it in reference to?

**Mr DAVID SHOEBRIDGE:** Canopy.

**Mr ROB STOKES:** Tree canopy—yes. There is a range of measures, and I would refer you to Sydney Green Grid and the work done.

**Mr DAVID SHOEBRIDGE:** How does clear-felling at least 450 trees on the 55 Coonara Avenue site in West Pennant Hills—many of them blue high gum forest—fit with your strategy of increasing canopy?

**Mr ROB STOKES:** I think they are blue gum high forest.

**Mr DAVID SHOEBRIDGE:** Correct.

**Mr ROB STOKES:** From memory, I think there is more than 15 hectares on that site that will be permanently preserved with an E2 conservation zoning.

**Mr DAVID SHOEBRIDGE:** I am not asking about the trees you are not allowing to be cut down. I am asking about the 450-odd trees you are allowing to be cut down—many of them, as you identified, blue high gum.

**Mr ROB STOKES:** Ultimately, all of those trees that I mentioned—I think it is 15.6 hectares, if my memory serves me right—under the previous zoning could be cleared with consent; under the new zoning they cannot.

**Mr DAVID SHOEBRIDGE:** Minister, you are perfectly comfortable with 450 mature trees, many of them those beautiful blue gums, being chopped down under your watch?

**Mr ROB STOKES:** I am perfectly comfortable that the appropriate process was followed, and that is my role.

**Mr DAVID SHOEBRIDGE:** What about the 500 or 600 trees that are proposed to be chopped down on the Royal Sydney golf course? Are you perfectly comfortable with another 500 or 600 trees being chopped down for the Royal Sydney golf course?

**Mr ROB STOKES:** That is not what I said.

**Mr DAVID SHOEBRIDGE:** Are you? What are you doing to prevent yet another small urban forest being chopped down on Royal Sydney, or is it just not your problem?

**Mr ROB STOKES:** No, that is not what I am saying at all. In fact, we have great efforts to ensure that we are engaging in tree plantings right across Greater Sydney.

**Mr DAVID SHOEBRIDGE:** I am not asking about tree planting, Minister; I am asking about you not chopping down large stands of mature trees in the centre of Sydney.

**Mr ROB STOKES:** In relation to individual project applications, it would certainly be my expectation that the process is properly followed, and the balancing required under section 4.15, I think, of the Planning and Assessment Act is thoroughly conducted and those matters are taken into account. But, ultimately, as you appreciate, decisions in relation to local development are not matters that come before me for determination.

**Mr DAVID SHOEBRIDGE:** Why don't you do your job as Minister and put in place a State environmental planning policy which requires the protection of these large collections of trees and prevents this kind of clear-felling of trees under your watch? You have got a target but you have no teeth in it.

**Mr ROB STOKES:** I point you to the Vegetation State Environmental Planning Policy.

**The CHAIR:** We now move to questions from Mr Justin Field.

**Mr JUSTIN FIELD:** I would like to start by tabling the document that I provided earlier titled "Holding lines." Minister, I will provide you with a copy. This document is titled "Holding lines". It is not dated but it appears from the information contained in it that it is probably mid-2019. Mr Whitworth, you did not author the document but on the back page it indicates that you were one of the approvers of the document. Minister, this document clearly makes out in, I think, the third highlighted section in bold: "The Minister has received a request from Water NSW for the project to be declared critical State significant infrastructure." As I said, this appears to be from the middle of 2019. This has been prepared by the media unit, it seems, to inform Government members, and possibly departmental staff, on how to talk about issues around Warragamba Dam. Can you confirm if that was the case?

**Mr ROB STOKES:** I can confirm that I have not received a request from Water NSW for the Warragamba Dam wall raising project to be declared critical SSI.

**Mr JUSTIN FIELD:** Mr Whitworth, can you explain why you would have approved a document that makes an error like that? In fact, it is bolded on here and makes out how the Minister would remain the determining authority should such a request be agreed?

**Mr BETTS:** Might I intervene at this point, given that that would be a matter for Mr Ray rather than Mr Whitworth?

**Mr JUSTIN FIELD:** Mr Whitworth was one of the approving officers on this, Mr Betts. That is why I asked the question.

**Mr BETTS:** Pursuant to your question this morning whether I was aware of an application having been made by Water NSW for designation of projects as CSSI, I have had the opportunity during the break to check with my department. We have, it turns out, received an application but that has not been presented to the Minister yet. The departmental advice is yet to be finalised on that and I was unaware of that this morning.

**Mr ROB STOKES:** Can I note that the wording here is a little equivocal because the following line says, "The department is reviewing that request". I assume that would mean that it has come to the department to come to me. I can confirm it has not come to me.

**Mr JUSTIN FIELD:** I think the request gets made to the Minister—if I am correct in the process, it is made to the Minister; the department would review the request and provide advice as to whether or not you seek to accept that or make that change—

**Mr ROB STOKES:** It sounds like the reverse—

**Mr JUSTIN FIELD:** Either way, we have an answer. Was it back in 2019, Mr Betts, or was it more recent than that?

**Mr BETTS:** I am finding this out myself now because of the systems of delegation that you and I discussed in the hearings with Minister Pavey the other day. I will get you that information as soon as I can.

**Mr JUSTIN FIELD:** I find it a little extraordinary, Mr Betts, that you agreed last week that you were a member of this convened Warragamba Dam coordinating group to discuss the high-level issues associated with the development of the environmental impact statement [EIS]. Minister, were you aware that such a group exists and that your Secretary personally—

**Mr ROB STOKES:** I am sorry, I was momentarily—

**Mr JUSTIN FIELD:** The Secretary, in discussions we had last week in questions and answers, accepted that he is a member of what has been described as the Warragamba Dam coordinating group. It is a high-level meeting that brings the different departments together to discuss, I guess, the development of the EIS, which has been subject to significant public criticism and departmental criticism in the media. Were you aware that your Secretary was personally attending those sorts of meetings?

**Mr ROB STOKES:** I do not control my Secretary's diary, but it certainly would not be unusual for the Secretary, given his role across the cluster, remembering that this project—which I will not make any specific comment on—

**The Hon. MARK PEARSON:** Minister, could you move the microphone closer to you?

**Mr ROB STOKES:** Sorry. The implications for broader north-western Sydney and the whole Hawkesbury-Nepean flood plain—there are a lot of moving parts there. There is a lot of potential development activity that will either proceed or not proceed on the basis of these sorts of decisions. I do not think having a coordinated approach is a bad thing, and I certainly would not have a problem with the Secretary being involved in these sorts of discussions.

**Mr JUSTIN FIELD:** I understand that. Mr Secretary, how could we be having a Warragamba Dam coordinating group that is supposed to be working out how to best prepare the EIS, yet that group has not discussed or considered a request for the project to be declared critical SSI which, as I understand it, would affect the Secretary's Environmental Assessment Requirements [SEARs] and probably need to be reissued—and would affect, to some degree, the very question of the assessment of the EIS, which that group is supposed to be meeting to discuss?

**Mr BETTS:** I might take some advice in a moment from Mr Ray, who is the steward of the Planning and Assessment group. You asked the question the other day of why I am involved in that group and I explained

to you that I am involved in a number of groups for State significant infrastructure to ensure that—and this includes the Warragamba Dam and other things, for instance, in the transport sector—

**Mr JUSTIN FIELD:** That is already on the record, Mr Betts. If we could go to the key point—

**Mr BETTS:** It is. It is on the record.

**Mr JUSTIN FIELD:** How was this request for critical SSI not part of the discussions in that coordinating group?

**Mr BETTS:** Perhaps the proponent, who might have been the person to ask about that, did not see the need to bring it up because there were other channels for an application for CSSI to be handled and advice then to be put to the Minister. I will defer to Mr Ray on whether that necessarily implies a radical change to the Secretary's Environmental Assessment Requirements but, in a way, that would be at the jeopardy of the proponent. Mr Ray?

**Mr JUSTIN FIELD:** If it is okay, Mr Ray, I have limited time and we are coming to a close, if we could deal with those this afternoon? I would like to go back to Mr Whitworth quickly as an approver on this document, and for the Minister to hear this. It is a curious document, this. The very lead-in seems to be in response to some media comments that came about as a result of the creation of the parliamentary inquiry which, of course, I am chairing. It states:

There has been renewed interest in Warragamba Dam wall raising since the SMH's Tom Rabe ... reported on Greens defector Justin Field teaming up with One Nation to push through a parliamentary inquiry into the Government's plan to raise Warragamba Dam.

It is a somewhat partisan and almost pejorative way to talk about members of Parliament with regard to an inquiry established by the New South Wales Legislative Council. Minister, is it appropriate that your officials are describing members of Parliament and parliamentary processes in that fashion?

**Mr ROB STOKES:** I have not seen this document before. It is not language that I would use, and certainly I would encourage the department to be clearer in referring specifically to people by their correct titles, as we would in Parliament.

**Mr JUSTIN FIELD:** Of course, the Government actually supported that inquiry through formal business; it did not go to a vote. Mr Whitworth, why would you have approved—

**The Hon. SHAYNE MALLARD:** We could count the numbers.

**Mr JUSTIN FIELD:** —language like that?

**Mr WHITWORTH:** Mr Field—

**Mr JUSTIN FIELD:** You made no case against there, Mr Mallard.

**Mr BETTS:** Would you like Mr Whitworth to answer the question?

**Mr JUSTIN FIELD:** I would.

**Mr WHITWORTH:** Mr Field, I have no specific recollection of that document. I do recall being provided with a number of pieces of advice ahead of me providing evidence to the inquiry. I do stand by the evidence that I gave and I believe that I was respectful to all the members of the inquiry of the day. I remember it was being held at Windsor and we discussed a number of elements of the planning for the Hawkesbury-Nepean. I would have taken on advice information about the assessment process because my remit, as I think I explained at the inquiry, is the rezoning and the strategic planning elements of the Hawkesbury-Nepean. I am not responsible for or a part of the assessment process, including the issue of the SEARs or any other element of identification of whether it is State significant infrastructure or critical State significant infrastructure.

**Mr JUSTIN FIELD:** Thank you, Mr Whitworth. I am not precious about this in any way, shape or form. It just seems curious because there is quite a lot of, to some degree, personal criticism in the media—including by the Minister in charge of this project, which we will get to tomorrow—which is why I raised the question. Minister, I have just indicated—and you have noted—the discussion between Mr Betts and me about his role in this coordinating group and that this potential escalation that might mean a change of the SEARs. He is playing a very central role in coordinating the development of the EIS and I am sure will be informing your decision as Minister. Have you any concerns about potential conflicts of interest between Mr Betts' role in coordinating the development of the EIS and then assisting in the assessment, as far as advising you in making your decision?

**Mr ROB STOKES:** Ultimately, these are matters for Mr Betts. I have great confidence in his capacity to identify where a conflict might exist and to deal with that appropriately, but certainly he has not raised any concerns with me and, from what I have seen, I am not concerned. Certainly I am not concerned in relation to my capacity to exercise my decision-making independently.

**Mr JUSTIN FIELD:** I might go to questions with Mr Ray about the requirements to change the SEARs this afternoon—

**Mr ROB STOKES:** It is probably fair enough to give Mr Betts the opportunity to respond.

**Mr JUSTIN FIELD:** I was going to do exactly that. Mr Betts, last week when I asked you questions about this you indicated that you have no formal—the transcript states:

In terms of the formal decision-making under the statutory planning process, I will not have any participation in that decision-making for precisely the reasons that you are driving at, which is that it would present a potential conflict of interest if I were seen to be, on the one hand, the line manager for various groups in that department and was also the determining authority.

That makes eminent sense. But Minister, how are you actually managing that? Given that the Secretary must be providing advice to you, how often do you meet with him and how are you managing those potential conflicts?

**Mr ROB STOKES:** Again, I meet with the Secretary regularly. The machinery of government arrangements make it clear that he presides over a cluster with a whole range of roles and functions. I think that is in the public interest to make sure that there is coordination so that we do not have siloed decision-making. Equally, if the Secretary ever feels that there is a conflict that he needs to manage he would have my support in doing so, and I would support whatever arrangements he felt were necessary.

**Mr BETTS:** Including the range of statutory delegations that are in place to avoid precisely the conflict of interest—

**Mr ROB STOKES:** That is actually the major point here: These matters are delegated as well.

**The Hon. ADAM SEARLE:** Minister, I would like to go back to the issue of State-led rezonings. Around the issue of the airport there has been some controversy about the amount of land to be acquired from residents; the resuming of homes, particularly around the western metro, I think it is; but also there have been concerns from a number of affected residents about proposals to rezone their land. For example, at the Wianamatta-South Creek precinct, which is one of the five aerotropolis precincts, people around that area have been told that their land is going to be rezoned from E4 to E2, even though apparently their land will not be needed to be rezoned for some time—possibly even two decades. However, it is going to impact the value of their land. I think residents at Luddenham and also Leppington are concerned about similar proposals. Can you tell the Committee what plans your Government and your agency have about rezoning the land that residents live on?

**Mr ROB STOKES:** Certainly. There are a couple of things I need to be clear on. There is no proposal, as I understand, to apply an E2 zoning. My understanding is it is called an environment and recreation zone, which is a zone specifically created for the aerotropolis. The reason for this zone is that it is analogous to a particular zone in the standard instrument. However, it has some more uses putting in there; for example, things, from memory, like cafes and restaurants can also be put into that zone

Effectively, when you are building a new city on a green field location, you start at a reasonably high level of abstraction to delimit the areas you are planning about. You refer to the precincts. Five of them that we have now gone out having created a State environmental planning policy to guide overall zonings for the airport. We have now gone out with those first five precincts to indicate with a bit more granularity the sorts of land uses that can occur in different areas.

The environment and recreation zone largely is modelled and corresponds with, on advice from councils as well—and it is important to acknowledge the role of the planning partnership in preparing these draft plans—largely follows where our specific environmental constraints are and particularly—you mentioned Wianamatta-South Creek. Obviously there are flood issues around those waterways so, if possible, particularly if, for example, you refer to acquisition for a public purpose, if as is inevitable we will be—or councils particularly will be—purchasing land over time for public purposes. Wherever possible we will seek to align that with land which would not be developable for very intensive purposes in the first place.

We can get a lot of great outcomes like linear parks, for example, along waterways that may at times be subject to flooding, which would make them—render them unsuitable or even unsafe for more intensive development. I totally understand that these processes are vexed and fraught and contested. That is the subject matter of planning and that is why there is a draft plan and why they are out for consultation at the moment.

**The Hon. ADAM SEARLE:** Certainly, but leaving aside the green fields part of the aerotropolis, what proposals are there to rezone land that people are currently living on? Is that part of the proposal?

**Mr ROB STOKES:** So, ultimately, while I say it is green field, it is obviously existing farmland where people have lived for generations, and obviously zonings will overlay where people are currently living. There is no suggestion—I want to make it very clear to the Committee—that those land uses cannot continue under existing uses, but it is just to say, in terms of potential future uses, it is describing where those potential future uses should best happen and that is based on obviously the costs to provide infrastructure to those areas. But at a very basic level, it is ensuring development occurs in the areas where the constraints are such that it is safe to do so.

**The Hon. ADAM SEARLE:** Okay. Leaving that aside, you have said that existing use rights will continue, but some of the rezonings, the residents are concerned, will actually impact the value of their land. They might be able to continue to live on it but at some point they will not really be able to sell it, or any sale price will be very significantly compromised. What safeguards would you put in place to make sure that residents do not have the value of their homes destroyed?

**Mr ROB STOKES:** So there are a couple of things here. I mean, so this area for many years has been, as you would anticipate when there is uncertainty about what the future may hold in terms of specific rezonings, has been an area where there has been a lot of real estate speculation. That is the nature of peri-urban areas where there is expectation of development outcomes. The more certainty that is provided over time as to what those rezonings will be, the less room there is for speculation and the less room also there is for wild swings in property values. So, the closer we are getting to the very clear certainty about future pathways for different land parcels, the rate of speculation will decrease and that will have a moderating influence in terms of expectations for land values.

So, in relation to people's decisions to sell at a particular time and what the market is doing at that particular time, ultimately my job is not to sort of work in step with what the speculative property market may be doing. It is to provide certainty based on the capability of land. Certainly where land is to be acquired for a public purpose, and you mentioned the case of the Metro land, for example—

**The Hon. ADAM SEARLE:** Orchard Hills.

**Mr ROB STOKES:** —that has to be acquired in accordance with the Land Acquisition (Just Terms Compensation) Act. In relation to other lands—and I accept the premise of where you are going, which is that whenever you are doing these processes there will always be the potential for people—and it has been explained to me a couple of scenarios—who may be left in a very vulnerable or compromised situation. I have already had discussions with the department to make sure that a compassionate approach is adopted. But equally, we need to be very careful and follow established process because ultimately we are dealing with taxpayer money.

**The Hon. ADAM SEARLE:** Yes. Leaving aside the issue of the speculative land investment, I guess, and just looking at people who own their own homes, what steps will you take to make sure that those land values are not negatively impacted by rezonings? Will there be proper and full consultation with them if their land is going to be negatively impacted by rezonings? Will you commit to negotiating a fair sale price with them to acquire that land?

**Mr ROB STOKES:** Well, certainly if the land is acquired for a public purpose, then that process is outlined in legislation. What I am referring to is those people who may not get the zoning outcome that they may have hoped for because the capacity of their land may not support the zoning they would hope for, in which case that will have to be taken on a case-by-case approach. What I would say as well, however, when you talk about homeowners, remember in this area, while there are homeowners on suburban blocks, the majority of land we are talking about is acreage. So, in many of these sites there are actually—depends where you are—it is a vast area; I think it is what—11,200 hectares, so it is a vast area.

**The Hon. ADAM SEARLE:** Yes.

**Mr ROB STOKES:** It will really depend on the context, but my advice to the department is obviously to be as flexible as possible, as compassionate as possible, but as you would expect—and I know you would feel the same way—what I cannot do is provide a rezoning that would put development in harm's way.

**The Hon. ADAM SEARLE:** Just moving onto the land acquisition at Orchard Hills, what role is your agency playing in making those decisions? I know it is a different agency, but do you have any input into the amount of land that is being acquired when the questions are being raised by residents?

**Mr ROB STOKES:** My understanding is that that is a matter for Metro, but I will refer to the secretary for further detail.

**Mr BETTS:** That is right. Mr Whitworth?

**Mr WHITWORTH:** Thank you, Mr Secretary. Yes, that is a matter for Metro. We have been participating in broader strategic planning activities in the great Penrith to Eastern Creek area to understand what the context of that station and its surrounding town centre development will be. We also had a role in identifying the specific corridors and they have been identified under the State environmental planning policy relating to corridor infrastructure so that they can be identified and acquired under that process.

**The Hon. ADAM SEARLE:** Thank you. Minister, moving on to the issue of the six tranches of fast-track approvals that you engaged in last year, I think you announced 101 major projects and planning approvals. Of course, the trick was, or the criterion was, that the projects had to meet a number of criteria but one of them was about commencing within six months. Can you inform the Committee how many have commenced and how many have yet to commence?

**Mr ROB STOKES:** Certainly. Just a point of clarification: There were 101 applications or determinations. Not all of them were approved. So that is the first point.

**The Hon. ADAM SEARLE:** Fair enough, yes. I have the list here.

**Mr ROB STOKES:** From memory I think 59 have either resulted in a development application [DA] or actual physical construction. I think 17, from memory, are under watch. I will refer to the deputy secretary.

**Mr WHITWORTH:** Yes, thank you, Minister. So 59 out of the 99 approved projects have actually commence construction or have submitted a development application within the six-month period. Twenty-one of the remaining projects are on track to meet their obligation. We are in discussions with 17 proponents that have not yet met their obligation and we have issued letters to each and every one of those proponents to ask them to identify what they are doing to meet their obligation within 14 days.

**The Hon. ADAM SEARLE:** Okay. You might have just answered this, but how many DAs have been lodged as a result of the fast-track approvals?

**Mr WHITWORTH:** Sorry, we would have to take that on notice because we have DAs approved and planning proposal is approved.

**The Hon. ADAM SEARLE:** Yes.

**Mr WHITWORTH:** So, the commitment was to commence construction if a DA had been determined within six months and to submit a development application within six months if it was a planning proposal.

**Mr BETTS:** We will see if we can take that on notice for you and answer the question.

**The Hon. ADAM SEARLE:** Thank you. I might come back to this in the afternoon session with the public servants. A number of job targets were attached to a number of these projects. How many jobs have been created from the tranches that have been approved to date? What mechanisms are you putting in place to track that the numbers of jobs committed are being delivered?

**Mr ROB STOKES:** Sure. I will take that on notice. In broad terms—from recollection—about 52,000 job opportunities were created through this process. But in relation to the deliverables on those, we will take that on notice and get back to you.

**The Hon. ADAM SEARLE:** Okay, thank you. In relation to one of the projects approved in, I think, the first tranche of Ivanhoe Estate—3,400 units—that was approved within four days of being put in. An application was made for fast-tracking. That is a very quick turnaround. How was the department able to make the assessment so quickly and can you assure us that no corners were being cut?

**Mr ROB STOKES:** I will make a preliminary comment and then refer to the Secretary. My recollection is that in the very early days of this process, effectively it was also about providing certainty and confidence into the market at a point where there was real uncertainty in the early days of the COVID-19 pandemic. Also I presume it was because it was at a very advanced stage in the assessment at the time in which it was nominated, but I will refer to the Secretary.

**Mr BETTS:** What the Minister said is correct. The first tranche—as you would recall, Mr Searle—was in April last year, a time of great economic uncertainty. We consciously and avowedly adopted the first tranche projects that were at an advanced stage and that had been on exhibition, and the key thing was to build confidence

in the business community that decisions would be taken in a timely and efficient fashion. We combined the identification of projects, which were pretty much close to decision anyway, with a call for others outside in industry and elsewhere to nominate projects that could be considered in subsequent tranches. But it is fair of you to say that the projects that were in that first tranche, in particular, were those that were already at a very advanced stage of decision-making. To reinforce the Minister's point again, there was no suggestion of any corners being cut in terms of the application of the requirements of the Environmental Planning and Assessment Act.

**The Hon. ADAM SEARLE:** In relation to, I think, the Ivanhoe Estate, the local developer contributions I think were originally set at \$45 million. I think the developer made an application to you for a modification claiming that infrastructure provided internally within the development proposal should be counted towards the external infrastructure contributions. I think some \$30 million has already been sort of waived, if you like, from the developer or they have been allowed to offset and there is now a further modification, I think, on your desk to essentially waive the remaining developer contributions. Can you tell us where that is up to?

**Mr ROB STOKES:** I will take it on notice. I will say in relation to the projects and the project selection, they were selected not just in terms of jobs, homes and investment, they were also selected on their capacity to deliver wider public benefits, and the Ivanhoe Estate was one of these examples in terms of its contribution to a new school, to new public open space, to affordable and social housing. They were some of the co-benefits upon which this particular project was selected for acceleration.

**The Hon. ADAM SEARLE:** Sure, but not all of those benefits will be available to the community outside the development—

**Mr ROB STOKES:** I will take it on notice.

**The Hon. ADAM SEARLE:** Okay. Just a follow-up question. In relation to the value of contributions required to be paid by the developer to the City of Ryde, when the application for the modification was made was that application peer reviewed in consultation with the local council before you made a decision and will you do that in the next round as well?

**Mr ROB STOKES:** I will refer you to the Secretary.

**Mr RAY:** Mr Searle, my understanding is that the application is still before the department and there has been consultation with the City of Ryde. The status that I have is that we have asked the applicant to respond to the city's concerns, and that is the status of the application at the moment.

**The Hon. ADAM SEARLE:** In the second tranche there was a concern about the Eastlakes Shopping Centre modification in relation to that matter. I think the local member Mr Hoenig met with you and said it did not qualify because it could not be commenced within six months. Nevertheless, it was assessed and approved in the fast-track and it has not commenced in the six months. What are you doing to make sure that the developer, having the benefit of this approval, keeps up his end of the bargain? It is Mr Iwan Sunito, isn't it?

**Mr ROB STOKES:** I have no idea who the developer is, but what I will say is, I certainly do know who the local member is because he has had very forthright views on this, which he has communicated to me very robustly.

**The Hon. ADAM SEARLE:** And in the Parliament also.

**Mr ROB STOKES:** And in the Parliament as well and I was there to hear it, and I completely respect the job that he is doing on behalf of his constituents. In relation to the progress on that particular project, I will refer you to Mr Betts who will refer you on.

**Mr RAY:** Mr Searle, in that particular case there are two components to the development. There is a southern development and a northern development. In that case, the criteria was met because the application for the southern development made necessary modifications to the northern development and that allowed the work on the northern development, which was potentially not going to go forward, to actually continue. In that particular case, the application was not just for the southern development, it was also for the northern development, and that allowed the construction to continue.

**The Hon. ADAM SEARLE:** We might have to come back to the one.

**Mr JUSTIN FIELD:** Minister, before I come back to Warragamba, I just wanted to ask questions on another matter. There was some media reporting, and I think the letters have now become public, that the Minister for Transport and Roads, Andrew Constance, had asked his department or directed his department secretary to establish a clearance zone of 40 metres either side of major roads. Obviously if something like that had happened,



it would have had a pretty substantial impact on some land tenures that your cluster has responsibilities for, even potentially planning consents that are protected areas and the like. I just want you to give an indication. Are you aware of whether your department or your cluster was asked for advice about the impacts of such a request or policy?

**Mr ROB STOKES:** No, I am not aware. I will refer you to the Secretary in a moment for any additional information. But what I can say is that as far as I am aware there was no request for information, nor were there requests for owner's consent, which would be required if such clearing would take place. Obviously there would be significant matters that would need to be considered by this department. For example, it could also relate to matters that were subject to conservation agreements, so there would be real complications I would have thought in relation to that particular policy. But I will refer you to Mr Betts if he has any further information.

**Mr BETTS:** Sure. I had conversations with Mr Staples and there was an exchange of correspondence in which he provided me with a copy of the draft direction and asked me to provide some advice. I pointed out that there were quite significant potential legal and pragmatic considerations that would need to be resolved that clearance zones could be established under a Bush Fire Risk Management Plan, but New South Wales and Commonwealth statutory approvals would still be triggered and went on to suggest that the proposal was probably best considered in the light of the findings of the bushfire inquiry, which were imminent at that stage.

**Mr JUSTIN FIELD:** What was the nature of the advice that was written?

**Mr BETTS:** It is a letter from me to Rod Staples.

**Mr JUSTIN FIELD:** Are you able to table that letter?

**Mr BETTS:** I will take that on notice.

**Mr JUSTIN FIELD:** Okay, thank you. I might just move back if I could to the critical State significant infrastructure application as it relates to Warragamba Dam. I may not have got quite the clarity around the status of that last time and it might be useful for the Minister to hear and I will ask more detailed questions this afternoon. Mr Ray, could you just clarify when that request by WaterNSW was received and what its status is?

**Mr RAY:** It was received some time ago. I understand that it was received at the end of 2016, so very early in the proposals development before the final shape of the proposal had been put forward. Because it was received very early on in the process, our normal practice is not to provide advice to a Minister until we are very close to getting an environmental impact statement so we can actually make the fullest advice possible as to whether the matter would be, or should be, declared as critical State significant infrastructure.

**Mr JUSTIN FIELD:** Wouldn't a declaration typically be made before the SEARs are created?

**Mr RAY:** No.

**Mr JUSTIN FIELD:** Mr Betts, maybe I am confused because we talked about this last week and I asked if it was ordinary for an application to be made—or for a change in that designation to be made—after work on the EIS was completed. I do not have the transcript in front of me, but from recollection, you thought that was unusual. Given that the designation of a project that is critical State significant infrastructure has some impacts on the assessment and also the ability for the proposal to have merits appeal, as I understand, is one of the key issues, can you give me an example of other projects where the designation has been made after the EIS has been completed?

**Mr RAY:** I can take that on notice, but I am sure I can. It is, in fact, our practice to provide that advice when we are quite clear about the EIS and that it is imminent. But I can provide that advice on notice.

**Mr JUSTIN FIELD:** But it has been designated State significant infrastructure at the moment. Correct?

**Mr RAY:** Yes, through, I think, the provisions of the relevant State environmental planning policy.

**Mr JUSTIN FIELD:** If it has been designated as that, wouldn't the point of making a designation of the project as either critical or not critical have been made at that time?

**Mr RAY:** No. That is a matter that is actually already in a State environmental planning policy. So there are categories there and if matters fall within that then they fall within it. If they do not fall within it, then they are not State significant.

**Mr JUSTIN FIELD:** What are the factors for making a decision to declare the project critical State significant infrastructure?

**Mr RAY:** Those factors are the factors that are set out in the legislation, in the section of the legislation which relates to it being an essential matter for the social, economic and environmental wellbeing of the State.

**Mr JUSTIN FIELD:** What are the options available for the Minister in making such a decision? Is there an objective test or a subjective test here?

**Mr RAY:** The test is the test in the legislation.

**Mr JUSTIN FIELD:** I had better go and read that legislation, I think. Minister, I would suggest you might want to go and do that too. It is coming up pretty soon.

**Mr ROB STOKES:** Sounds like it.

**The Hon. PENNY SHARPE:** He knows it. On the legislation, he is pretty good.

**Mr JUSTIN FIELD:** Well, Minister, can you tell me then—

**Mr ROB STOKES:** Thank you very much, Ms Sharpe.

**Mr JUSTIN FIELD:** Minister, what are the considerations for you in making a decision—

**Mr ROB STOKES:** In making a CSI declaration?

**Mr JUSTIN FIELD:** Yes.

**Mr ROB STOKES:** There is discretion. I have to make sure it is of critical infrastructure significance to the State.

**Mr RAY:** Yes, to the economic wellbeing of the State.

**Mr ROB STOKES:** I have sought from the department some guidelines to frame the exercise of that discretion. I understand that those guidelines have been published and consulted upon and I have now got a brief, I understand, coming up to me in relation to the finalisation of those guidelines. I understand there was feedback in relation to that consultation that broadly thought that it was heading in the right direction to provide some context to frame up that decision.

**The CHAIR:** Thank you. We will move to questions by Mr Pearson.

**The Hon. MARK PEARSON:** Thank you, Minister. Will these changes require any legislation process including regulations?

**Mr ROB STOKES:** I am sorry, what changes?

**The Hon. MARK PEARSON:** The proposed changes to the SEPP.

**Mr ROB STOKES:** Sorry, in relation to the koala SEPP, that is a piece of delegated legislation and I will undoubtedly, under the ordinary process, receive a brief from the department in relation to the making of the SEPP. I will have a decision to make in relation to, I anticipate, the exhibition of the SEPP. However, I note for the benefit of the Committee, that the SEPP is effectively a SEPP that has already been made and it has already been subject to significant consultation. I will take on notice if I am missing any elements in relation to the decision-making before me in relation to remaking the SEPP. But I think that is the process I will have to follow.

**The Hon. MARK PEARSON:** Are any other aspects of the changes that you have announced—apart from the SEPP—going to require any legislation, including regulation, to pass?

**Mr ROB STOKES:** That relates to matters in other portfolios. Again, as I said, I am not expert in relation to the operation of the Local Land Services Act. The planning Act, in terms of its capacity as an enabling Act to enable the creation of statutory instruments, is fairly broad. It gives me fairly broad enabling power. In relation to the LLS Act, I would have to take that on notice. Certainly, in relation to the remaking of a PNF code, I do not believe that would require any legislation. But, obviously, if any legislation would have to be made, that would be a matter that would have to go through a legislative process and that would involve your involvement.

**The Hon. MARK PEARSON:** Would it not be the case though that the new code, when it is finalised, has no legal binding unless it is incorporated into a regulation or legislation?

**Mr ROB STOKES:** Again, we are straying into the operation of the LLS Act and its interactions with its codes. I find that a very difficult piece of legislation to read in terms of the way it interacts with its codes, so I best take it on notice.

**The Hon. MARK PEARSON:** What protections will be available for koala habitat found on private land that is of outstanding biodiversity value under the Biodiversity Conservation Act?

**Mr ROB STOKES:** You refer to the Biodiversity Conservation Act; there is other legislation. Obviously, there are already existing protections in the Local Land Services Act. We have already talked about the protections in relation to a development application that might be submitted under the Environmental Planning and Assessment Act. Then there is also Federal legislation—the Environmental Protection and Biodiversity Conservation Act—and the protections there. In relation to any code that is drafted and put before the LLS Minister and environment Minister for their decision, as I have indicated to the Committee, that would have to be to the satisfaction of both Ministers that it would achieve, again, the objective that government has already decided on, which is in the Koala Strategy, which is the overarching strategy guiding government action in relation to koala habitat, that it would seek to stabilise and then increase numbers of koalas in the wild.

**The Hon. MARK PEARSON:** Was the new SEPP informed at all by any of the recommendations of the koala inquiry that this Committee put forth—in particular, recommendation 26 where the Government, in finalising the new SEPP, must strengthen the ability of consent authorities to protect koala habitat? Has it addressed that?

**Mr ROB STOKES:** In terms of chronology, the original koala SEPP was subject to public exhibition prior to the Committee delivering its findings. But I would say that it is consistent with the findings with that recommendation 26 of the Committee as you have outlined.

**The CHAIR:** Minister, why was the environment Minister shut out of the negotiations in September to come to some kind of compromise on the new SEPP and the Local Land Services bill?

**Mr ROB STOKES:** I certainly would not characterise it as that. I would make the observation that a State environmental planning policy is a matter that is under my administration. Certainly, there are interactions with other legislation that is also under the remit of the environment Minister. I would also make the point that we are within the same cluster in government and we regularly meet in our committee meetings and discuss these sorts of matters.

**The CHAIR:** The environment Minister and the people that work within Environment, Energy and Science [EES] had quite a bit to do with the original guidelines and original SEPP though, correct?

**Mr ROB STOKES:** That is correct, yes.

**The CHAIR:** I have another email—Katie Stevenson, does she work in your office?

**Mr ROB STOKES:** Yes. She is my chief of staff.

**The CHAIR:** This is on Sunday 27 September at the time, I think, when you were negotiating what the new Local Land Services bill would be—

**Mr ROB STOKES:** The days seemed to merge at that point.

**The CHAIR:** Yes. It does say, "Hi Rob, the info I received from EES is completely obstructive and includes multiple references to the fact the environment Minister has not been consulted on this. Suggest we rely on the advice from planning yesterday to continue progressing with Tooley"—who I think is Paul Toole—"and then discuss with Matt and the Premier on Monday so the finalisation is not blocked."

Firstly, why is your department suggesting to continue to progress with "Tooley" and not with the environment Minister on this?

**Mr ROB STOKES:** I would honestly have to take that on notice. But if you are trying to—certainly I can reflect that the lived experience was that we were getting advice from the department. I do not make a differential actually in terms of the department; it is one department. There are different sections and they all provide different sources of advice. Ultimately, Planning sits in the role of seeking to mediate the advice within different parts of the department.

**The CHAIR:** Minister, this from your chief of staff suggests unequivocally that information from—is it EES?

**Mr ROB STOKES:** Sorry, I am getting off the point. Mr Betts, what is the acronym?

**Mr BETTS:** Environment, Energy and Science.

**Mr ROB STOKES:** Energy, that is right.

**The Hon. PENNY SHARPE:** You were right.

**The CHAIR:** The information from EES was completely obstructive—completely obstructive—and included multiple references to the fact the environment Minister has not been consulted on this. That does not sound like you believe that Planning is as equal to EES within your mega department.

**Mr ROB STOKES:** Chair, I do not know what you are talking about.

**The CHAIR:** It sound like you actually worked—or your staff did or Planning did—to ensure that EES and the environment Minister were excluded from this new bill and the new SEPP. Is that the case?

**Mr ROB STOKES:** No, absolutely not.

**The CHAIR:** Why did this email from your chief of staff—

**Mr ROB STOKES:** You are talking about information—

**The CHAIR:** —say it was completely obstructive and to continue to progress with "Tooley", as recommended by the Planning department?

**Mr ROB STOKES:** Well, straightaway, the email you are reading out from talks about obstructing information. I do not know what that information is so I cannot really comment.

**The CHAIR:** Why was the environment Minister instructed or prevented from having input into this compromise with the National Party?

**Mr ROB STOKES:** Again, I do not accept the premise of your question, but I also make the point that a SEPP—a State environmental planning policy, and I would point you to the Act—is created by the planning Minister. Well, it is actually created by the Governor on the advice of the planning Minister. And obviously in doing that, I will rely on the advice of the Planning department. But obviously a key input into that will be the advice of EES.

**The CHAIR:** Let us talk about your advice that is dated—and I have something to give to you, to table it, which is a letter from you to the Deputy Premier. This is the email, 20 August 2020. This is before the National Party had their dummy spit over the koala SEPP. This correspondence addresses, as I understand, a lot of different issues that the Deputy Premier raised with you. On 20 August you suggest:

The Koala SEPP review process has involved extensive consultation ...

And you have:

sought to minimise impacts on landholders wherever possible. To this end, the draft Guideline has undergone significant change since the version released in March in consultation with your office and stakeholders.

You say that you have addressed a heap of issues to date and then you go on to address further issues that he raises. But importantly, what you say here—and this is based on the email I read out before—is:

The aim of the SEPP is to reverse the decline of koala population in NSW.

You talk about "Excluding RU zoned land from the SEPP would exclude more than 80% of the land in each LGA". You say:

The SEPP would be ineffective if it only applied to a small portion of land in each LGA.

This is the question. You say:

The Department of Planning has provided comment on the proposals to decouple the Koala SEPP from PNF Codes ... Before activities such as PNF and agriculture are decoupled from the Koala SEPP, LLS need to provide details about how koalas will receive robust protection under the LLS Act.

That is what you said to John Barilaro on 20 August. Why have you now come out and said that the new SEPP has robust koala protections when you know they do not and when you are trusting the National Party to develop them later with the code? Here you said they absolutely have to be in there before you agree to any new koala SEPP. What has changed?

**Mr ROB STOKES:** Two things: Firstly, I do not accept that the SEPP does not include robust koala protections. It does. The challenge I faced, quite frankly, was I had a new SEPP that was remaining in abeyance when I knew that this SEPP could make an appreciable difference in terms of identifying and protecting koala habitat up and down the New South Wales coast while there was a continuing discussion about the application of that SEPP to other areas of New South Wales. Every day that this SEPP was not made, those areas that are now

going to be covered by that new SEPP were covered by laws that I knew not to be as good as they could have been.

**The CHAIR:** Minister, what is clear is that the National Party—

**Mr ROB STOKES:** I have not finished my answer. So of course I would take the option of ensuring that I could get as much coverage as I could under the new SEPP whilst ensuring that those areas that remained a real contention for some of my parliamentary colleagues remained under their existing protection, with the assurance that any new code would at least match the protections that are currently available. That is the agreement that has been reached. I think that any sensible person in my position would have done precisely the same thing.

**The CHAIR:** With respect, I am not sure you understand what you have done, Minister.

**Mr ROB STOKES:** I think I understand precisely what I have done, and I have a very good understanding of the law on these issues.

**The Hon. ADAM SEARLE:** Minister, it is my question time now, briefly. The crocodile park in the Blue Mountains—

**Mr ROB STOKES:** Ah, the crocodile park. Yes, I was waiting for this.

**The Hon. ADAM SEARLE:** This was approved in 1989.

**Mr ROB STOKES:** Right.

**The Hon. ADAM SEARLE:** Three decades have gone past.

**Mr ROB STOKES:** Yes.

**The Hon. ADAM SEARLE:** It has now been revived and it has risen like a zombie from the swamp.

**Mr ROB STOKES:** Yes, yes. Crocodiles are prehistoric, yes.

**The Hon. ADAM SEARLE:** But it has now been deemed a State significant development, which means, I think, it is in your hands, or it is certainly out of the council's hands.

**Mr ROB STOKES:** Oh, good grief. Yes.

**The Hon. ADAM SEARLE:** Can you explain why that has happened and what planning framework will be applied to any modified application?

**Mr ROB STOKES:** I think on this one, because it is technical in nature, I will refer you to the secretary.

**The Hon. ADAM SEARLE:** Hospital pass.

**Mr RAY:** Mr Searle, it has come to the department because the application fulfils the requirements of the relevant State environmental planning policy, which says this application is one for the department. So that is why it is with the department, it falls within the categories of things that go to the department rather than the council. The assessment will take place in accordance with the usual policies, standards—all of that sort of thing.

**The Hon. ADAM SEARLE:** Sure.

**Mr RAY:** So there is nothing out of the ordinary in that.

**The Hon. ADAM SEARLE:** Perhaps we can jump straight to the policy problem, which is obviously planning standards have changed significantly in the Blue Mountains over the past 30 years. Obviously it seems to me that the current planning regime would not really permit something of this scale or of this kind. And it raises the issue about so-called zombie DAs: things where approval is given, action is in substance not taken but it outlives regulatory changes. What are you doing as Minister to address that policy problem both generally and in relation to this particular ghastly matter?

**Mr ROB STOKES:** Thank you, Mr Searle. It is a very good policy question and it was one that was raised in this Committee last estimates. From recollection, I undertook to look at it and see what we could do.

**The Hon. ADAM SEARLE:** Yes.

**Mr ROB STOKES:** Subsequently we have amended the Environmental Planning and Assessment [EP&A] Regulation to clarify, in relation to substantial commencement or physical commencement of a DA to effectively freeze in time those rights that are established by a planning consent, that that physical commencement actually has to be what the person in the street would consider physical commencement. So things like survey

pegs or other sorts of preliminary surveys are no longer counting towards physical commencement. There is a much tighter definition of what constitutes physical commencement in order to preserve that right to undertake development. So that action has been undertaken. Obviously we have challenges where action has been taken in the past that preserves the right to undertake a development or establishes an existing use or an existing right. We have to deal with those applications when they come before us. It is one of the challenges of the planning system. We are often dealing with historical decisions in the light of information that says if we knew then what we know today, we would not have made that decision. I will refer you to Mr Ray to add any further details on that point.

**Mr RAY:** So what I can say, though, is the application before the department will be assessed in accordance with today's standards. It will not be assessed in accordance with the standards that applied in 1989.

**The Hon. ADAM SEARLE:** So the current local environmental plan [LEP] will be the framework against which this is developed—this is assessed?

**Mr RAY:** Yes.

**The Hon. ADAM SEARLE:** You can give that commitment?

**Mr RAY:** Yes.

**Mr ROB STOKES:** Isn't it a bit cold for crocodiles? Anyway.

**The Hon. ADAM SEARLE:** I think it is more generally a reptile proposal.

**Mr ROB STOKES:** Okay.

**The Hon. ADAM SEARLE:** Again, I have not seen the details of the application. There was a site meeting involving, I think, council and maybe Planning, certainly other agencies. Some people who were present had the distinct impression that there was a real drive to approve this rather than to assess it. Can you address those concerns? Is that the framework in which the department operates?

**Mr RAY:** No. The department will assess the application in accordance with today's standards, today's LEP. Because that matter, I understand it, has already gone to the Court of Appeal, the question of the consent, and the Court of Appeal said that the '89 consent still runs. If the developer wanted to implement that '89 consent, they could, but they have put in a different application and that application will be assessed. Certainly, there has been no suggestion to me that we would do other than to assess that application on its 2020-21 merits.

**The Hon. ADAM SEARLE:** Okay. Minister, in relation to the housing diversity code, I know initially a number of councils were—the application of the code to them was deferred. Obviously you were hoping that councils would do work which would remove the necessity to have the code imposed on them.

**Mr ROB STOKES:** Yes.

**The Hon. ADAM SEARLE:** You had a meeting with Blue Mountains council, I think, in July.

**Mr ROB STOKES:** Yes, I did.

**The Hon. ADAM SEARLE:** I think they made the case to you that they had actually done the work required. Why then is the code still applying to the Blue Mountains local government area, and will you lift it in some way?

**Mr ROB STOKES:** I had a very good meeting with the council and the mayor. They put forward a compelling argument as to their unique circumstances. I was persuaded by the force of that argument and would anticipate that the department is undertaking the work to fulfil the outcomes of that meeting. I refer you to Mr Ray in relation to how that work is proceeding.

**Mr RAY:** My understanding—or the information that I have got here is that we are waiting on the council to submit a planning proposal to address the matters that followed up from that meeting, because that is the process that we have in place for a range of councils to seek variation from the Low Rise Housing Diversity Code.

**The Hon. ADAM SEARLE:** Obviously my time for questions has expired, but there is a letter from the council of 10 February that you should have a look at.

**Mr ROB STOKES:** I am happy to work with them.

**The CHAIR:** Minister, what form of consultation did you undertake with the environment Minister for this new koala SEPP?

**Mr ROB STOKES:** I have a number of conversations with the Minister and his staff. Certainly, in relation to this matter, we have had a number of discussions.

**The CHAIR:** Why within the new SEPP is there not the ability for—there is joint sign-off, I think, with the Deputy Premier, the Department of Regional NSW. There is a concurrence arrangement. Are you aware of that? Is that a standard procedure?

**Mr ROB STOKES:** There is a concurrence arrangement between departmental secretaries, and Mr Betts is the departmental secretary for both Planning and EES.

**The CHAIR:** This is koala plans of management and guidelines under koala SEPP 2021—

**Mr ROB STOKES:** Yes.

**The CHAIR:** —will require the approvals of the Secretary of DPIE and the concurrence of the Secretary of the Department of Regional NSW.

**Mr ROB STOKES:** That is correct.

**The CHAIR:** Who made that suggestion?

**Mr ROB STOKES:** I cannot recall specifically, but certainly these plans will require sign-off by government but not at a political level—at an administrative level, at a public service level. That is why it is at a secretary level and not by the Ministers.

**The CHAIR:** Did the environment Minister have concurrence under the previous SEPP in any way or with the guidelines?

**Mr ROB STOKES:** Not my understanding. Again, the SEPP is a piece of delegated—an environmental planning instrument that is wholly within the administration of the planning Minister. I certainly will consult with the environment Minister in areas that are relevant, obviously. As I have mentioned, we are in the same cluster and we are actually similar minded on these things. But literally in relation to the making of a SEPP it is a matter within my administration as planning Minister.

**The CHAIR:** This is koala plans of management and guidelines. Who recommended that the concurrence of the Secretary of the Department of Regional NSW be given?

**Mr ROB STOKES:** I am happy to take that on notice, but I also make the observation that that is an entirely—I am happy to take that on notice, but I think it is an entirely appropriate—

**The CHAIR:** Minister, how much did you personally get involved in the detail?

**Mr ROB STOKES:** Can I just finish—an entirely appropriate process. In relation to detail, yes, I was heavily personally involved in seeking to resolve these matters because, as I have made very clear, I have always wanted to ensure that this State environmental planning policy was made.

**The CHAIR:** If you were heavily involved in the detail, we are talking what you said was a deal or a compromise or a peacemaking effort, whatever it was. There are eight points here that the media release is saying are a key part of the new SEPP 2021. The last point is:

Koala Plans of Management and guidelines under Koala SEPP 2021 will require the approval of the Secretary of DPIE and the concurrence of the Secretary of DRNSW.

Who made that decision or request for that to be included?

**Mr ROB STOKES:** As I said, I will take it on notice. But what I will also—

**The CHAIR:** Sorry. This is extraordinary. You just said you had a lot of involvement here. You were across the detail. This is part of the media release that you signed off on.

**Mr ROB STOKES:** Yes.

**The CHAIR:** It is a significant change. It is clear that the National Party—the Deputy Premier has got a lot of his way, and you are saying you have to take it on notice when a question comes in budget estimates as to who requested that.

**Mr ROB STOKES:** No, no. Chair, I am saying, okay, when you go into a matter of detail, it is absolutely appropriate that I can take the option of furnishing you with an answer on notice. I do not see anything inappropriate with doing so. I will get you an answer. I will get you an accurate answer. But, as you would

appreciate, this work has involved a lot of late nights and early mornings, and—as I am sure you are too—I am tired, and if I need to get some advice on this matter before providing you an answer, I think that is fair enough.

**The Hon. BEN FRANKLIN:** Hear, hear!

**The CHAIR:** I think that what is clear from this media release actually is that the Liberal Party—and potentially you, Minister—has capitulated to a lot of demands in relation to allowing landholders and private native forestry operators to be able to access koala habitat. That is what is clear. You have been absolutely done over, Minister.

**Mr ROB STOKES:** Well, no. I do not know if that is a question or statement. If it is a statement, I categorically reject it. Categorically reject it.

**The Hon. MARK PEARSON:** The dangers of coalition.

**The CHAIR:** All right. That is the end of our questions. We will be back with the officials at two o'clock.

**(The Minister withdrew.)**

**(Luncheon adjournment)**



**The CHAIR:** We will move directly to questions from the Opposition.

**The Hon. PENNY SHARPE:** Going back to some of the discussion this morning, in terms of rural land zones 1, 2 and 3, is there a map available of that zoning across the State?

**Mr BETTS:** I will ask Mr Ray to take that one

**Mr RAY:** Ms Sharpe, I am not sure that we have compiled a map in one place because obviously it would be quite detailed, but there certainly are maps for each local government area. PDF maps are available on the website of the Parliamentary Counsel, www.legislation, et cetera, but I do not think we have compiled a map.

**The Hon. PENNY SHARPE:** Are you able to provide the Committee with information about—obviously, given the making of the SEPP and these exemptions. I know people took it on notice this morning but quite often I find that you are able to provide it in the afternoon—how large the RU1, RU2 and RU3 zoning is across the State?

**Mr RAY:** No, I would have to take that on notice as to the actual number of hectares.

**The Hon. PENNY SHARPE:** Can I clarify one thing with the proposal for the new SEPP, which is the issue about reasonable definition of highly suitable koala habitat? Can you confirm with me whether that is the same as what was previously suggested?

**Mr RAY:** I cannot. I do not know if that is a term of art or a term in a defined sense.

**The Hon. PENNY SHARPE:** It is the issue that goes to thresholds around relevant tree species.

**Mr RAY:** In relation to the proposed new SEPP, which is the 2019 SEPP, to be remade in those zones other than R1, R2 and R3, all the technical issues about the definition of koala habitat—the 123 trees will all be the same.

**The Hon. PENNY SHARPE:** So the trees are in. I am asking you to confirm that the thresholds remain the same. There has been no change in relation to the thresholds?

**Mr RAY:** There has been no change to the thresholds in relation to the definition of koala presence from the 2019 SEPP.

**The Hon. PENNY SHARPE:** Take me through how many regimes for clearing are farmers going to have to undertake before making changes on their land? There is a land clearing framework, there is private native forestry, there is now a new code under Local Land Services, plus there are any relevant arrangements in relation to local government. I am trying to understand the gateways for a farmer to understand how they are going to clear on their land and where they will be able to navigate their way through that. Are you able to enlighten me, Mr Ray?

**Mr BETTS:** Mr Ray can answer that insofar as it extends to the Planning portfolio.

**The Hon. PENNY SHARPE:** Maybe you, Mr Betts? I am happy for anyone to have a go here.

**Mr BETTS:** I think that the Agriculture portfolio might be the relevant one, but, Mr Ray, over to you.

**Mr RAY:** Yes, so obviously—

**The Hon. PENNY SHARPE:** Tell me the gateways, Mr Ray.

**Mr RAY:** The SEPP obviously works in relation to development applications. It has always done so since the original one in SEPP 44, so its focus is on DAs. Most activities relating to farming, the great bulk of activities have never required a development consent. Obviously, we heard the testimony earlier today that there are consent requirements for private native forestry. There are also consent requirements in environmental zones for certain clearing where primary production is also going on within the environmental zone. Generally, normal farming practices do not require development consent. As a general proposition, they generally do not require development consent under the legislation, under the zones, if you are in a rural zone.

**The Hon. PENNY SHARPE:** And the other part here, of course, is the Biodiversity Conservation Act. That is something else that farmers also have to take into account. I know it is not strictly in your purview.

**Mr RAY:** No, but it does come into the planning system when there is a consent requirement. While the planning system deals with things through requiring consent or not requiring consent, my understanding is things like the private native forestry code and the code under Local Land Services also regulate those things for the department that the EP&A Act does not regulate when no development consent is required.

**The Hon. PENNY SHARPE:** Thank you. That is helpful. The Minister mentioned this morning that he thinks the new code in relation to LLS will be made in the next six to eight weeks, is that right? Is that your expectation?

**Mr RAY:** I think that was what he said, yes.

**The Hon. PENNY SHARPE:** And can you tell me what process is and the role you will play in the development of that code?

**Mr RAY:** As the media release points out, and as the Minister gave testimony earlier on today, the approval for the code is an approval that goes to both the Minister for agriculture and the Minister for the environment. The Minister for the environment has concurrence role for both the private native forestry codes and the farming codes under Local Land Services. I would anticipate that my part of the department will provide some advisory information to the Minister about those codes and the thresholds that he has already discussed this morning.

**The Hon. PENNY SHARPE:** Just to be clear, it is now LLS role to develop a new code in relation to these matters? Primary carriage of that is the agriculture Minister. They will draft those and that will then go to the environment Minister for concurrence. They are letting us know if it is not concurrence—I will come back to that. If there is concurrence then it comes to the Minister for planning for final sign-off? Or no, he has no oversight at all? Is the only mechanism for this the concurrence role?

**Mr RAY:** Ms Sharpe, as I understand the legislation, the legislation provides that in both cases the Minister for agriculture is the proposer and adopter of the code, and the legislation provides that the Minister for the environment must agree to the code before it is adopted.

**The Hon. PENNY SHARPE:** Just to be clear, the Minister for planning at this point pretty much is done here?

**Mr RAY:** Has no legal role.

**The Hon. PENNY SHARPE:** So no oversight. It all goes back to this. Mr Betts, obviously you are in charge of many different parts and I know that this is not the Environment hearing, but I am interested in the process for EES in providing advice to the Minister. Could you take me through that, please?

**Mr BETTS:** We will be working, I imagine, closely in concert with our colleagues in the Department of Regional NSW. The Environment, Energy and Science part of the department will be working with them and Mr Ray and his team will be involved in that process as well. I will be meeting with the Secretary of the Department of Regional NSW in the next couple of days to shape up what that process will look like and how we deliver advice to government in a coordinated fashion and in accordance with the time frames that the Minister indicates.

**The Hon. PENNY SHARPE:** But just to be clear, primarily the Minister that you will be working with through that process is the environment Minister and not the planning Minister. Is that correct?

**Mr BETTS:** Yes. From a legal point of view, the power rests with the agriculture Minister, with the concurrence of the environment Minister.

**The Hon. PENNY SHARPE:** So in that scenario, the whole thing is going reasonably well. What is the process if there is not concurrence from the environment Minister?

**Mr RAY:** The codes cannot be made.

**The Hon. PENNY SHARPE:** So there are two options: There is the status quo, which would basically leave most of those areas still under SEPP 44, plus the new—

**Mr RAY:** So the situation would be that zones RU1, RU2 and RU3 would remain under SEPP 44, as they are now, and all remaining land that is not zoned those zones will be under the remade koala SEPP 2019, with the 123 tree species and the extended definition of "koala presence".

**The Hon. PENNY SHARPE:** What is the process if there is not an agreement from the environment Minister?

**Mr RAY:** Ultimately, that might be a matter for government through Cabinet.

**The Hon. PENNY SHARPE:** So, just to clarify, there is no role for the planning Minister in relation to resolving—

**Mr RAY:** Not in a legal sense.

**The Hon. PENNY SHARPE:** Not in any formal sense?

**Mr RAY:** In any formal sense under the legislation, no.

**The Hon. PENNY SHARPE:** I want to ask you about something completely different now. I want to ask you about parklands and, in particular, Western Sydney Parklands. As we are all aware, there are a lot of changes happening in relation to the management of parklands, particularly across Sydney. At a recent parklands forum at Parliament House, it was suggested that only 15 per cent of Western Sydney Parklands is available for recreational and open space use. Is that figure correct?

**Ms O'MARA:** I am happy to take that on notice. The information I have got is that the Western Sydney Parklands model has successfully created a sustainable revenue base for the parklands to develop and manage over 5,280 hectares of public land.

**The Hon. PENNY SHARPE:** How much of that is free, open, recreational space where people do not have to pay and there is no commercial activity attached to it?

**Ms O'MARA:** My understanding, Ms Sharpe, is that most of that is available. I am happy to check with the team while we are asking these questions. I know that there is 2 per cent of land that is set aside for business hubs, and they provide a sustainable revenue stream for the parklands. My understanding is that the rest of it is available, but I will check that for you.

**The Hon. PENNY SHARPE:** Well, it might be available but there is a big whacking zoo there and you cannot get there unless you pay to get in. I am trying to work out what is the recreational open space use that does not require money to access.

**Ms O'MARA:** Yes. What was the figure you quoted?

**The Hon. PENNY SHARPE:** It was 15 per cent. I do not know if that is correct or not; that is why I am asking.

**Ms O'MARA:** Yes, okay.

**The Hon. PENNY SHARPE:** The Minister recently stated at that parklands forum that there will be legislation coming for the Greater Sydney Parklands. Is that correct?

**Ms O'MARA:** Yes. The Minister announced this move to the Greater Sydney Parklands last year. He has appointed an advisory committee and that committee has oversight, for example, of the open space vision for Sydney. As part of that, I think he indicated at that forum that he is looking at how to do that in the simplest way possible and whether there needs to be some refinement of the legislative arrangements.

**The Hon. PENNY SHARPE:** So as far as you are aware, you do not know whether we are going to see legislation or not?

**Ms O'MARA:** I think he indicated that he is looking at that. At this stage, there has been no legislation introduced to the House. I think the focus has been on how to bring those entities together and operate in a more cohesive way both to, I think, provide a new role in terms of advocating for open space across Greater Sydney, including through things like the open space vision for Greater Sydney, but also to do things like to provide a vehicle for greater connectivity between parklands. The parklands to date have been managed very well by the trusts that look after them, but they are managed in a very kind of discrete way. Each park trust looks after that park. I think the Minister is looking at things like the green grid and how can you create an entity that can really give life to that green grid because it can both advocate for and hold other parcels of land that can connect up those parklands.

**The Hon. PENNY SHARPE:** I am not going to ask you to comment on policy. I do not think that is something that we are going to agree on, Ms O'Mara. In relation to the Greater Sydney Parklands and the model, are you able to provide me with information about what the requirement to self-fund is for those parks?

**Ms O'MARA:** The information I have got about the model is that the way the model works is that, essentially, Western Sydney Parklands plan of management has set aside 2 per cent of the parklands to be used as business hubs. That creates a revenue stream to continue to deliver these facilities and manage the parklands long term. The hub land remains in trust ownership and commercial leases of the hubs are estimated to generate around 80 per cent of the funds to manage the remaining 98 per cent of the parklands.

**The Hon. PENNY SHARPE:** But just to be clear, for Western Sydney—I will come to the other parks—2 per cent of the land is set aside for these business hubs but they basically fund 80 per cent of the park?

**Ms O'MARA:** Yes. The information I have is that sustainable revenue has allowed the parklands to create over 1,000 hectares of bushland corridor, with more than 60 kilometres of tracks and trails for cycling, running, walking et cetera. I do have some information from the team: 65 per cent of the parklands is for recreation, sport and bushland. Some of that will have zoos and other facilities on it.

**The Hon. PENNY SHARPE:** If you could provide a bit more information, that would be great. As I said, I am concerned about the 15 per cent figure, but I am happy to have a look at that afterwards. Obviously, there are other parks. Can you take me through the arrangements for each of the other parks in relation to self-funding?

**Ms O'MARA:** The arrangements for Western Sydney Parklands come from its legislation, so it is able to operate in this way because of the powers given to it under its legislation. Obviously, as you would be aware, each trust has its own legislation and the provisions differ. Some legislation is pretty explicit that there can be no revenue generation—Callan Park legislation would be an example of that. Then there are other pieces of legislation—for example, Centennial Park legislation—which allows for some activities to be undertaken. I am happy to provide detail on notice.

**The Hon. PENNY SHARPE:** Obviously, my interest is whether all parks are treated fairly and whether they are treated the same. There are obviously historical reasons why there might be differences, but I am very interested in understanding the level to which some parks have to raise their own money versus the support that they get from government. If you could provide a breakdown of that, it would be very useful.

**Ms O'MARA:** I am happy to do that. I would say, Ms Sharpe, that other than Western Sydney Parklands—there is funding provided to all of the parklands and most of them do not operate on the basis that Western Sydney Parklands does.

**The Hon. PENNY SHARPE:** When you talk about the 65 per cent of sport, does that include the motorsports component in Western City Parklands?

**Ms O'MARA:** I will have to check that for you. I would say, for example, that we are already seeing benefits from bringing together the administration of some of those parklands. A good example of that is recently we have renegotiated the security contract for Callan Park. That contract came to an end—the contract for security and park rangers—and we were able to negotiate a 25 per cent saving in the hourly rate for that security contract because it was combined with a security contract for Centennial Park. The benefit of that for the community is that that saving is then put back into the park operations and heritage management at Callan Park. As well as that, Callan Park will be getting a higher level of ranger service than they were getting before under a more standard security contract kind of model. They are the kinds of efficiencies that we are looking at.

**The Hon. PENNY SHARPE:** No issue with those sorts of efficiencies. As you would be aware, there are massive remediation costs at Callan Park. How do you expect those to be dealt with under those new arrangements?

**Ms O'MARA:** As I said, most of the parklands are still provided with funding by Government. So that would be something for the Government to consider.

**The Hon. PENNY SHARPE:** Do you accept that increased commercialisation of Callan Park is something that will have to be considered, given those remediation costs?

**Ms O'MARA:** I would not say that the parks are commercialised. Sometimes I think some of those services are really about providing amenity to the community. If you look at Centennial Park, for example, some of the things that create revenue are things like the cafe, the restaurant and cinema in the park. They are also things that the community enjoy doing in the parklands. There is certainly no intention to commercialise the parkland in a way that would mean it was no longer available to the community for that parkland use.

**The Hon. PENNY SHARPE:** I will come back to it. Thank you.

**The CHAIR:** Back to the koala SEPP. I ask you, Mr Ray, because the Minister was unable to respond to this today, what is the exact role that the EES group played for developing this new koala protection framework?

**Mr RAY:** The Minister said he would talk about that and provide that on notice. I do not think I have really got anything to add on that.

**The CHAIR:** They did not really have any role to play?

**Mr RAY:** I am afraid that question will be taken on notice.

**The CHAIR:** I have a brief before me of 27 November, and I will get a copy of it in a second. I believe you saw this as well, Mr Ray, that it was sent to you. It was a signed briefing note and associated Executive Council papers for the recommendations to make the Koala Habitat Protection SEPP 2020 and repeal of the Koala Habitat Protection SEPP 2019. You have seen these papers. It says that with the supporting analysis you are aware of the fact that section 3.25 of the Environmental Planning and Assessment [EPA] Act requires the secretary—this is in relation to threatened species consultation—what does that require, concurrence or consultation?

**Mr RAY:** It is consultation.

**The CHAIR:** Requires the secretary to consult. This is the chief executive of the Office of Environment and Heritage [OEH] and the Secretary of the DPIE before preparing a proposed SEPP. What was the consultation? You are aware of that, but you are not sure though what the consultation was that took place?

**Mr RAY:** That obviously was in relation to the making of the koala SEPP 2020, the former SEPP 44. That is a statutory requirement and obviously the announcement yesterday requires the making of a koala SEPP 2021, which will be based on the 2019 SEPP and that statutory consultation will take place going forward.

**The CHAIR:** This brief says that this requirement is only engaged if the secretary or his delegate is of the opinion that the proposed SEPP will or may adversely affect critical habitat or threatened species populations or ecological communities. I assumed that was the case in terms of both the SEPP this year, and the SEPP that was remade, if you like, from SEPP 44. So SEPP 2020 and SEPP 2021, I assume they both adversely affect critical habitat or threatened species populations?

**Mr RAY:** Let me put it this way; obviously there have been a number of processes in relation to the making of both the 2019 SEPP and its amendment in October of last year, and then the making of SEPP 2020, which is SEPP 44, at the end of November last year, and there have been statutory consultations as required by the legislation in each case. I suppose what I would say is we have a broad sweep of issues that have been dealt with through the making of the 2019 SEPP, the amendment of the 2019 SEPP and then the making of the 2020 SEPP. To that extent there has been not only a formal but also an informal consultation as we have gone down that path with EES. What I would say is that there will be a formal consultation requirement in the making of the 2021 SEPP. That SEPP has not been made. It has been announced. It has not been made. There will be a formal consultation requirement that will take place prospectively. Having said that, there is a lot of information on the files in response to formal consultations over the last two years in relation to the various iterations of the koala SEPP.

**The CHAIR:** Therefore, the development of the new SEPP, would it be correct to say that the EES group will have a role in developing that new framework?

**Mr RAY:** Yes, they will be formally consulted. There will be a formal consultation of them in relation to what was announced.

**The CHAIR:** Does the formal consultation, in terms of how you are using that language, mean formal consultation, not really being able to contribute as such and provide advice, but just, "Here you go. This is what we are looking at."

**Mr RAY:** In each case the legislation requires us to consult on the proposal. The proposal that we will be consulting on is the proposal that was announced yesterday. I would expect EES to give the usual full and frank, their full and frank views about the proposal.

**Mr BETTS:** Just to tell you what you already know. EES is part of the department. The coordinator general of Environment, Energy and Science reports to me. Minister Kean's name is on the media release which came out yesterday, along with those of the Deputy Premier and Minister Stokes. We would expect this work to take place in a collaborative fashion and with the concurrences and consultations that are prescribed in statute that Mr Ray has described.

**The CHAIR:** Have there been changes to section 3.25 of the EP&A Act where it requires the secretary to consult with the chief executive of the OEH and the secretary of the Department of Planning, Industry and Environment before preparing a proposed SEPP in relation to threatened species consultation? Is that still the same?

**Mr RAY:** Yes, broadly. It may have changed in some way over the years, but broadly within the period we are talking about I do not think there have been any major changes.

**The CHAIR:** Within the briefing, what I have before me is dated 27 November 2020, so I am assuming they are making reference to the correct—

**Mr RAY:** Yes.

**The CHAIR:** Can I check this, the chief executive of the OEH, who is that now?

**Mr RAY:** The coordinator general of EES.

**The CHAIR:** It says that they are required to consult. The requirement is only engaged if the secretary or his delegate is of the opinion that the proposed SEPP will or may adversely affect critical habitat or threatened species populations or ecological communities. The coordinator general was consulted, this is what this brief says from November last year. It says that a response was received indicating the coordinator general supports reverting to the framework provided by SEPP 44 on the understanding that this is an interim measure until a new koala protection framework can be implemented and that EES group should have a role in developing this new framework. But what I have seen before me in terms of emails and what I read out this morning was that EES was attempting to have a role and they seemed to be rebutted by people within DPIE, including potentially you, Mr Ray.

**Mr RAY:** You did not share that email with us, Chair, with respect.

**The CHAIR:** I am happy to share it now.

**Mr RAY:** We haven't seen that, so I am not going to comment on internal correspondence, which was not only departmental correspondence as I construed it.

**Mr BETTS:** I can tell you that Mr Ray and I meet with, as part of the leadership team of the department, on a weekly basis, including with the Coordinator-General of EES who is the successor in statute to, the former Chief Executive of OEH, so there is a highly collaborative process that is part of the standing business of the department.

**The CHAIR:** That is very lovely, Mr Betts, but there have been two emails so far, and I am about to read out the second, that seem to imply that, in fact, people within DPIE, largely Planning, have seemed to reject any input from EES on this koala SEPP. The second one, 28 September 2020, which I have just given to you says in relation to you, Mr Ray, that you thought that it was entirely counterproductive and not what we asked for, which was contribution from the environment department, which was a draft tabled with a proposed approach to defining koala habitat categories. This was the second to what I read out earlier, which was in fact the information received from EES was completely obstructive and included multiple references to the fact that the environment Minister has been not consulted on this. Was it an instruction from Minister Stokes or is it coming from within the department, within Planning, that you do not want to work with the environment department when it comes koalas?

**Mr RAY:** I would not agree with that characterisation at all. All through this period the planning part of the department has endeavoured to work as collaboratively as possible with Environment, Energy and Science. We are very grateful for their assistance right through this process.

**Mr BETTS:** I would point out that the emails that I think you have referred to are emails between ministerial staff, not between departmental staff.

**The Hon. MARK PEARSON:** Mr Betts, will you put the microphone a little closer, please?

**Mr BETTS:** Yes. It would appear to me, on the basis of emails that have just been thrown at us at the moment, that the words that you are quoting, Ms Faehrmann, are not words from departmental officials.

**The CHAIR:** I will come back to that.

**The Hon. MARK PEARSON:** What role will the Environment Protection Authority have in checking compliance with koala protection requirements in any proposed regulation or changes as a result of the new SEPP, especially regarding private forestry logging?

**Mr RAY:** If new codes are made they will have exactly the same input as they have under the existing codes. But as to the detail of that, I cannot unpack that any more than I have said. That is really a matter for both the Environment Protection Authority and/or Environment, Energy and Science.

**The Hon. MARK PEARSON:** They could be excluded?

**Mr RAY:** I would not necessarily say that that is the case. There is the clear legislative role, a legislative role for the Minister for the environment, to concur with the code, so I do not see that they could be excluded. I find that difficult to envisage. But, having said that, I am not holding myself out. I mean, that is a matter for Environment, Energy and Science at the end of the day.

**The Hon. MARK PEARSON:** Is the code of practice likely to have penalties if it is breached or is it a guideline?

**Mr RAY:** Again, that is really a matter that you need to take up with the Environment Protection Authority.

**The Hon. MARK PEARSON:** Will the new SEPP allow for koala mapping on private land known for its koala habitat?

**Mr RAY:** The proposal is to bring back the 2019 SEPP as it existed before it was repealed in November last year, so that is the proposal. That would be supported by the mapping that has been done, but I do not believe that the maps will actually be attached to the instrument.

**The Hon. MARK PEARSON:** Why not?

**Mr RAY:** The maps that were attached to the instrument originally were predictive in nature. They were not factual. They were not ground-truthed. They were designed to give people an indication. Originally they were included so that many of the areas that currently require surveys in council areas under SEPP 44, or SEPP 2020 as it is now, where there were not likely to be koalas then the people in those areas would not have to lodge surveys if they were lodging development applications. But there was a lot of concern among a broad range of people about the effect of the maps. Of course, there was an issue with the accuracy of the maps. We always said the maps were predictive but obviously people were very concerned if the map indicated that their land, we know, had high-value koala, or had the potential, sorry, because it is really a map about potential, koala habitat. We were concerned about that so a decision was made in October to remove those maps.

**The Hon. MARK PEARSON:** What was the concern?

**Mr RAY:** The concern was that it did not indicate with accuracy whether there were koalas or whether there were koala feed trees on the land. There were quite a number of instances where it became clear that although the predictive map that was produced by EES indicated that there was a likelihood of koala trees, in fact there was not. So in those circumstances a decision was taken to remove the maps from that SEPP. But the mapping is still available. It will be available to councils and to government.

**The Hon. MARK PEARSON:** Speaking of councils, what role is left to councils in relation to koala protection, given the new exclusions from agriculture and forests?

**Mr RAY:** At the current point, when the new SEPP is made, councils will have the same roles in relation to the preparation of koala plans of management. They will have the same role in the assessment of development applications because what is proposed is to make the koala SEPP 2019 in relation to all land zoned other than RU1 to RU3. So those things will not change in those areas. In that first stage councils will continue to have that development control that they have under the old SEPP 44—SEPP 2020—in those other claims. So that will not change as a first step.

**The Hon. MARK PEARSON:** The Minister was not really able to answer the question in relation to whether there will be any legislative or regulation changes, only referring to the code of practice. Can you elucidate as to whether there will be any—or it will be required for there to be any—legislative changes, including regulation?

**Mr RAY:** For the same reason that the Minister desired to take that question on notice, I will take that question on notice.

**Mr JUSTIN FIELD:** Mr Ray, this is probably for you. I caught most of the initial questions by Labor, so if I am traversing similar ground please let me know and I will look at the transcript. I have a specific question with regard to rural land that is not being used for private native forestry. It might be subject to development such as an intensification of agricultural activities. It is not clear to me how those developments, should it happen in areas of koala habitat, are captured by the proposed changes to the koala SEPP.

**Mr RAY:** In relation to those sorts of developments, at the moment with SEPP 2020—the old SEPP 44—if a development application is required to be lodged for that form of intensification then the SEPP will apply. That is the same when the remade SEPP2019—the new SEPP 2021—applies outside of those rural zones. That

would be the same if that activity were permissible in the non-rural zone. In the interim period, before the codes are made, there will not be any change. They will still have to get development consent.

**Mr JUSTIN FIELD:** That is right, but what happens once that SEPP 2020 is withdrawn, once the codes are made? Because, of course, those activities do not relate to the codes.

**Mr RAY:** No. Once SEPP2021, or the 2019 SEPP, is remade across those zones, my understanding is that those matters will still require development consent.

**Mr JUSTIN FIELD:** But how will considerations of koala habitat be factored into that because none of the koala SEPPs will apply to that rural land?

**Mr RAY:** No, the koala SEPP 2021 will apply to that rural land so that anything—

**Mr JUSTIN FIELD:** Isn't the whole point of this that the koala SEPP 2021 only applies to the major metropolitan land and land likely to be subject to development? The whole point of it is to exclude most rural land.

**Mr RAY:** No, I do not think that is right. At the first stage, the koala SEPP will apply in those metropolitan areas that the current koala SEPP applies. It will apply in rural and regional areas in all zones other than RU1, RU2 and RU3.

**Mr JUSTIN FIELD:** That is where a lot of this intensive agricultural activity happens.

**Mr RAY:** Yes, that is right. While that is in place, the current SEPP—SEPP 2020 or the old SEPP 44—requires that if a development consent is required for that intensification under the various provisions—

**Mr JUSTIN FIELD:** Sure. I am talking about once it is withdrawn when the codes are made. The codes only cover areas interested for PNF.

**Mr RAY:** No, I think there is a misunderstanding.

**Mr JUSTIN FIELD:** Then please clear it up.

**Mr RAY:** If the codes are made, the proposal is then to extend the 2021 SEPP to that rural land.

**Mr JUSTIN FIELD:** The 100 feed trees aspect and all of that—

**Mr RAY:** The 123 feed trees, the extended definition—

**Mr JUSTIN FIELD:** And the National Party are happy to effectively extend this 2021 code—once the PNF codes are remade and the LLS codes are remade—to all of New South Wales, including rural land?

**Mr RAY:** That is my understanding.

**The CHAIR:** You did say "if".

**The Hon. PENNY SHARPE:** Except that one, two and three is exempt.

**Mr RAY:** No—

**Mr JUSTIN FIELD:** Except one, two and three is exempt. I am not sure that we—you are saying not all? That seemingly runs entirely counter to the public comments from the Government to this point.

**Mr RAY:** Let me try and explain then. There is a two-stage process here. The first—

**Mr JUSTIN FIELD:** Yes, and I am interested in stage two.

**Mr RAY:** Okay. In stage two if the codes are made the codes will be made, but at the same time as the codes are made the SEPP 2021 will be extended over those rural zones so that if there are developments like intensifications, as you talk about, that require consent they will not be assessed under the 2021 koala plan.

**Mr JUSTIN FIELD:** That is not spelt out on the media release in any way, shape of form, and seems to be one of the most significant questions, particularly for the expansion of intensive agriculture on the North Coast of New South Wales. Someone should have a bit of a closer look at that. But I appreciate your answer, Mr Ray.

**Mr BETTS:** May I very rapidly clear up one thing that Mr Field raised this morning? You were concerned about some of the terminology used in a departmental briefing note, the one that you shared with me?

**Mr JUSTIN FIELD:** Not so much concerned; I found it curious, Mr Betts.



**Mr BETTS:** Yes. I actually googled you and the headline in *The Sydney Morning Herald* that was quoted there was "Greens defector teams up with One Nation to form inquiry into plans to raise Warragamba Dam wall". It was a direct quote from the SMH. I would be equally unhappy if I thought departmental staff were using potentially pejorative—

**Mr JUSTIN FIELD:** I would not quibble with the SMH's headline editor at all, but it is curious for official talking points of the department to—

**Mr BETTS:** I agree.

**Mr JUSTIN FIELD:** —mirror that as though it is somehow factual.

**Mr BETTS:** It should be in inverted commas.

**The CHAIR:** Okay.

**The Hon. ADAM SEARLE:** Madam Chair?

**The CHAIR:** Yes, we will go to questions from Mr Searle.

**The Hon. ADAM SEARLE:** Thank you, Madam Chair. I have got some questions about the North Wilton project, so maybe Mr Brogden might approach the table. In media reports last week it was reported that the property at North Wilton had been valued at \$155 million in 2019 yet Landcom has purchased it for around about \$257½ million. I think the explanation was that the payments are staged over eight years and there was a second valuation that was higher than the first valuation. My questions are really around this. I know property prices in Sydney are accelerating but that is a 65 per cent mark-up in one year. Even allowing significant growth in property values and paying it off over eight years, that is a really big jump in one year, is it not? What is the explanation for that?

**Mr BROGDEN:** Thanks for the question. Let me start with the context. In 2017 Country Garden Australia purchased the land at North Wilton from Bradcorp for \$297 million; that was the active market figure for the purchase of that land. The two parties entered a dispute in the Supreme Court of New South Wales in 2019 and both parties put valuations to the table—as you said, Bradcorp at \$155 million and Country Garden at \$240 million. That court case, to the best of my understanding, was based on the breakdown of the sale between the two parties and Bradcorp was seeking to maximise the capacity for damages in that with their valuation. Those valuations were both for the purposes of what the site was worth to buy in one go, in one payment.

In 2019 we were approached by Bradcorp and entered discussions with them with respect to purchasing the land. In the run-up to the contract being signed in June 2020, we undertook not one but two independent valuations. The two valuations were from—I will just get you the exact details—Cushman & Wakefield at \$238 million excluding GST, and Lunney Watt & Associates at \$250 million also excluding GST. Those are both independent valuations, and both of those valuations also anticipated paying that price for the purchase in one payment only. Landcom determined, based on our capital strategy and our capital deployment, that the best option was to purchase this land over staged payments. That allowed us to deploy capital off our own balance sheet, as a State-owned corporation, into other new projects in addition to Wilton. Over the proposed 10-year period repayment at that stage, we then undertook a net present value formula, which estimated the value of the land to be \$280 million for the purposes of payment over 10 years.

**The Hon. ADAM SEARLE:** Sorry, how much was that?

**Mr BROGDEN:** It was \$280 million over a 10-year period. As we found ourselves, at the time of signing, in the middle of COVID, at that stage I think most organisations—I can speak for property organisations—were somewhat concerned about what the future of home buying would look like at that period in time. As a consequence, we sought an updated valuation from Lunney Watt to take into consideration the economic circumstances at the time. That valuation indicated that the value had dropped. In its valuation Lunney Watt reflected the impacts of the pandemic before us. The revaluation resulted in a 7 per cent reduction in their original valuation of \$250 million—bearing in mind that is the one-off figure before you apply net present value calculus—to a price of \$232 million. Once again, that is for one payment only, upfront. We then re-entered price negotiations with Bradcorp and were able to reduce the purchase price from \$280 million over 10 years to \$257.5 million over eight years, which was an 8 per cent reduction in the purchase price.

That explains the approach we took. The question that has arisen is why we did not take the Bradcorp valuation. The first thing is that that was not an independent valuation, and it is incumbent upon us as an organisation to procure and receive our own independent valuation. Indeed, on this occasion we received two independent valuations which, for an abundance of caution, created a range for us within which to negotiate. The

area, potentially, for confusion also is the difference between some of the numbers that have been quoted that are figures to be paid up-front in one go for the transaction versus Landcom's approach to pay over staged payments.

**The Hon. ADAM SEARLE:** Well, for the avoidance of confusion, now that the contract has been executed and there is no commercial-in-confidence, are you able to share those valuations with the Committee? I am happy for you to take that on notice.

**Mr BROGDEN:** Yes. Thank you. I will take it on notice.

**The Hon. ADAM SEARLE:** Thanks. Landcom is also committing around \$950 million in infrastructure spending for the North Wilton project. What was the logic behind committing close to a billion dollars in infrastructure when you are still acquiring the land? I mean, that commitment of infrastructure will have the effect of increasing the value of that land.

**Mr BROGDEN:** Oh, okay.

**The Hon. ADAM SEARLE:** I am just wondering whether you gave any thought to doing it the other way round. You could be boosting the price that you are paying for land.

**Mr BROGDEN:** Yes, sure. The valuation—and indeed our contractual arrangement and our agreed price took into consideration the fact that we would be putting infrastructure in—and the reason we are putting infrastructure in—and there are, I think I read about four or five players who are major owners, including Landcom there, all of whom are contributing to infrastructure. Landcom's contribution, as you indicated, comes to just under \$1 billion over that full period of time, the 26 years, of the build out of that site.

We are committed—and I think this follows good practice and frankly the intent of the department thereby—to provide people with infrastructure as they move in rather than waiting until they have moved in for another five or 10 years. This has been the curse of planning for far too long in many places, including New South Wales, and so the imperative from the Government is for developers like Landcom to put the infrastructure in so there are parks and community halls and public spaces—water features, in the case of our land at Wilton—as people move in rather than at the end of the process.

**The Hon. ADAM SEARLE:** Mr Brogden, Infrastructure Australia released the updated priority list in February this year and North Wilton will be serviced by Picton Road and the Hume Highway. In the five years up to March 2019 there were nine fatalities and, I think, 34 serious injuries, which is more than double the New South Wales average for the number of fatal and serious crashes per kilometre for similar type of roads. Why was North Wilton identified for the extra 5,600 dwellings, given the dangerous nature of the roads that will service it? How much of the \$950 million in infrastructure will be dedicated to fixing those roads?

**Mr BROGDEN:** So, if I can speak briefly to the second question and then I do need to defer to the department because they rezone the land.

**The Hon. ADAM SEARLE:** I am happy for someone to take on notice the breakdown of the \$950 million in infrastructure.

**Mr BROGDEN:** Sure, but what I will say is part of what Landcom is funding is a significant on and off ramp to the Hume Highway, which will improve access for the residents, not just of our land in North Wilton but in greater Wilton. But, with respect to the reason for the 5,600 in that area, that is a matter for the department who actually rezone the land.

**The Hon. ADAM SEARLE:** Mr Whitworth, I think that is you.

**Mr WHITWORTH:** Yes, thank you. The Wilton Growth Area is 15,000 dwellings identified, so, as Mr Brogden has identified, there are a number of rezonings within that component. It is also accompanied by a draft State infrastructure contribution charge and supported by traffic studies and transport studies that were prepared in collaboration with Transport for NSW. It identifies the importance of Picton Road as a freight road down to the Illawarra. It also identifies the importance of the Hume Motorway. The State infrastructure contribution is designed to ensure that the Picton Road and Hume Motorway Interchange is upgraded to deal with the additional development that is to occur in the area.

The concept of Wilton as a town centre also was to provide greater I suppose commercial opportunity for the Wollondilly area so that the southern part of south-western Sydney, the Wilton 2040 plan, identified a target of 15,000 jobs, which was to come from the provision of services in the area but also the role of the Wilton town centre as a commercial and retail centre. So the idea is to try to maintain as much jobs containment as we can in that area and provide an alternative for people to need to travel outside of the area, which then means that

a lot of that traffic that you have talked about is really the through traffic connecting Sydney to Canberra and also some of the freight routes in terms of the connection from Sydney down to the Illawarra. The broader scheme I suppose from Transport for NSW is to look at the role of the Outer Sydney Orbital and what role it might play in effectively bypassing that Picton-Hume Motorway Interchange.

**The Hon. ADAM SEARLE:** Okay. Mr Brogden, can you take on notice the breakdown of the \$950 million?

**Mr BROGDEN:** Yes—happy to.

**The Hon. ADAM SEARLE:** I think Landcom refers to itself as the master developer for North Wilton and you mentioned other landowners and I think you have various business arrangements with other landowners in the area, potentially. Does Landcom intend bringing on another partner in terms of developing North Wilton—for example, a construction partner?

**Mr BROGDEN:** So, Landcom's typical approach is to master plan, as you say, so to water and sewer an area, provide electricity and of course now fibre through the area's streets, parks, et cetera, and we would typically use other—we would outsource all of that work so we would tender and outsource earthmoving, et cetera, et cetera, for all of those services. In terms of bringing on a construction partner, it has not been our usual practice to build homes. As you know, we tend to build land, if I can use that phrase, and release that to the market for sale. So it is not our intention to bring on another construction partner—a construction partner—if I am understanding you correctly in terms of what you are thinking about when you say "construction partner".

**The Hon. ADAM SEARLE:** Well, I might sharpen my questions then. Is Landcom considering bringing in Mr Tony Perich or Greenfield Development as a partner in any way in developing North Wilton?

**Mr BROGDEN:** No.

**The Hon. ADAM SEARLE:** Okay. And did Mr Perich or any staff of Greenfield Development or consultants that work for them advise Landcom on any part of the North Wilton transaction?

**Mr BROGDEN:** So none, no staff of Greenfield's, to the best of my knowledge had any involvement in our transaction in buying North Wilton from Bradcorp. I am not aware whether any of the consultants we use are also used by Greenfield's, if for no other reason than I do not know who Greenfield uses.

**The Hon. ADAM SEARLE:** I understand. I am happy for you if you think, on reflection, think of other things and you want to give an answer on notice.

**Mr BROGDEN:** Sure.

**The Hon. ADAM SEARLE:** I think in terms of your purchase of the land it is nearly \$260 million over the eight years.

**Mr BROGDEN:** Are w35 It is \$257.5 million.

**The Hon. ADAM SEARLE:** And then there is the \$950 million in infrastructure.

**Mr BROGDEN:** Correct.

**The Hon. ADAM SEARLE:** And that is over the 26 years. That is an awful lot of investment in properties. I see in the budget papers there is a line item that says you are expecting to return a billion dollars to Government. Is that in 2020 dollars, or is that a billion dollars today over 26 years?

**Mr BROGDEN:** Yes. It is actually \$1.3 billion so it remains a very profitable project for Landcom on behalf of the people of New South Wales, which of course, as you know, will repatriate, effectively, back to the State Government through dividends.

**The Hon. ADAM SEARLE:** So you are spending about, what is, \$215,000 to \$220,000 per block, assuming there are 5,700 blocks over the 26 years and then, if you are making it \$1 .3 billion, again that is about the same amount, so it is sort of break-even. Is that the sort of area you are trying to get? It is actually slightly lower. I think it is \$215,000 versus \$180,000 you get back.

**Mr BROGDEN:** Yes, well, the way you are dividing 5,600 by the cost of the transaction and the airport—

**The Hon. ADAM SEARLE:** Yeah. Again, I appreciate these are over periods of time, so I am happy for you to explain that.

**Mr BROGDEN:** A Yes.

**The Hon. ADAM SEARLE:** Because, on the face of it, it sounds like the return is a bit less at the outlay.

**Mr BROGDEN:** No, that is not the case. Our anticipation is that we will return over that period of time, as you indicated before, \$1.3 billion back to Landcom and then—

**The Hon. ADAM SEARLE:** Is that over and above any expenses?

**Mr BROGDEN:** Yes. That is correct. That is over and above.

**The Hon. ADAM SEARLE:** So it is expenses plus \$1 .3 billion.

**Mr BROGDEN:** Correct.

**The Hon. ADAM SEARLE:** Okay. Mr Brogden, how well do you know Mr Peter Brennan?

**Mr BROGDEN:** I have known Peter for over 20 years.

**The Hon. ADAM SEARLE:** And you attended his wedding. Is that correct?

**Mr BROGDEN:** I did.

**The Hon. ADAM SEARLE:** And it did you declare that relationship when Landcom was that negotiating with Bradcorp?

**Mr BROGDEN:** So, at the beginning of the discussions with Bradcorp, as per our disclosures of interest policy, I disclosed that matter to our executive general manager [EGM] for legal and compliance, Sandra Lee, and I indicated that I had known Peter Brennan for over 20-plus years and also that he had been, through Bradcorp, an attendee at Lifeline, of which I am the national chairman, fundraising lunches, along with many others. Those lunches can add up to a thousand people.

In discussions with our EGM legal and compliance we agreed there was a perceived conflict of interest. That was managed effectively by the fact that I was not a decision-maker. So our policy specifically takes into consideration a perceived conflict of interest against the role that person holds in an event—in this case, in that transaction. As I was not a decision-maker, the decision was made by the board and then through the Expenditure Review Committee. I am not a member of the board. For those reasons, the EGM legal and compliance acknowledged that it was a manageable conflict of interest.

**The Hon. ADAM SEARLE:** Sure, so you are not the decision-maker but you still made a recommendation to the board?

**Mr BROGDEN:** Management made a recommendation, so it was the team effectively, predominantly led by our executive general manager for business development and our chief financial officer.

**The Hon. ADAM SEARLE:** Was that relationship with Mr Brennan disclosed to all of those persons who collectively were the decision-maker—those individuals you have named plus the board?

**Mr BROGDEN:** Certainly people were aware of our friendship but the policy requires me to disclose it to one of three parties. For what it is worth, my direct report, the EGM, or—I do not have the other role on hand, I am sorry.

**The Hon. ADAM SEARLE:** Who is your direct report? Is that the Minister?

**Mr BROGDEN:** That is the chairman, but it gave me the option that I took at the time of disclosing it to the relevant EGM.

**The Hon. ADAM SEARLE:** Do you know whether that relationship with Mr Brennan was disclosed to the board before the board made the decision?

**Mr BROGDEN:** I am sure they were aware of our friendship.

**The Hon. ADAM SEARLE:** Could you just take that on notice just to give a full accounting of all of that?

**Mr BROGDEN:** Yes.

**The Hon. ADAM SEARLE:** Because, as you say, you have got a friendship. Obviously you are the Chief Executive.

**Mr BROGDEN:** Yes.

**The Hon. ADAM SEARLE:** This is a big transaction.

**Mr BROGDEN:** Yes, it is, and the matter that made it manageable was the fact that I was not the decision-maker.

**The Hon. ADAM SEARLE:** Well you were not the only person of influence in the decision.

**Mr BROGDEN:** No, I literally did not make the decision. The board approved the purchase and then sought approval from the Expenditure Review Committee who also approved the process.

**The Hon. ADAM SEARLE:** Are you saying that you played no role in the decision—

**Mr BROGDEN:** No.

**The Hon. ADAM SEARLE:** —one way or another?

**Mr BROGDEN:** Well—

**The Hon. ADAM SEARLE:** I am assuming you thought this was generally a good idea and it should be pursued.

**Mr BROGDEN:** That was the management recommendation but I did not have a decision-making position in this transaction.

**The Hon. ADAM SEARLE:** Okay. So you disclosed it to the EGM. Did you disclose it to the Minister?

**Mr BROGDEN:** I am not required to.

**The Hon. ADAM SEARLE:** Did the Minister have to sponsor the proposal to the Expenditure Review Committee?

**Mr BROGDEN:** He was not required to attend the Expenditure Review Committee.

**The Hon. ADAM SEARLE:** But he would have had to have put up the minute being the portfolio Minister.

**Mr BROGDEN:** I am not sure on that because as a State-owned corporation we went through our shareholders, the Treasurer and the finance Minister, and to the best of my knowledge it was—

**The Hon. ADAM SEARLE:** Could you take this on notice and maybe Mr Betts can assist with who sponsored the minute?

**Mr BETTS:** I was about to say, I do not think it is fair to induce Mr Brogden to start disclosing the content of Cabinet-in-confidence discussions.

**The Hon. ADAM SEARLE:** No, I was not going to do that. I was after who sponsored the minute. I assume it is the portfolio Minister.

**Mr BETTS:** I will see whether we are able to provide any information consistent with Cabinet-in-confidence protocols in light of your question.

**The Hon. ADAM SEARLE:** Thank you.

**Mr JUSTIN FIELD:** Mr Ray, maybe just to conclude on our previous line of questioning, I just want one other clarification. Because this code could take a while and we know how the Government likes to get into barneys over land-clearing policy, if in that first stage a rural landholder seeks to rezone land for residential development, what koala SEPP will apply?

**Mr RAY:** If the rezoning is from RU1 to RU3, then in the first stage it will be the current SEPP, SEPP 2020—the old SEPP 44.

**Mr JUSTIN FIELD:** So the old feed tree numbers and the other limitations.

**Mr RAY:** Yes, for a rezoning and the same for a development application.

**Mr JUSTIN FIELD:** But you still hold the view that in phase two the SEPP 2021 will have expanded by that stage, once the codes are signed off, to now cover all rural land—outside of PNF of course.

**Mr RAY:** In the media release, if I take you to the—

**Mr JUSTIN FIELD:** I think point six—actually if you read it sort of with one squinty eye and your head slightly turned to the left you can get the sense of where it might be going.

**Mr RAY:** Yes, so it actually says:

- Once the codes are finalised and reflected in legislation (as required), the Koala SEPP 2020 will be repealed and the Koala SEPP 2021 will apply to the remaining land.

**Mr JUSTIN FIELD:** We are just not sure John Barilaro read it in that way but that remains to be seen.

**The Hon. PENNY SHARPE:** To be clear, the Minister said this morning that that was going to be by the end of April. So is SEPP 44 only in existence until the end of April? Is that what that means?

**Mr RAY:** Indeed, if the codes are made and they provide those robust protections that the Minister said were essential, that would be the consequence.

**Mr JUSTIN FIELD:** Thank you, Mr Ray, I might move on. Mr Betts, I might just go back to this question of the advice that was provided by you to the Secretary for Transport for NSW. I am not sure if you had considered whether you could table that advice today or whether you were going to take that on notice.

**Mr BETTS:** I am taking it on notice so I will let you know.

**Mr JUSTIN FIELD:** Okay, understood. Did you receive a response?

**Mr BETTS:** No, I did not. At that point, having provided Rod with my input, I left it to him to work out how he wanted to proceed from there.

**Mr JUSTIN FIELD:** Did you have any conversations with the Minister about this question?

**Mr BETTS:** Which Minister?

**Mr JUSTIN FIELD:** Your Minister.

**Mr BETTS:** No.

**Mr JUSTIN FIELD:** Okay. I might move onto another issue: the Natural Resources Commission [NRC] review that has been flagged—and I recognise it is not here today and it is probably my fault—to chart us back to a Coastal Integrated Forestry Operations Approval [CIFOA] position. I understand they come under the Minister's control so I am hoping you could just assist with some administrative questions about where that review is actually at and if it has been established, if the relevant letters have been signed and the Minister has asked the NRC to undertake that work.

**Mr BETTS:** I do not think I will be able to, so I am going to have to take any questions you ask on notice. I think that the operation of the CIFOA is a matter between the Deputy Premier as Minister for forestry and the environment Minister, is it not?

**Mr JUSTIN FIELD:** I understand that.

**Mr BETTS:** And the NRC may provide independent advice and it may sit under Minister Stokes for administrative purposes or for the purpose of the legislation but the content of the thing I could not speak to.

**Mr JUSTIN FIELD:** No, I understand that. I understand the process though is that the two relevant Ministers here sign a joint letter to your Minister and the NRC is then appointed to do this work. It has been flagged and touted in the media since I think November last year. It is not clear if that has ever been actioned. It has been said to me—and I think we asked these questions last week—that those letters have been sent, but there is nothing on the NRC website. I am just trying to get a sense if that work has actually been commissioned.

**Mr BETTS:** I would have to take that on notice I am afraid.

**Mr JUSTIN FIELD:** If you could take on notice whether or not the terms of reference for that review can be made public and if you could give an indication about the time line because as I understand it, again, it comes back to your Minister and it is ultimately up to your Minister to publish. I would be interested in a position as well, if there is one, on whether or not that review will be published.

**Mr BETTS:** I will give you all of the information I can on it.

**Mr JUSTIN FIELD:** That would be greatly appreciated. I might just go back then, if we can, to Warragamba quickly. Mr Ray, I want to finalise a line of questioning around the critical State significant infrastructure and just clarify that. The application that was made back in 2016, is it the only application that has been received or have subsequent applications been made? Has it been changed over time?

**Mr RAY:** The information I have at the moment before me is that that is the only application, but I will have to take that more detail in the question on notice for you. I do not know if it has been changed or added to, whether there is more material or not.

**Mr JUSTIN FIELD:** If you can.

**Mr RAY:** I am sorry.

**Mr JUSTIN FIELD:** I went and had a look at some guidelines and advice that exists out there about how State significant infrastructure works and this declaration. It is still not clear to me at which point in the planning process the Minister then has to make a decision as to whether or not to declare an SSI project critical.

**Mr RAY:** I do not think the legislation is specific on that point.

**Mr JUSTIN FIELD:** Has there been another one that has been declared critical?

**Mr RAY:** Yes. There are a number of projects that have been declared critical, yes.

**Mr JUSTIN FIELD:** At what point where they declared critical in their assessment process?

**Mr RAY:** Our general practice is to make the recommendation when we have the EIS ready to go out on exhibition or immediately before we have that EIS ready to go out on exhibition so we can make a full assessment under the provisions of the relevant clause, so that the Minister can make his judgement.

**Mr JUSTIN FIELD:** So immediately before and that would be part of the advice that comes out of the publication of the EIS for public consultation that this project is now declared critical State significant infrastructure.

**Mr RAY:** Yes. Usually that is the case. We endeavour to do that so that at the time the matter is actually before the public for comment it is clear that it is critical infrastructure or not critical infrastructure.

**Mr JUSTIN FIELD:** What is the nature of this application? Is it just a letter?

**Mr RAY:** It is usually a letter that makes the case.

**Mr JUSTIN FIELD:** Is it from the Minister or from WaterNSW in this instance, do we know?

**Mr RAY:** It is from the proponent, so it would be from WaterNSW in this instance.

**Mr JUSTIN FIELD:** So it does not contain any substantive information about why the project should be deemed to be critical.

**Mr RAY:** No, I think it does. It probably provides—I have not seen it—the justification as to why it should be declared critical.

**Mr JUSTIN FIELD:** Is that process a public process in any way? Is that letter made public at the end, once the Minister has made a decision? Are the Minister's reasons for the decision made public?

**Mr RAY:** I would have to check that. I am not sure that that is the case. I would have to check that.

**Mr JUSTIN FIELD:** Mr Betts, the Minister had indicated that a process was being gone through to establish some protocols, criteria and guidelines for how to apply this element of the law. It seems like that is a good idea, given the answers to some of these questions today. What is the time line in resolving that particular document?

**Mr BETTS:** Mr Ray can help me on this one. He provided some advice to the Minister. I think it is up to him when he decides to—

**Mr RAY:** Yes. We put the guideline out for public comment from mid-December till the second or third week of February. We are collating those comments and we will put advice to the Minister—I hope that we would be able to put advice to the Minister this month.

**Mr JUSTIN FIELD:** What form will those protocols take? Is it a regulation? Is the Minister compelled to comply with them? Is it that it is an executive order, essentially; he made it so he can apply it or not?

**Mr RAY:** It is a guideline.

**Mr JUSTIN FIELD:** For himself.

**Mr RAY:** Yes.

**Mr BETTS:** It is a guideline which supplements the legislation enacted by you, the Parliament, in order to provide people, I imagine, with greater clarity as to the circumstances in which CSSI and other categorisations will be activated, and in order to guide future Ministers, potentially.

**Mr JUSTIN FIELD:** How many decisions have been made—just as a ballpark; if you could take on notice—to list projects as critical State significant infrastructure since that law became valid.

**Mr RAY:** The critical infrastructure as a category was brought in in 2011, so I would have to go back and get you the statistics on that.

**Mr JUSTIN FIELD:** If you could. That would be great.

**Mr BETTS:** My understanding is that designation as critical State significant infrastructure does not materially affect the Secretary's Environmental Assessment Requirements, which are set much earlier in the process and therefore—

**Mr JUSTIN FIELD:** That was where I wanted to go now, if we could.

**Mr BETTS:** —it is more about the decision-making at the back end.

**Mr JUSTIN FIELD:** Can we just confirm that? Are there any additional requirements on the proponent as a result of designating a project critical State significant infrastructure?

**Mr RAY:** No.

**Mr JUSTIN FIELD:** So it does not affect the work that would need to be done on the EIS and it does not affect, ultimately, the assessment of the project. My understanding is it really only changes whether or not that ultimate decision by the Minister can be challenged on merits in the Land and Environment Court. Is that correct?

**Mr RAY:** Not on merits. It changes the extent of whether it can be the subject of judicial review decision. There is no—and there never has been—merit review of State significant infrastructure or critical State significant infrastructure.

**Mr JUSTIN FIELD:** I think I will have a few more on this next round. Thank you, Chair.

**The CHAIR:** Thank you. Mr Ray, I am just wondering what the department, the EES, have contributed. I understand that they have provided the broader department and you with, basically, suggested requirements that would need to be satisfied if there was a code-based approach to replacing the koala SEPP. I understand that they have tried to have input there. What are the key elements of that?

**Mr RAY:** I do not have that material in front of me, Chair. But as part of the development of SEPP 2019 and any changes, there was correspondence about those things. I think you have got this email which reflects some material that was prepared by EES back in September.

**The CHAIR:** So you cannot recall what you received from EES.

**Mr RAY:** I have got this email here that you have given me. It is an email chain. Clearly I have received an email from Kate Wilson on 28 September 2020 and it sets out there in that document some matters in relation to different categories of koala habitat and associated land management actions.

**The CHAIR:** It is a question to see where the input from EES goes, recognising that they are the public servants and officials in this State that are employed to advise the Government on environmental matters and science matters, really. I am just wanting to see how their input was taken into consideration both with the development of this SEPP, but also how much their input will be taken into consideration for any of the codes that you said may or may not happen.

To delve into the detail a little bit further, there is input here by EES that suggests—it kind of looks like they are trying to come up with some kind of a solution or a compromise around the koala feed trees. They have put forward ranking the koala feed trees one, two, three and four, into regionally—this, I think, has been done in the past. One is that it is regionally high use; it is a strong preferred koala tree. Two is local high use within a single koala management area, three is an irregular use tree and four is a low use tree. What happened to that recommendation from EES?

**Mr RAY:** Those recommendations are recommendations that related to the process that led to the amendment of the 2019 SEPP in October of last year. The SEPP 2019 relied on that categorisation of one to four for the 123 trees.



**The CHAIR:** So within SEPP 2019 it did rely on ranking those categorisations. The 123 trees were not all the same, if you like, in terms of there is a tree there. But has that continued over to the new SEPP, this ranking?

**Mr RAY:** The same 123 trees will be the subject of SEPP 2021. My understanding—imperfect though it is in these matters because I am not the expert—is that the trees ranked one to four provide the whole of the 123 trees that are in the SEPP. They are, obviously—as Minister Stokes said earlier today—a regionally based set of trees. There are 65 in the Central Coast, there are 42 in the North Coast and in the Far West there are only nine. But, overall, there are 123 tree species. These four categories are the four categories on which the 123 tree species that were in the 2019 SEPP, and will be in the 2021 SEPP, are based.

**The CHAIR:** Yes. I understand what you are saying. The ranking, however, does suggest that basically there could be core koala habitat, for example, defined where it then says that allowable activities are restricted, and then, say, low value koala habitat or medium value koala habitat if it has got 15 per cent or more of canopy, say, and no record of koala presence, the full suite of allowable activities could occur. That was what was recommended. This was a compromise to what was originally announced, wasn't it? This was a compromise to the SEPP that was in place at the beginning of last year.

**Mr RAY:** Yes. What Environment, Energy and Science are doing here is explaining to us and providing advice about how the 123 trees are made up. They have got these four categories of regionally high use, local high use, irregular use tree and a low use tree. They were providing advice about certain activities that could take place given the different status and the different importance of these four different rankings of trees in relation to koala habitat.

**The CHAIR:** It does sound like a better compromise, and it seems that it was hastily rejected. But this sounds like it could have been a compromise to what was going on. Just have a look at prioritising the trees, if you like, a little bit more than maybe what they were 18 months ago to still ensure that some of the really core koala habitat—the really critical trees that are much more preferred by koalas—are still protected. Was that considered by government? I have seen some of the lobbying letters by Timber NSW. I have seen some of the lobbying letters by NSW Farmers. They are all, of course, saying, "Get off our property, get off our land. We do not want any koala protection on rural lands." This seems like a decent compromise but it sounds like it was rejected outright.

**Mr BETTS:** Why do you say that?

**The CHAIR:** I say that because it says here from the Minister:

It is entirely counterproductive and not what we asked for. Just spoke with Marcus and Danijela and their view was the same.

**Mr BETTS:** The person from whom those remarks come is not a departmental official. All the officials in the group Environment, Energy and Science sit within my department. Marcus reports to me. Ultimately, Ministers have made decisions based on a whole series of policy trade-offs and considerations where different parts of government within our department and outside have contributed. What you are doing is you are focusing on a fragment of a conversation which takes place, which you have discovered through Standing Order 52 or something, and you are attempting to reconstruct a much bigger picture. The key thing is that Ministers have made a call on this. That call is documented in the media release that went out yesterday.

**The Hon. PENNY SHARPE:** Clear as mud.

**Mr BETTS:** Public service has contributed different views which have been synthesised by Ministers and, under the Westminster system of government, Ministers decide. That is pretty much all there is to it.

**The CHAIR:** Mr Betts, what I think I am getting to is it is very clear that the Minister for the environment and officials that sit within Environment, Energy and Science have been sidelined in the development of this SEPP.

**Mr BETTS:** Well, why is his name on the media release then? The Minister's name is on the media release. The Minister for environment will have concurrence on the codes.

**The CHAIR:** Yes, and he has been completely sidelined in terms of any future consideration in this SEPP. It says several times in these emails that the environment Minister has not been consulted. I have not found emails in all of the calls for papers that I have done that seem to imply that he has been consulted. That is what has been revealed and that is what these questions are trying to get to the bottom of, because I think it is extremely concerning.

**Mr BETTS:** We have described already the concurrence role that the Minister for the environment will have under the new codes that are to be set under this process.

**The CHAIR:** So those new concurrence roles, remind me again what they are.

**Mr RAY:** Those roles are the statutory roles the Minister for the environment has in relation to the private native forestry code and the local land management code. So my understanding is they are statutory roles under the Local Land Services Act.

**Mr BETTS:** Minister Kean is even quoted in the media release that went out yesterday.

**The Hon. PENNY SHARPE:** I have only a couple of questions. They are more about Callan Park, Ms O'Mara.

**Ms O'MARA:** I do have some more information for you.

**The Hon. PENNY SHARPE:** Great.

**Ms O'MARA:** Do you want me to start with that?

**The Hon. PENNY SHARPE:** Yes, please do.

**Ms O'MARA:** The breakdown for Western Sydney Parklands is 65 per cent is available to the community, 40 per cent is bush, 10 per cent is for sporting uses—so motorsport and other kinds of sporting uses—15 per cent is passive recreation, and in total that is 3,432 hectares, which is around nine times the size of Centennial Park. The rest of it is used for various purposes. For example, a large proportion of it is infrastructure like Prospect Reservoir, which is why it is not available to the public. In terms of the funding for remediation at Callan Park this year, there is \$14 million of capital expenditure this year for Callan Park, and some of that relates to adaptive re-use and remediation works along the foreshore.

That forms part of \$69 million that is being invested in capital expenditure upgrades across all of Greater Sydney Parklands this year—in total this year, \$129 million of investment in Greater Sydney Parklands to provide enhanced park facilities and environmental benefits. Next year we are projecting a spend of \$100 million, including \$39 million in capital expenditure across all of Greater Sydney Parklands. So while there is some scope for those parklands to create revenue depending on the legislative provisions that relate to those specific parklands, there is also a very significant investment from government in those parklands. That would be consistent with the Minister's priority and the Premier's priority with our first ever Minister for public space, which is really about ensuring we have more and better public spaces.

**The Hon. PENNY SHARPE:** Do you have a figure on what the remediation costs of Callan Park are?

**Ms O'MARA:** You would be aware that Callan Park is half owned by the parkland trust and half owned by Health.

**The Hon. PENNY SHARPE:** Yes.

**Ms O'MARA:** So let me see what I have got.

**Mr BETTS:** Could I clarify: Does your question relate to the whole of that park or just to the section which is—

**The Hon. PENNY SHARPE:** Whatever you can give me.

**Mr BETTS:** Okay.

**The Hon. PENNY SHARPE:** Obviously I would prefer to have it broken down into both parts, but whatever you have got.

**Ms O'MARA:** I do not think I have that figure. I can get it for you, though.

**Mr BETTS:** Yes.

**The Hon. PENNY SHARPE:** Terrific, thank you. Obviously the Callan Park Act has pretty significant—and again, all of these are unique, as previously discussed.

**Ms O'MARA:** Yes.

**The Hon. PENNY SHARPE:** It has pretty clear objects, which are that development or leases on the Callan Park site really are for health, education and community facilities.

**Ms O'MARA:** Yes.

**The Hon. PENNY SHARPE:** As this process with the Greater Sydney Parklands rolls out, do you anticipate that there will need to be changes to the Callan Park Act?

**Ms O'MARA:** As I said, I do not think the Government has formed a view about exactly what legislative reform will look like. Although it has said that it is moving towards a model of Greater Sydney Parklands for the reasons I have articulated. I have an answer from the team in relation to the detailed costs for Callan Park. There are studies at the moment but not yet detailed costs. We are looking at that.

**The Hon. PENNY SHARPE:** When are those studies due to be completed by?

**Ms O'MARA:** I will find out for you.

**The Hon. PENNY SHARPE:** That is okay. Thank you.

**Ms O'MARA:** If you just give me a minute.

**The Hon. PENNY SHARPE:** I know we have spent a lot of time looking at it; I am interested in when we are going to fix it.

**Ms O'MARA:** Yes.

**The Hon. PENNY SHARPE:** So you do not know whether there are going to be changes to the legislation? Obviously the issues of things like cafes and restaurants and other commercial issues are a significant hurdle in relation to the current Callan Park Act. It would not allow that.

**Mr BETTS:** I think it is fair to say that there are decisions before Government about the legislative pathway that will be followed to achieve the outcomes that Ms O'Mara is describing at high level, and it would not be appropriate for us to comment on those ahead of Government decisions.

**The Hon. PENNY SHARPE:** Sure, I am not asking you to do that. I am just asking what you can tell me.

**Mr BETTS:** I would not want you to think Ms O'Mara does not know.

**The Hon. PENNY SHARPE:** I understand there are some things you are not allowed to tell me. In relation to Fernhill, can you confirm whether there are plans for cafes and restaurants within the historic buildings?

**Ms O'MARA:** Not that I am aware of. Although I would say that it does go to the amenity of the parklands, doesn't it? I do think there is a question about how people want to enjoy their parklands, and I would say that having the ability to get a coffee is not necessarily a bad thing.

**The Hon. PENNY SHARPE:** I did not say it was, Ms O'Mara.

**The Hon. SHAYNE MALLARD:** You sound like Clover Moore.

**The Hon. PENNY SHARPE:** I did not say that.

**The Hon. DANIEL MOOKHEY:** Mr Secretary, can I pick up some questioning from this morning about the Rhodes matter?

**Mr BETTS:** Yes.

**The Hon. DANIEL MOOKHEY:** In December, did the department make a referral to ICAC about the concerns about the conduct of senior officials over the Rhodes development after small landowners made a complaint to a senior probity officer?

**Mr BETTS:** Yes. The department did make a referral to ICAC last year, and ICAC was happy to include that there was nothing further to see. I just want to caution you ahead of any further questions you might ask: I have legal advice that I am happy to share with you, appropriately redacted, that given that ICAC recently announced on 3 March that it will be holding further hearings in relation to issues related to Rhodes, I would not want to pre-empt those hearings or the considerations of the commission.

**The Hon. DANIEL MOOKHEY:** Sure. I was not going to ask you any more questions about that particular referral, but now that you have said you would be happy to share legal advice, I am more than happy to accept that, if you are in a position to provide it. So thank you very much for that. Have you made a separate referral to ICAC about improper involvement in strategic processes in the multibillion-dollar urban renewal project at Rhodes?

**Mr BETTS:** Which project, sorry?

**The Hon. DANIEL MOOKHEY:** A second ICAC referral regarding Rhodes.

**Mr BETTS:** So I am not—is this in relation to recent media coverage about Marobar Holdings?

**The Hon. DANIEL MOOKHEY:** Yes. *The Sydney Morning Herald* reported yesterday:

*The Herald* can reveal the Department of Planning asked ICAC to investigate after receiving allegations of improper involvement in strategic processes in the multibillion-dollar urban renewal project at Rhodes.

**Mr BETTS:** Yes. I can table on notice a copy of the department's letter to the commission, advising of it having received a complaint from the people we have just described. That letter has been redacted to remove references to personal information. As the letter sets out, the department determined that the matters raised by Marobar did not allege corrupt conduct within the meaning of the ICAC Act, but the department nevertheless referred Marobar's complaint to the commission for its consideration. The department also determined not to undertake an investigation as no allegations were made in relation to departmental staff. I can confirm also that the department was later advised by the commission that at this point in time the commission has determined not to commence an investigation into the concerns raised by Marobar Holdings as referred to it by the department.

**The Hon. DANIEL MOOKHEY:** Thank you. I would appreciate if you could table that. That would be great. But that is separate to the matter that was referred in December?

**Mr BETTS:** I would have to check the date.

**The Hon. DANIEL MOOKHEY:** Sure. Can I turn to some other matters through you, Mr Secretary, in relation to this?

**Mr BETTS:** Please. Yes.

**The Hon. DANIEL MOOKHEY:** I might just table this and ask that this be provided through you, Mr Secretary, but probably best to Mr Whitworth, if that is possible.

**Mr BETTS:** I will see what you are about to table.

**The Hon. DANIEL MOOKHEY:** Prudent. Again, I will ask the questions through you, but they are probably to Mr Whitworth. So it is your discretion as to whether you wish to share those documents with him or not. Mr Whitworth, can I ask: On 6 July 2018, did Billbergia make a presentation to the department about a proposed development and public benefit offer?

**Mr BETTS:** I am happy for Mr Whitworth to answer strictly factual questions about what meetings might have taken place and the issues that were covered in those meetings, but any subsequent political points that you want to make or anything else, please refer to me.

**The Hon. DANIEL MOOKHEY:** Sure. I will try to limit my political points, Mr Betts. I take the hint.

**Mr BETTS:** Thank you.

**The Hon. SHAYNE MALLARD:** He caught you out there, Daniel.

**The Hon. DANIEL MOOKHEY:** On 6 July, did they make a presentation to you?

**Mr WHITWORTH:** Mr Mookhey, you have obviously tabled documents from the department that appear to be meeting notes. I hope you also noted that I was not one of the attendees.

**The Hon. DANIEL MOOKHEY:** Yes, to be fair.

**Mr WHITWORTH:** I was not actually the Deputy Secretary in July 2018.

**The Hon. DANIEL MOOKHEY:** You weren't? Okay.

**Mr WHITWORTH:** So I am not able to confirm that.

**The Hon. DANIEL MOOKHEY:** Sure.

**Mr WHITWORTH:** But I have to rely on the notes that you provide.

**The Hon. DANIEL MOOKHEY:** Maybe, Mr Secretary, we can agree that that is fair. To be fair to you, Mr Whitworth, there is no implication that you were at the meeting as well. So I am happy to defer the first question, therefore, Mr Secretary: On 6 July 2018, did Billbergia make a presentation to the department about a proposed development and public benefit offer?

**Mr BETTS:** Well, I was not the Secretary of the department at the time. But there is a record of the meeting there, so—

**The Hon. DANIEL MOOKHEY:** Do you accept that that is a valid record, though?

**Mr BETTS:** I have no reason to dispute that that is a valid record.

**The Hon. DANIEL MOOKHEY:** That is the only question I was going to ask about that. Can I ask you, Mr Whitworth, to turn to document A in that bundle?

**Mr WHITWORTH:** Certainly.

**The Hon. DANIEL MOOKHEY:** At the time, was the—I am not going to name them, but if you scroll down, you see the "Primary Officer". Do you see that part of the document?

**Mr WHITWORTH:** I do.

**The Hon. DANIEL MOOKHEY:** Do you see that the title was "Acting Director, Urban Renewal"?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Was that a person who was reporting to you at the time?

**Mr WHITWORTH:** Again, you have struck out. I became Deputy Secretary—Acting Deputy Secretary—at the end of September.

**The Hon. DANIEL MOOKHEY:** Okay. Don't worry. To you, Mr Secretary, however you see fit: Did this Acting Director, Urban Renewal hold a meeting in John Sidoti's office in which a briefing was provided to Mr Sidoti about Billbergia—well, about the Rhodes development?

**Mr BETTS:** Do you know the answer to that, Mr Whitworth? That is a matter of—

**Mr WHITWORTH:** On the basis of the meeting notes and the business contact form, there was a meeting with Mr Sidoti. It actually had two members of the department, but one of those was also acting, or on secondment to Minister Roberts' office as a departmental liaison officer.

**The Hon. DANIEL MOOKHEY:** Indeed. To be fair, I don't believe the DLO officer actually attended, because their car broke down—that is my understanding—but they were meant to be there. Nevertheless, this might be too specific a detail for you to respond to, Mr Secretary.

**Mr BETTS:** Interesting historical colour.

**The Hon. DANIEL MOOKHEY:** That is okay. It is not much. Let us just go forward in time, Mr Whitworth, to the next document, which is document B. Have you got document B in front of you?

**Mr WHITWORTH:** I do.

**The Hon. DANIEL MOOKHEY:** That is another business contact form. This time you are listed as the primary officer, so perhaps I have struck gold this time.

**Mr WHITWORTH:** You have struck in the mark.

**The Hon. DANIEL MOOKHEY:** Indeed. Then another meeting is held in Mr Sidoti's office, this time attended by the then Minister's chief of staff. Do you recall this meeting?

**Mr WHITWORTH:** I do.

**The Hon. DANIEL MOOKHEY:** Why was the Minister's chief of staff at that meeting?

**Mr WHITWORTH:** It is not uncommon when we are asked to brief members of Parliament that we are accompanied by a member from the Minister's office.

**The Hon. DANIEL MOOKHEY:** Who asked you to brief the Minister—the member?

**Mr WHITWORTH:** I was asked to brief the member by the chief of staff at the time.

**Mr BETTS:** Which is pretty commonplace; local members get briefed on these things routinely.

**The Hon. DANIEL MOOKHEY:** Sure. So the chief of staff made a request for you to go out and brief, and then attended the meeting. Is that your recollection?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Okay. Did you make any inquiries with the chief of staff as to whether there was any specific reason to brief the member, or had the member gotten in touch with the Minister's office, or anything like that?

**Mr WHITWORTH:** My recollection is that we had been preparing the finalisation of the 2018 exhibition of the draft precinct plan for the Rhodes Peninsula. There had been a lot of activity occurring in the department at that point in time. We had briefed the Minister's office on the status of the document. I think if you look at what had been happening in the lead-up, there are been a workshop, for example, earlier in 2018. There had been a lot of information going around in the department. We were in the process of formalising and finalising our document for exhibition. It was now in the point that we could be providing, I suppose, a reasonably solid form of what the expectation of what the draft precinct plan would be, and we were asked, not unreasonably, to brief the local member on what the—

**The Hon. DANIEL MOOKHEY:** By the Minister's office?

**Mr WHITWORTH:** By the Minister's office, yes, but I have briefed local members from both persuasions. It is not an uncommon thing to do.

**The Hon. DANIEL MOOKHEY:** I am not disputing that, but that is the origin of the meeting. Is that correct?

**Mr WHITWORTH:** Yes, that is the origin of the meeting.

**The Hon. DANIEL MOOKHEY:** So in terms of the matters discussed, do you see that table in the document?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** You gave an overview of the proposed directions of the plan, including 3,600 dwellings for the Rhodes East. Do you see down there it says, " John Sidoti confirmed he was comfortable with the direction"? Is that in accordance with your recollection still?

**Mr WHITWORTH:** Yes, but you have missed a couple of dot points.

**The Hon. DANIEL MOOKHEY:** Sure, I have, but that is because—

**Mr WHITWORTH:** Well, I think that it is important.

**The Hon. DANIEL MOOKHEY:** Okay.

**Mr WHITWORTH:** Sorry, Mr Mookhey. It is important to read that in context, because it actually goes to some of the deeper concerns that people seem to have raised. I mean, we were talking about the 3,600 dwellings cap, which has remained consistent from 2017, 2018 and 2020, which has been a source of some confusion and concern. So that has remained absolutely consistent. There has been no increase in development potential that has been investigated in the Rhodes East area. We also talked about that being related to the train station, and the potential and the need for train station upgrade.

We also talked about the different draft development scenarios, including whether around what we call the Station Gateway East precinct, whether that should be a commercial or a mixed-use option. Then Minister Sidoti identified that he was comfortable generally with the direction, and the next point I think is also important, that he wanted development in Rhodes East or in the Rhodes Peninsula to be accompanied by infrastructure and wanted to make sure that we strengthened the conversation around the importance of the infrastructure in the draft precinct plan.

**The Hon. DANIEL MOOKHEY:** I appreciate that as context, but just to be clear at this point in time, I do not believe Mr Sidoti was a Minister, but I think you meant member Sidoti.

**Mr WHITWORTH:** I do not believe I said Minister.

**The Hon. DANIEL MOOKHEY:** You have referred to him as Minister.

**Mr WHITWORTH:** If I did, sorry, I apologise.

**The Hon. DANIEL MOOKHEY:** Fair enough.

**Mr WHITWORTH:** It was member Sidoti, yes.

**The Hon. DANIEL MOOKHEY:** Just quickly, down the bottom, this contact form is signed on 28 February 2019. Do you see that?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** It says here that it was meant to be filed within 10 days of the date of the contact.

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** The meeting took place on 9 October 2018.

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** But the form was signed four months later. Was that just an oversight?

**Mr WHITWORTH:** It is just an oversight. I will say that the volume of meetings that I attend, the volume of material and making sure that people are on top of the business contact forms, the process is important. It is important that we document our decisions and we document our records. We do do, from time to time, sweeps to make sure that we have that information.

**The Hon. DANIEL MOOKHEY:** There is nothing is to be read into it. I was just checking if it was more of a case of oversight. Nothing is at all being inferred from that, Mr Whitworth, for what it is worth. The last matter that you advised:

BW advised next steps, including further discussion with Council and Billbergia regarding the potential VPA

That remains accurate to your recollection?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Thereafter, did you initiate the contact with Billbergia? What happened there?

**Mr WHITWORTH:** Billbergia have made a very large number of offers to enter into a VPA. They have all been quite conditional on certain things happening, which is why the VPA process has not yet been finalised. I think what that dot point is making clear is that we would continue to discuss the VPA with Billbergia. There were some discussion as to whether the draft offer should be put on exhibition with the draft precinct plan, but because it was an unresolved offer and we had not yet completed the negotiations, we decided against it. I believe that dot point was also making clear that I would be briefing the council, which I have done. I have briefed Canada Bay council on a number of occasions.

**The Hon. DANIEL MOOKHEY:** Again, I do appreciate that context, Mr Whitworth. At this time, the Minister's office was there, but thereafter you held a meeting with Billbergia on 21 September 2018; on 15 October 2018 so five or six days later; again two weeks after that, 1 November 2018 another meeting was held; then on 16 November 2018 another meeting was held; then on 20 November 2018 another meeting was held; and then on 23 January 2019 another meeting was held. This morning you made the point that the meets were taking place at quite a tempo, I think that was the implication. Basically, after this meeting with Mr Sidoti, the department is having dialogue with Billbergia every two weeks, is that accurate?

**Mr WHITWORTH:** I am assuming that you are quoting from the business contact forms that were supplied with a section 52 call for papers. There has also been a GIPAA process, so I would like to—obviously, you have read a whole bunch of dates and I do not have those business contact forms in front of me, so I would like to confirm the dates, but in general terms, yes, there was a fairly high tempo of conversation. That tempo has dropped off over time.

**The Hon. DANIEL MOOKHEY:** Why was there such a high tempo of conversations at that point in time?

**Mr WHITWORTH:** Billbergia had made an offer to fund quite—you have me in a slightly difficult position because I really cannot divulge the extent to which their VPA offer is because it is not yet finalised or not yet resolved. We were going to put out on exhibition quite a contentious State-led rezoning. That State-led rezoning was going to make clear the importance of the infrastructure provision for the area, and the importance in particular of providing additional capacity at the train station. That was something that Billbergia was recognising. We were also talking about the need for additional foreshore open space and that was something that Billbergia had identified.

We are in the process of preparing a draft precinct plan for exhibition where there is a large amount of infrastructure that, as the major landowner, Billbergia was discussing its potential to make a contribution to. So

yes, there were lots of meetings. I think there was an aspiration that the VPA would be resolved to go on exhibition, but it was not resolved and it did not become part of the exhibition package.

**The Hon. DANIEL MOOKHEY:** Were you asked by Minister Roberts to treat this matter with some priority?

**Mr WHITWORTH:** I am asked to treat most matters with priority and a sense of urgency.

**Mr BETTS:** As we discussed earlier, we had 50-plus priority precincts at that stage.

**The Hon. DANIEL MOOKHEY:** Specifically this one.

**Mr WHITWORTH:** Specifically this one? I was asked to ensure that we could get this draft on exhibition. It was one of the issues that the Minister had flagged. Sorry, not the Minister himself, but it was one of the issues that had been flagged with me that was important. But I was—

**The Hon. DANIEL MOOKHEY:** Was that flagged by the chief of staff?

**Mr WHITWORTH:** But I was—sorry?

**The Hon. DANIEL MOOKHEY:** When you say were, was that request coming from the chief of staff to Minister Roberts at the time?

**Mr WHITWORTH:** There was actually a number of chiefs of staff at that time because there was a—

**The Hon. DANIEL MOOKHEY:** Mr Babbage?

**Mr WHITWORTH:** No.

**The Hon. DANIEL MOOKHEY:** Who then?

**Mr WHITWORTH:** Initially it was the chief of staff before Mr Babbage. I do not feel it is an appropriate forum to be naming people, even though we are in this environment. It was certainly an issue that the Minister's office had flagged with me there was a need for a sense of urgency. There is a contextual issue here in that there was a concern that there were a number of precincts that needed to be brought forward and got to a point of finalisation, or to get a sense of urgency and movement on. The Rhodes precinct was certainly one of them. There was also a desire to get a move on on other land release precincts in western Sydney.

There was also a desire to get forward momentum on the resolution and the implementation of the recent discussion around the Sydenham to Bankstown corridor and how we were transitioning that to the two councils. I do not want it to be contextualised as there was just, "Brett, you need to get Rhodes on exhibition." It was, "Brett, there are a number of projects that we would like to get moving."

**(Short adjournment)**

**The CHAIR:** We will now proceed to questions from the crossbench.

**Mr JUSTIN FIELD:** Mr Ray, we might get into a bit more detail, if we can, while I have you here. It is great to learn about these curious processes in the department. On critical State significant infrastructure, what is the nature of the advice that you provide to the Minister? I am not asking you for that advice. If it is just a letter coming from the proponent, what analysis do you do? Do you make a recommendation or do you just provide him with his statutory role, rights and responsibilities?

**Mr RAY:** No, we would normally provide him with a recommendation. A letter of request for that declaration would usually be accompanied by quite a detailed submission by the proponent, and the department would—

**Mr JUSTIN FIELD:** Sorry—in the last round I asked you and I got the sense it was just a letter.

**Mr RAY:** Sorry, no. People just write and they write via letter, and they usually either write a very long letter or they attach to the letter a substantial submission that goes through why they believe that it would meet the test and the Minister should declare it critical State significant infrastructure.

**Mr JUSTIN FIELD:** I assume one of the considerations is related to time imperative. Is it critical because it is important for this to be done expeditiously? The fact that this application—I assume the submission was made back in 2016 as well.

**Mr RAY:** Right.



**Mr JUSTIN FIELD:** Have you asked them to revise their submission or to at least check whether it is all still accurate and adequate? There has been quite a bit of water under the bridge on this one since then.

**Mr RAY:** Mr Field, I think I said in my previous answer I could not say if they had added to it or if they had amended it from the original application in 2016. But I am happy to go back and have a look at—

**Mr JUSTIN FIELD:** My question is more whether you have gone to them and said, "We're getting close to the end here. We're going to be putting something forward to the Minister soon—we assume, because the EIS is due relatively soon." Have you gone back to them and said, "Do you want to just check on your submission and revise or update it"?

**Mr RAY:** I would have to take that on notice. What we will have is we will have much more information than we had in 2016, because we have been made aware of and have been looking at various components of the environmental impact statement. So we have that additional information there. But as I have said, I will have to go back and check to see whether we have requested any additional information for them to update their statement.

**Mr JUSTIN FIELD:** The EIS, as I understand it, is not significant to the question of whether it is critical State significant infrastructure. So why would that be a consideration? Why is the content of the EIS a consideration?

**Mr RAY:** Because we know more about the project.

**Mr JUSTIN FIELD:** How does that change whether it is deemed critical or not?

**Mr BETTS:** We are therefore more able to ascertain whether it satisfies the criteria in the legislation to be deemed a critical State significant project. We would also want to make sure, for the benefit of the community, that they understood whether it was going to be categorised as such before we embarked on a public consultation around an EIS. So we have more information on our side and the community is better informed as to the planning pathway from their point of view.

**Mr JUSTIN FIELD:** Is it likely, Mr Betts, that the protocols around the use of critical State significant infrastructure that you have mentioned will be finalised and agreed by the Minister before a decision is taken to declare the Warragamba Dam raising project as critical State significant infrastructure, or not?

**Mr BETTS:** To be honest, that would have been a good question to ask the Minister this morning. I cannot comment on what his intentions are.

**Mr JUSTIN FIELD:** The working time line—has it gone to the Minister yet?

**Mr RAY:** The guideline?

**Mr JUSTIN FIELD:** The guideline.

**Mr RAY:** No.

**Mr JUSTIN FIELD:** Do you have a sense of when it is planned to go to the Minister?

**Mr RAY:** I think previously I gave evidence that I expected it to be submitted this month.

**Mr JUSTIN FIELD:** I will ask Minister Ayres this tomorrow as well, but sitting in the coordinating group as you do, Mr Betts, have you got any idea when the EIS is likely to be finalised and then considered by the department for public consultation?

**Mr BETTS:** Soon.

**Mr JUSTIN FIELD:** Is there any reason why—

**Mr BETTS:** I do not hold decision rights over exactly when the EIS is put on exhibition. That is a matter for the proponent. But my expectation is that they are—

**Mr JUSTIN FIELD:** Has the department of planning received the final EIS yet?

**Mr RAY:** My understanding is that we have not.

**Mr JUSTIN FIELD:** At that point, I assume that there will be quite a bit of work yet to be undertaken by the department before it can go on public exhibition. Is that fair to say?

**Mr RAY:** There will be some work, yes. There will be some work.

**Mr JUSTIN FIELD:** Traditionally, that takes a period of time—potentially months. Is that right?

**Mr RAY:** Not necessarily. It would depend on the circumstances. In this particular circumstance, I think, by the time the EIS is finally submitted a lot of work has been done and the department would move to put it on exhibition as quickly as it could. I just cannot give whether it would be two weeks, a month, six weeks—but it will be reasonably quickly once the final EIS is submitted.

**Mr JUSTIN FIELD:** I will not labour that point anymore. I did have one more, Mr Betts, for you. The Government submission to the inquiry, which was made back in 2019, I believe was a collective submission from the various government agencies and might have been coordinated by Infrastructure NSW. I am sure you had a close oversight of it, to a degree.

**Mr BETTS:** When was that in 2019?

**Mr JUSTIN FIELD:** I think it was August 2019.

**Mr BETTS:** That was a few months after I left.

**Mr JUSTIN FIELD:** Why was there no indication in the submission that an application had been made by the proponent for the project to be declared critical State significant infrastructure?

**Mr BETTS:** I cannot answer that because I was not the author of that submission, but it would be a matter for the proponent to indicate whether they had made a representation to us. No decision had been taken. There is no secret about it because no decision has been taken.

**Mr JUSTIN FIELD:** There is a bit of a secret about it, because I asked you in two different hearings last week—I accept it could well have been an oversight—if you were aware of such an application. You were quite definitive—

**Mr BETTS:** That I was not aware.

**Mr JUSTIN FIELD:** —that you were not aware.

**Mr BETTS:** Yes. I was not definitive that they had not made an application; it was that I was unaware.

**Mr JUSTIN FIELD:** No, I accept that—that you were not aware.

**Mr BETTS:** It is because it is not that big an issue in the early stages of planning a project. You are assembling the EIS; they are also, in parallel, assembling a final business case for government consideration. It has not gone to government yet, in terms of government deciding whether it is going to lock in a final investment decision on the project. So these things come towards the back end of the planning process, rather than the front end. The focus at the time when that submission was made would have been around the issuing of the SEARs, the compliance with the SEARs, and the data collection which went into the early stages of the compilation of the EIS—which, as we pointed out, has not even gone on exhibition yet.

**Mr JUSTIN FIELD:** I understand that process, but I find it curious that we have had an inquiry, a submission process and quite a few hearings; we have talked about this issue at multiple budget estimates hearings, including multiple times in this series of budget estimates hearings; there have been explicit questions about this and only today, at the end, do we find out an application was made in 2016. No previous mention of it has been made. I appreciate, Mr Betts, you may not consider it a serious issue, but the community that are watching this closely are curious. There is a substantial submission. A recommendation will be made to the Minister. It will be one of the key critical decisions that could affect legal avenues for opponents of this down the track. I think it is pretty critical and I am just trying to work out why no-one, despite questions, has heard about it before today.

**Mr BETTS:** Perhaps because no decision has been taken on it.

**Mr JUSTIN FIELD:** That is the common answer with regards to this project, I have found. Thank you, Mr Betts.

**Mr BETTS:** If you have not made a decision on something, you are not likely to announce a decision on something.

**The Hon. PENNY SHARPE:** I don't know. The Government does that a bit. That might be you, Mr Betts.

**The Hon. MARK PEARSON:** Just for some clarification—and you might not be able to answer this question accurately at this point—under the new SEPP and likely code of practice what kind of activities on land by landholders that could cause harm to koalas could go ahead which do not require a DA in order to trigger an

assessment of koala habitat? Are there more activities that would be possible by landowners on their land which are likely to cause harm to koalas without having to make a DA which would trigger the assessment?

**Mr RAY:** In relation to the koala SEPP 2021, the proposed SEPP 2021, the activities that have been the subject of the media release are the activities that can be carried out under the Local Land Services code and under private native forestry. To the extent that they are the activities that can be carried out, they will still be the activities that can be carried out under any revised codes. We are talking about those farming activities, we are talking about that private native forestry. If the codes are made with the robust protections that Minister Stokes spoke—

**The Hon. MARK PEARSON:** The code will be critical in capturing that?

**Mr RAY:** Yes, that is the case. The robust protections that Minister Stokes spoke about in those two codes, if Government were satisfied about those things, then that would then enable the removal of those development consent provisions relating to private native forestry.

**The Hon. MARK PEARSON:** The Minister for Energy and Environment has to sign off on this code, correct?

**Mr RAY:** Yes, indeed.

**The Hon. MARK PEARSON:** What happens if Mr Stokes and Mr Marshall want a code to be in a particular way, but then the environment Minister says no, there needs to be these safeguards in the code of practice, and there is a disagreement?

**Mr RAY:** That will be a matter for Government.

**The CHAIR:** I think that is one of the reasons why you are still suggesting, you are using the word "if", as opposed to "when", because it is not 100 per cent sure that, similar to the Native Vegetation Regulatory Map, similar to other things that are still holding out, you are not 100 per cent convinced that we will see those developed?

**The Hon. MARK PEARSON:** If is not when.

**Mr BETTS:** I think that is an unfair construction of what Mr Ray said.

**The Hon. MARK PEARSON:** We are continually hearing the word "if".

**Mr RAY:** I am happy to say when.

**The CHAIR:** Mr Ray, that is great.

**The Hon. PENNY SHARPE:** It is all right. The Minister was not willing to say when.

**The CHAIR:** Mr Ray, talk me through the consultation process. Do you have the number of organisations and groups that were consulted—the kind of consultation that happened on the 2019 SEPP, I think it was around 2016, and the quite extensive work that was done to develop that 2019 koala SEPP? Do you have that information?

**Mr RAY:** Yes, I am just looking for it. It was sent to me. In relation to the consultation on the guidelines in 2019, I think there were in excess of 2,000 comments in relation to that. I do not think I have the information about the consultation in 2016-2017 on the draft SEPP but I can get that for you.

**The CHAIR:** Thank you. Also the organisations that were consulted, I think I saw on your website earlier a description that it was around, say 119 or thereabouts, in terms of organisations that had a say. Was that the last time that consultation was really opened up for the community to consult on the guidelines and the SEPP, back then?

**Mr RAY:** Yes. That took place I think in March and April of 2019. There was an extended period, I think it went for a couple of months. That consultation occurred and there was a broad range of submissions.

**The CHAIR:** That was back in 2019. The first round was in 2016-17, was it not?

**Mr RAY:** Yes, there was.

**The CHAIR:** What was that into?

**Mr RAY:** That was a consultation on the proposed SEPP itself, yes.

**The CHAIR:** And then 2019 was the guidelines?

**Mr RAY:** Yes.

**The CHAIR:** The beginning of 2019. You probably can sense where I am going, but the changes that have been announced now and the Government's response at the end of last year, and now this new SEPP, who was consulted in these changes?

**Mr RAY:** There was no public exhibition in relation to the bringing in of SEPP 2020. There was consideration of that but there was a determination not to again publicly consult on that because I suppose all the issues surrounding the koala habitat, State Environmental Planning Policy and the associated issues with the guideline, and to some extent the issues with the codes, were well known.

**The CHAIR:** Yes, but the public were basically providing feedback on a draft SEPP and draft guidelines, were they not?

**Mr RAY:** In effect, yes, that is what they were commenting on.

**The CHAIR:** There has been significant change to this new SEPP. Is it unusual for there to be such a significant change to a planning policy without being submitted for public consultation again?

**Mr RAY:** What I would say in relation to this is, the decision in November was to resuscitate, bring back in SEPP 44. SEPP 44 was a well-known quantity. It had existed right up until the end of 2019.

**The CHAIR:** That is right.

**Mr RAY:** Clearly it was well known, people knew how to operate it. It was not a new policy. What I would say in relation to the announcement from last night, that the 2019 SEPP, which will be made as 2021 SEPP, is also well known because it has had the consultation that took place at the end of 2016, early into 2017. It had the more than 2,000 submissions, the 199 groups that commented on the guidelines. So I would also say that those matters are well known.

**The CHAIR:** But there are significant changes from the consultation to the 2019 SEPP, that is what I am getting at, significant changes to the 2021 SEPP. It is not like the people who were providing submissions, they have not been consulted or asked their views on the 2021 SEPP?

**Mr RAY:** The consultation on the 2019, the SEPP guidelines, led to both the revision of the guidelines, the making of the guidelines and amendments to the 2019 SEPP.

**The CHAIR:** Okay. Were there questions in there or things for people to consider when making submissions, organisations that, for example, core rural zones in rural areas will be decoupled from the SEPP? Was that part of it?

**Mr RAY:** I do not think that was part of the consultation on the guidelines, I do not think that was.

**The CHAIR:** No. Removal of dual consent for private native forestry, was that part of that round of consultation?

**Mr RAY:** What I would say is, I think those issues came up during the consultation. While the consultation was on any changes to SEPP 2019 and the guideline, as a result of that consultation the issues of dual consents for private native forestry and the issues of the operations of the codes for private native forestry and for Local Land Services were germane and were raised by various people.

**The CHAIR:** Which, of course, could have been dealt with because there is a review for private native forestry. Did your department recommend that instead of being in the private native forestry review to keep it separate from the Koala SEPP?

**Mr RAY:** I think there was a separate public consultation on the private native forestry codes.

**The CHAIR:** There was.

**Mr RAY:** My understanding is that those codes have not yet been finalised.

**The CHAIR:** What kind of consultation, for example, has there been on the new changes to the 2019 SEPP to what is going to be the 2021 SEPP? Did the Government have any communication from Timber NSW about its concerns in relation to private native forestry under the SEPP?

**Mr RAY:** I am not aware of those matters. They may have been, they may not have. I do not know.

**The CHAIR:** They wrote to many Ministers, in fact, with legal advice in July 2020 extremely concerned about the impact of the Koala SEPP 2019 on private native forestry and that private native forestry is not exempt from the operation. Are you aware of any lobbying or concerns put by industry in relation to this matter?

**Mr RAY:** I am sorry, I misunderstood your question. I thought you were asking me about the decision announced yesterday.

**The CHAIR:** I meant 2019, my apologies.

**Mr RAY:** There obviously was a lot, as we have already established, of consultation. A lot of people were interested and, of course, the timber industry wrote putting out its concerns back in 2020, which was prompted by the guidelines being out of public comment in 2020. Yes, there were lots of groups that raised a lot of concerns about the operation of the SEPP and the guidelines.

**The CHAIR:** Yes. I see that Timber NSW has helpfully suggested to the Government to deal with what it says is essentially private native forestry not really being able to be stopped when it comes to operating in koala habitat that it can be stopped by a simple amendment to the Local Land Services Act, part 5 and part 5B, to actively stay existing law, which some have referred to as decoupling. It seems like this very powerful lobby group has had quite an influence on the Government's decision to do just that.

**Mr RAY:** I cannot make a comment on that.

**The CHAIR:** What about other industry representatives and forestry representatives, have they met with the department over the past, say, year to discuss their concerns and to helpfully suggest ways in which they can be accommodated?

**Mr RAY:** Yes, a number of groups have met with the department during that time in order to explain their submissions or to emphasise matters in their submissions. Yes, they have.

**The CHAIR:** What about conservation groups?

**Mr RAY:** I would imagine that that would also be the case and there certainly would not be any reason why the department would not meet equally with conservation groups.

**The CHAIR:** I now move to questions from the Opposition.

**The Hon. DANIEL MOOKHEY:** Mr Whitworth, I wish to resume our dialogue, if possible. I think where we left off was when you said that the VPA in Rhodes was amongst the priorities that the Minister's office at the time told you about, is that correct?

**Mr WHITWORTH:** No. I think what I actually said was the precinct planning, amongst other precincts, was amongst the priorities that had been identified.

**The Hon. DANIEL MOOKHEY:** Sorry, you are right. It is the precinct planning, not the VPA. I accept that. When thereabouts did the Minister's office give you that view? You became the Acting Deputy Secretary in September, you said?

**Mr WHITWORTH:** Yes, late September. Obviously we had regular briefings. I think Mr Betts described that there is a briefing session regularly with the Minister. So it was as a part of that process that it was clearly identified and there were clear discussions about the importance of mobilising to get a number of the precincts going. I cannot point to a single conversation. There was a range of conversations about the importance of mobilising to get things on exhibition before the end of the year.

**The Hon. DANIEL MOOKHEY:** Were you regularly reporting to the Minister's office on progress on those priorities?

**Mr WHITWORTH:** As I said, there were regular weekly meetings. So it was just part of those conversations. I also had a regular meeting with the Minister's office to delve into more detailed. It was more of a briefing session on what was coming up and so on.

**The Hon. DANIEL MOOKHEY:** When you say a "regular meeting" of that type, is that weekly?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** With whom in the Minister's office?

**Mr WHITWORTH:** That was with the Minister's office advisers. It was not with the Minister.

**The Hon. DANIEL MOOKHEY:** Was it with the chief of staff or at that level?

**Mr WHITWORTH:** Yes, but there were a number of advisers from Ministers' offices. It is an opportunity to ensure that we are engaging on the issues that are arising and to get an early steer in terms of issues of concerns that they might have.

**The Hon. DANIEL MOOKHEY:** Were you directly briefing the Minister's office on the negotiations or discussions you were having with Billbergia about the VPA?

**Mr WHITWORTH:** I do not believe that I was, other than in broad terms. At that point in time there were concerns about the way the—and again, I am concerned that we are sort of in an area where this is legal. I mean, thinking of a VPA is a legal agreement between the planning authority and a proponent, and there is a degree of commerciality that goes into those conversations—

**The Hon. DANIEL MOOKHEY:** Sure, but that is not what I am asking.

**Mr WHITWORTH:** No, I appreciate that. I suppose I am putting that context because it is hard to answer the questions that you are putting to me in such a way that reveals some of the backwards and forwards about—

**The Hon. DANIEL MOOKHEY:** To be fair to you, I am not asking you to reveal back and forth. So, firstly, do not feel like you have to. What I am asking is if you were regularly providing updates to the Minister's office about your negotiations with Billbergia?

**Mr WHITWORTH:** In the broader sense, yes.

**The Hon. DANIEL MOOKHEY:** Were you doing the same with the secretary at the time?

**Mr WHITWORTH:** The secretary would be part of the regular meetings.

**The Hon. DANIEL MOOKHEY:** These were not one-on-one meetings?

**Mr WHITWORTH:** No.

**The Hon. DANIEL MOOKHEY:** I do not have too many more questions about this but in the course of the negotiations with Billbergia, document F makes mention of a school. That was an offer that Billbergia was prepared to build a new school to the value of \$100 million for approximately an additional 1,000 dwellings. That is what is listed on page 2 of document F at point five, in case you wanted to follow it. Do you see that?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Are you still in conversations with Billbergia about a school?

**Mr WHITWORTH:** Again, it is difficult to characterise some of those conversations. I am uncomfortable with discussing the precise nature of the negotiations. What I am prepared to say though is that in July—there were a number of different options for a school that were discussed in the Rhodes peninsula. The 2017 plan had the concept of a potential, as followed on from the 2017, for an integrated school and a mixed-use development.

**The Hon. DANIEL MOOKHEY:** When you say "integrated school", do you mean a school integrated into a tower?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** In a mixed-use development?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** So a high-rise school?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** We are talking specifically about a primary school, are we not?

**Mr WHITWORTH:** Yes, we were at the time, yes.

**The Hon. DANIEL MOOKHEY:** As opposed to a standalone school on a separate site?

**Mr WHITWORTH:** Yes, and that was one of the changes from 2017 to the 2018 plan, that is, the importance of having a standalone site for a school that was not reliant on being integrated with other development.

**The Hon. DANIEL MOOKHEY:** Did that school come up with a meeting with Mr Sidoti on 9 October 2018?

**Mr WHITWORTH:** Not to my recollection.

**The Hon. DANIEL MOOKHEY:** Do you mind turning to document C, if you have got it? This is an email chain that takes place the day after the Sidoti meeting on the ninth. If you start at the bottom on page 2 you see the substance of the email is coming from the executive director of strategic planning at School Infrastructure NSW. Amongst other things—but in the interests of time, I will go to the bit that is most relevant to me—it makes the point:

... it is essential that any proposals in relation to the location of the school be addressed through this new governance structure in order for the impacts to be fully evaluated.

School Infrastructure NSW [SINSW] request that Department of Planning and Environment [DPE] provide a formal submission to this Steering Committee at its earliest opportunity ... Any submission and subsequent meeting will need to detail the investigations to date by DPE and address the current identified concerns by Department of Education [DoE]. Note that there are serious concerns raised by DoE as to the robustness of the investigations and the lack of any meaningful consultation with DoE. We would also like details as to the investigations completed for the previously identified site and the rationale for discounting this site. Based on the very limited information we currently have major concerns regarding the value for money and the risk for this proposed site. At present SINSW cannot support this proposal.

Do you see that?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Do you see that that is emailed to you from the person who I think at the time was the acting director of urban renewal?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** You then forward that on to the Minister's chief of staff and you state:

I'll call Antony Manning at School Infrastructure, but you might also want to give Katie Stevenson—who I believe at that time was Mr Stokes' chief of staff—

a call. I was worried about something like this.

Do you see that?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Do you see that the Minister's chief of staff replies to you stating, "Thanks Brett. Will do"?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Was the first time that School Infrastructure NSW was made aware of this proposal around about 10 October?

**Mr WHITWORTH:** No.

**The Hon. DANIEL MOOKHEY:** Did you ever ascertain why School Infrastructure NSW seemed to have such major concerns?

**Mr WHITWORTH:** That would require a bit of speculation on my part, which I am not prepared to do. There was a high degree of consultation with Schools Infrastructure NSW. I think the issue at hand was who was going to pay for the land. I think, from a Planning point of view, we were more focused on ensuring that the right sort of school was identified in the right location. That was what our planning focus was.

**The Hon. DANIEL MOOKHEY:** Did you end up calling Mr Manning at School Infrastructure?

**Mr WHITWORTH:** That is two-plus years ago, but I do believe I did.

**The Hon. DANIEL MOOKHEY:** Do you have any recollection of that conversation?

**Mr WHITWORTH:** It was two-plus years ago. Again, I am happy to take that one on notice.

**Mr BETTS:** I am sure Mr Manning has given evidence to these inquiries and you could have asked him.

**The Hon. DANIEL MOOKHEY:** To be fair, I am asking Mr Whitworth.

**Mr WHITWORTH:** I am happy to take that on notice because I would be speculating. My memory is fairly good but that would be a stretch.

**The Hon. DANIEL MOOKHEY:** That is fair enough. But you reported this to the Minister's chief of staff—do you see that?

**Mr WHITWORTH:** Yes.

**The Hon. DANIEL MOOKHEY:** Was that a regular practice for you to bring these types of concerns to the Minister's chief of staff?

**Mr WHITWORTH:** I believe that I would have brought this to the attention of the Minister's chief of staff because it was right when we were trying to finalise a draft precinct plan. I would also say that, again, we were in a situation where we were trying to improve the relationship between School Infrastructure and the department, particularly on giving forward notice about how our planning process was evolving. There had been a number of—we had a sort of interdepartmental committee that we were running, which is why I had mentioned that I would give Antony a call and identify this because there was also a tendency for these issues to be escalated to ministerial level quite quickly. I wanted to make sure that my Minister's office was aware that they might be receiving a call.

**The Hon. DANIEL MOOKHEY:** Sure. When you say, "I was worried about something like this", is that what you were worried about?

**Mr WHITWORTH:** Again, that is speculation on my memory. I think I was concerned that we were still trying to pin down a school location and that it was still a moving issue. You may also characterise my concern as being that there had already been discussions and so there might be, reading between the lines, a degree of frustration from me that we had thought that we had had agreement and it had not materialised.

**The Hon. ADAM SEARLE:** Mr Betts, what is the economic value of the construction work for those fast-track approvals that have commenced?

**Mr BETTS:** Those that have commenced?

**The Hon. ADAM SEARLE:** Yes.

**Mr BETTS:** The economic benefit is \$25 billion overall for all the projects that were determined as part of tranches one to six. I think I would have to take on notice the economic value of the ones that were determined.

**The Hon. ADAM SEARLE:** I am happy for you to do so. Has the Alex Avenue Public School at Blacktown commenced?

**Mr BETTS:** We will find that information for you, if you give us a moment.

**Ms O'MARA:** I have got some information for Ms Sharpe if you want me to—

**The Hon. ADAM SEARLE:** We might just put a pin in that. I have got a few questions and time is running short. Perhaps while we are waiting for that information, has the Warnervale Public School on the Central Coast commenced, Mr Betts?

**Mr BETTS:** We will get that from the same document that is currently being searched for by no fewer than three deputy secretaries while I am just sitting here talking to you.

**The Hon. ADAM SEARLE:** I could go on and name various things, but perhaps you could provide a list of those that have commenced and those that have not—and with those that have not, any explanation you have got about why and what steps are being taken to make sure that those proponents who have had the benefit of the fast-track—

**Mr BETTS:** Yes. As you heard us say this morning, 59 out of 99 were determined as at the end of February or have reached the threshold that would warrant a DA or construction—

**The Hon. ADAM SEARLE:** Sure. I noticed just that some of them are State government agencies and obviously that is something the State Government can control.

**Mr RAY:** What I would say, Mr Searle, is that certainly if those schools were approved in tranches one to four they will have commenced.

**The Hon. ADAM SEARLE:** Okay, well let's not speculate. Let's just get the information and I can move on to some things that maybe—



**Mr WHITWORTH:** I also provided some information this morning that has been updated. As of early March 2021, some 71 out of the 99 approved projects have met their obligation by either commencing construction or submitting a development application. Some 11 of the remaining projects are on track to meet their obligation. I think I flagged this morning that there are 17 that we have flagged as not meeting their obligation that we have on a watchlist, including writing to those proponents and identifying our expectations of what they need to do. I can give you a flavour of some of those issues?

**The Hon. ADAM SEARLE:** No, that is okay. If you can provide on notice who they are, obviously we will see whether they are all private sector or a mixture of public and private sector. Mr Betts, last year at the COVID oversight committee I think you and the Minister answered some questions about the job figures attached to various projects. My question is this: We have got a call for papers through the upper House on job creation figures in the budget. This email from Treasury says that agencies should be aware to consult with Treasury on job estimates and that, in relation to Treasury advice, there is a need to adhere to the endorsed sector-wide methodology about how you calculate jobs. I assume that is the common planning assumptions tools—the data-sets model and analytic tools. Are these job estimates in the fast-tracking process consistent with the Common Planning Assumptions Group methodology?

**Mr BETTS:** Yes, I believe that Mr Whitworth is across that.

**Mr WHITWORTH:** Thank you, Mr Secretary. The calculation of the jobs was based on what we call the Landcom calculator. It is an application of so much capital activity will generate so many construction jobs. That was something that the department sourced from Landcom. We discussed it with Treasury and we discussed it with—

**The Hon. ADAM SEARLE:** Yes, but my question was: Is it consistent with the Treasury?

**Mr WHITWORTH:** We discussed it with—the common planning assumptions are more about the forecast of population growth and the expectation of jobs over time, whereas this was actually an application of capital leads to so much construction activity. We did consult with Treasury. We also asked that there be consultation with the Chief Economist, and the Chief Economist was happy with our approach.

**The Hon. ADAM SEARLE:** Okay. Mr Betts, last year in estimates you and I were discussing how the net zero emissions objective of the State Government could be met through the assistance of the planning system. I think you said that there was a mapping exercise looking at various regulatory mechanisms and how the planning system could assist with that. Has that mapping exercise been completed or is it still ongoing?

**Mr BETTS:** I do not recall the conversation with precision, but there are—

**The Hon. ADAM SEARLE:** It is page 42 of the transcript of 13 March, if you could go back and just have a think about it?

**Mr BETTS:** Okay.

**The Hon. ADAM SEARLE:** But do you have an initial response?

**Mr BETTS:** No, I will take it on notice if you would like me to.

**The Hon. ADAM SEARLE:** Also there was a discussion of waste to energy and how that is dealt with in the planning system. We had a discussion, which Mr Ray was part of, about whether or not you might need to have, for example, a specific planning instrument to assist waste-to-energy proposals. I think, Mr Ray, you said that the chief scientist had carriage of providing some advice about that. I think you said last year that the chief scientist was going to report relatively soon. That was a year ago. I cannot see anything on the chief scientist's webpage. Where is that up to?

**Mr RAY:** I understand that the chief scientist may have recently reported. I have not seen the report, but I understand that that report has been submitted.

**The Hon. ADAM SEARLE:** On notice, can you inform us as to where that matter is up to and, if possible, whether we are allowed to see the chief scientist's report?

**Mr RAY:** Yes. The matter is within the administration of the Minister responsible for the environment, but I will provide a status update.

**Ms O'MARA:** If I may, Mr Searle, on the Design and Place State Environmental Planning Policy Explanation of Intended Effect that was released on 26 February, one of the focus areas of that EIE is to give effect to net zero 2030 through the planning system.

**The Hon. ADAM SEARLE:** Mr Betts, last estimates we were discussing the Independent Planning Commission [IPC] and its budget. I think it had been increased to \$5.8 million. Can you give an update about where the budget is up to? I might have a follow-up question for Professor O'Kane.

**Mr BETTS:** Yes. I might invite the chair of the IPC, who has been sitting here patiently all day at your invitation, to provide some evidence on that.

**The Hon. ADAM SEARLE:** Yes, I know. I have been trying to get to this. Absolutely.

**Mr BETTS:** As a matter of general principle—while Professor O'Kane is taking her seat—our understanding is that the IPC will get the resources that it requires to do its job efficiently and consistent with the memorandum of understanding between ourselves and the IPC. That has been a centrepiece of the conversations that Professor O'Kane and I have had over the last two years.

**The Hon. ADAM SEARLE:** Professor, what is the budget for the current year for the IPC?

**Professor O'KANE:** The budget—I am just looking up the exact figure—is just over \$8 million for this year and was increased to cover various things.<sup>1</sup> I agree with what Mr Betts has just said. We also have an extra allocation to cover building a new case management system and more general information and communications technology.

**The Hon. ADAM SEARLE:** What impact on the work of the commission has the Minister's direction or benchmark of 12 weeks to determine matters—has that made things a bit tight?

**Professor O'KANE:** Financially tight?

**The Hon. ADAM SEARLE:** Either financially or in terms of operations.

**Professor O'KANE:** No. In terms of operations, it certainly has sharpened our focus on timing. It means we have to make sure commissioners are on cases where they have the time and they have nothing else that can interfere with the time they promise over that. It certainly has been a challenge but it is one that I am very proud that our commissioners have risen to. We have been able to stay within the benchmarks pretty much on everything, and certainly on the averages, which is what the Minister has asked us to do.

**The Hon. ADAM SEARLE:** Have you been able to do that without putting undue strain on the deliberations and the ability to produce quality reports?

**Professor O'KANE:** I think we are. I think the test will be on appeals. But I think we are writing good reports so far. It is a bit early because of the length of the appeal process, but we certainly have put a lot of emphasis on the supporting staff to the commission. Again, I thank Mr Betts and the Minister for help with the resources to do that so that we are able to concentrate on preparing very good statements of reason.

**The Hon. ADAM SEARLE:** In terms of the independence of the body—leaving aside I understand the decision-makers of course have statutory independence—are your staff still the staff of DPIE or are they now going to be the staff of an independent agency? Where is that separation going on?

**Professor O'KANE:** No, they are staff of an independent agency, the Office of the IPC. That has been very much appreciated.

**The Hon. ADAM SEARLE:** What practical benefits have flowed from that?

**Professor O'KANE:** I think it is very clear to staff where their loyalties lie. I think we saw it in the People Matter Employee Survey. We had very high ratings indeed. It was good to see that. The staff seem happy and are doing extraordinarily good work in supporting the commission under these new requirements.

**The CHAIR:** I wanted to seek some clarification around something that was said earlier by you, Mr Ray, to Mr Justin Field in relation to the application of the SEPP 2021 once the codes are in place. Just to be clear on this, you said that there will be new PNF and Local Land Services codes and a revision of those codes "to ensure robust protections for koalas in areas of high-value koala habitat and certainty and consistency for primary producers." Then it says here in the Government's media release, which I think is what you clarified earlier, that:

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<sup>1</sup> In [correspondence](#) to the committee, dated 8 April 2021, Professor Mary O'Kane, Chair, Independent Planning Commission, provided a clarification to her evidence.

Once codes are finalised and reflected in legislation ... the Koala SEPP 2020 will be repealed and the Koala SEPP 2021 will apply to the remaining land ...

What is the remaining land?

**Mr RAY:** The remaining land is the land zoned RU1, RU2 and RU3.

**The CHAIR:** So what is the expectation then? We have PNF that will apply to all land or to land that could be open to private native forest logging. Is that correct? And then for LLS codes, how much of rural land do you expect that will apply to?

**Mr RAY:** Again, not being an expert, but certainly it would apply to land zoned RU1. I would expect it to apply to land that is zoned RU1, RU2 and RU3.

**The CHAIR:** The Local Land Services code?

**Mr RAY:** Yes, the code.

**The CHAIR:** Just to be clear: RU1, RU2 and RU3, you are expecting LLS to apply to those and PNF to some?

**Mr RAY:** Yes.

**The CHAIR:** I cannot see how the koala SEPP 2021—sorry, when you take out those bits, what is the land that the SEPP 2021 then applies to? This is where we need a map.

**Mr RAY:** The development consent requirements not relating to PNF, those development consent requirements that exist for intensified rural development such as intensive cattle feedlot or intensive chicken production or all those intensifications—perhaps even blueberry farms—that require a consent under the various provisions of local environmental plans in RU1, RU2 and RU3, those consents will have to be assessed in accordance with the SEPP 2021 instead of SEPP 2020.

**The CHAIR:** That does not require, like SEPP 44, a koala plan of management to be in place?

**Mr RAY:** No. The preparation of an individual koala plan of management in response to a DA was not a feature of the 2019 SEPP, but the essence of the guidelines is to ensure a full and appropriate assessment of the impact of koalas in all of those development applications.

**The CHAIR:** I might ask some questions now about the assessment of the Dendrobium Mine by the department. I am wondering why the mining project was assessed as "approvable" despite what was quite strong objections against it by WaterNSW and despite concerns from the Independent Advisory Panel for Underground Mining?

**Mr BETTS:** The assessment report backed by the department stands as its view on the record. Mr Ray might want to highlight some aspects of that, but it is a balanced consideration and the assessment report is publicly available.

**The CHAIR:** Who did the assessment?

**Mr RAY:** The assessment was done by departmental staff with the assistance of a range of independent consultants who contributed to various peer reviews of the technical data.

**The CHAIR:** I have here that the assessment report was essentially done by a former senior manager of the resources assessment team who was engaged as a consultant.

**Mr RAY:** He was certainly involved, yes.

**The CHAIR:** Is there a reason why the department hires consultants who have worked in the department before? Can I just check that within the resources assessment team there is not enough skills and experience to undertake that work?

**Mr RAY:** Well, there is a range of skills and experience in the assessment team. In this particular case, the person was particularly familiar with the issues that apply to underground mining in the catchment, and it was felt that that person could make a technical contribution to the report.

**The CHAIR:** I understand that one of the representatives from the Independent Advisory Panel on Underground Mining told the IPC during that hearing and that process by the IPC that if the panel disagreed with the department's assertion in its assessment report that there would be little environmental benefit to reducing the width of the proposed long walls. Considering the strong objections by WaterNSW, do you think that within the

department there is the potential, whether it is like a cultural problem in terms of the department's approach to assessing the environmental impacts of longwall coalmining?

**Mr RAY:** Look, I do not think there is a cultural problem with that. As Mr Betts said, the assessment report, with all the peer reviews and all the material that inform the assessment report, was made publicly available. So there is a very public and transparent process there and then it was a matter that was then—and obviously there were opportunities for public comment and then there was a separate independent process with the IPC to determine the matter. So the amount of scrutiny on—sorry—

**The CHAIR:** I can do two things at once.

**The Hon. MARK PEARSON:** Five things.

**Mr RAY:** So the amount of scrutiny on—and quite rightly so—the amount of public scrutiny on the system, you know, encourages great public scrutiny of the department's assessment reports and provides a lot of opportunity for people to comment on them and for, you know, those issues to be well ventilated through the assessment process.

**The CHAIR:** Were the department and the assessors aware of, and did they address, WaterNSW's strong objections to that?

**Mr RAY:** Yes, they did. And that is all in the assessment report. It is fully documented about why the department came to its views in relation to that. I must say that there was indeed an offset sought for the issues relating to water loss, which was one of the major issues of WaterNSW and no agency within government objected to the proposal and the department advice from the independent expert mining panel and incorporated that advice in its proposed conditions.

**The CHAIR:** Okay. Thank you. I just want to move to Wyangala Dam offsets. We asked a question about the environmental offsets as a result of raising the Wyangala Dam wall—I think to the environment department at its recent hearing. They suggested that the planning department is looking at working on determining the cost of environmental offsets and determining what they will be. What work has been done on that so far? What is the approximate time line to be able to say exactly the cost of those environmental offsets?

**Mr BETTS:** As you would have heard, although I think it might have been in the Water session, the intention is for the relevant part of the department to produce a business case for Wyangala Dam and an environmental impact statement by the end of this calendar year. Discussions will take place around the likely treatment of biodiversity offsets, but there is much more work to be done before that project is sufficiently developed that those conversations can be meaningful. But, clearly, the biodiversity offset regime will apply to that project, as it would to any other major project.

**The CHAIR:** Thank you. We will move to questions by Mr Adam Searle.

**The Hon. ADAM SEARLE:** Thank you, Madam Chair. My questions are to Mr Brogden at this point. Mr Brogden, while you are coming back to the table, I am looking at the 2020 annual report of Landcom and there is a reference on page 48 to a gender pay audit conducted by an external consultant. I think you there say that the findings in terms of pay equity are consistent with the sector. I assume you mean the property development sector rather than the public sector.

**Mr BROGDEN:** I will clarify that for you.

**The Hon. ADAM SEARLE:** Okay. If you are able to, could you provide the Committee with a copy of that report on notice?

**Mr BROGDEN:** Sure.

**The Hon. ADAM SEARLE:** Turning to that part of the annual report dealing with Landcom's executive, you set out there the number of executives—

**Mr BROGDEN:** Can you help me with the page, please? Sorry.

**The Hon. ADAM SEARLE:** It is page 58, I believe. You there list senior executive band level employees, or those who are designated as band employees. I see there has been a 25 per cent increase in the executive from last year to this year. Can you explain the increase from nine to 12 executive positions?

**Mr BROGDEN:** I think what that refers to—but I will come back between—oh yes, I see. If you look at the bottom there, Band 1 (Director), one asterisk, it was an interim and the asterisk against one of the males

down the bottom is an interim. The asterisk against 2, the female down there, is also an interim and indicates also that there were two occupants of one position, so I think it nets out back at nine.

**The Hon. ADAM SEARLE:** Okay. That is fine.

**Mr BROGDEN:** It is the requirements of reporting that lead to that outcome.

**The Hon. ADAM SEARLE:** I understand. That is why I thought I would kick the tyres on that.

**Mr BROGDEN:** Yes.

**The Hon. ADAM SEARLE:** Apart from those positions that are designated as senior executive band, can you also—and I am happy for you to take this on notice—give the Committee a list of those employees who are paid the same as ECB bands other than those you have designated as part of the executive, if there are any?

**Mr BROGDEN:** The answer should be none, but I will come back to you on that.

**The Hon. ADAM SEARLE:** I think in the last estimates round I asked you some questions about your mission statement, as it were. I think you indicated that from 2011-15 Landcom was tasked by the Government to deliver 10,000 house sites.

**Mr BROGDEN:** Correct.

**The Hon. ADAM SEARLE:** And then the second sort of tranche was for double that?

**Mr BROGDEN:** Correct.

**The Hon. ADAM SEARLE:** Which was delivered.

**Mr BROGDEN:** Correct.

**The Hon. ADAM SEARLE:** And last year you had not been given a third mission statement. Is that still the case or have you now—

**Mr BROGDEN:** We have received a ministerial statement of directions in the meantime. It takes a different approach from the ones in the past. It does not require Landcom to deliver any supply targets. What it does do is require Landcom by 2024 to increase affordable housing across the portfolio from 5 to 10 per cent, to a hard 10 per cent. That is the main feature of it.

**The Hon. ADAM SEARLE:** Okay, but no quantum of housing sites.

**Mr BROGDEN:** No. Not on this occasion.

**The Hon. ADAM SEARLE:** I understand that having a harder affordable housing target is a good thing, but if you have got no supply target, have you set your own supply target then?

**Mr BROGDEN:** So part of our forward planning process is—or most of the forward planning process is—the Statement of Corporate Intent, which is a document agreed between Landcom, the board of Landcom ultimately, and the shareholding Ministers and Treasury every year. That document outlines our finances and a number of other factors, and in doing that it effectively also sets out our supply target into the future.

**The Hon. ADAM SEARLE:** Okay. Thank you. Looking through your financial statements, both this year and in previous years, it appears to describe an organisation in some kind of financial decline. Looking for 2018, I think the organisation's net profit was \$185 million; in 2019, it was \$30 million; now it is down to less than \$27 million. Receipts from customers was \$855 million in 2018 down to \$304 million and in 2019 it went down to less than \$95 million, but at the same time the \$200 million each year is being sucked out of the organisation by the Government in dividends and additional tax equivalent payments. How financially stable is Landcom, given this charting decline?

**Mr BROGDEN:** I appreciate your characterisation of decline and the numbers certainly indicate that. However, our revenue is tracked based on two main areas of sales: one would be our retail sales and the other our wholesale sales. That big figure you referred to would have been coming off the back of a number of large transactions, and we are expecting a number of large transactions to come in again this year and next year in FY '21 and FY '22. It is the very nature of property that it is rare to get a straight line, either flat, up or down; it is a very volatile market in that sense. We also have an agreed approach to dividends with Treasury and that is an agreement between the board and the shareholding Ministers, once again through Treasury. We are a very financially sustainable organisation able to both take on new projects, as at Wilton, and deliver them quite profitably.

**The Hon. ADAM SEARLE:** Okay. I am just looking at one of the areas of revenue. I think this is at page 68 of the annual report. Revenue from contracts with customers is down from nearly \$268 million to less than \$168 million, down by \$100 million. That is a very big decline in one year. What do you have coming through the pipeline for this year and future years?

**Mr BROGDEN:** Okay, I will come back to you on it in detail.

**The Hon. ADAM SEARLE:** Sure.

**Mr BROGDEN:** But, once again, that decline reflects payments for the sale of larger pieces of land coming through. Of course, as you would appreciate, the time of sale does not always equal the time of settlement. Once again some of the payments into us, not unlike the way we buy property, are staged over a certain period of time and is often a period after the contractual agreement is struck.

**The Hon. ADAM SEARLE:** Okay, that is useful. I think you said you did not have housing targets as such. I think in the past you have not provided houses; you have provided house sites. Is that correct?

**Mr BROGDEN:** Yes. The best way to think of it is—exactly—dwelling sites. We say "dwellings" because they could be freestanding homes or they could be apartment sites.

**The Hon. ADAM SEARLE:** Sure. I think in previous years you have indicated that Landcom does not seek to compete with the private sector in terms of building homes. You instead master plan estates and then you sell them back to the market to then build the houses. Is that the model?

**Mr BROGDEN:** We are the "land" in the classic house-and-land package for many builders. On many occasions people will come to us looking for the land. They have already in their own mind either designed their own house or they are purchasing a kit home—well, not a kit home, but a product home out of an existing cottage builder. The same applies to apartments. We do not construct apartment buildings; we sell sites for the construction of apartment buildings. What we do from time to time is also seek to influence the design outcomes of the homes and, in particular, sustainability outcomes by things like rebates to people.

For instance, in Macarthur Heights, which is one of our active projects at the moment, we offer people a rebate of up to \$15,000 for them to undertake—for that rebate they need to spend that money on sustainability initiatives around their home. Awnings over windows—those little things that can make an enormous difference in some suburbs that are very, very hot in summer.

**The Hon. ADAM SEARLE:** Recently there has been some attention given to the decline in housing completions in New South Wales. I think in '18 and '19 there was a high of 42,000, then I think it dropped down in the last financial year to 30 June to about 32,000. Admittedly that last quarter was probably influenced by the pandemic. Nevertheless, going forward, I think there is a consistent projection of about 31,000 completions each financial year, which is way down on what is needed to meet demand, but also way below what is needed if you are going to provide a level of supply that will actually appreciably bring house prices into an affordable range for many people who would like to purchase a home.

Should Landcom not be considering whether it might have a role in achieving a greater level of affordable housing outside a 5 to 10 per cent target? Should you not really be focusing your attentions on maybe even a majority of your work in that space, given that the market cannot seem to provide housing supply at that affordable price point? It is a market failure.

**Mr BROGDEN:** At the moment Landcom's role includes, as I indicated before, 5 to 10 per cent—moving to 10 per cent—affordable housing. We also will deliver as part of our portfolio rising to 20 per cent diverse housing, and that diverse housing includes accessible housing. The critical element of accessibility, of course, is for people who have disabilities or who are aging in place to have simple things like wider doorways and access to other needs of people who are both disabled and aging. They are some of our priorities at the moment. What we also do is try as hard as possible to address the first home owner market, to the extent that that is under our influence. Of course, the greatest influence for the first home owner market will always be whatever incentives the government of the day—and we have seen the Federal Government intervene in this during the pandemic as well—offer to make first home owners' purchases more attractive.

I think the problem we are facing at the moment that is obvious to all of us is that we have seen a boom in property in the last few months. Landcom is experiencing exactly what every other developer is where we operate in greater western Sydney: That is, we are almost out of supply. As we speak, we have one block of land available for sale. That is a very familiar experience right across greater western Sydney at the moment. Of course, you will read for yourself what is happening in the established property market in other parts. So, we do not have

a supply target at the moment, and the clear impetus from the Minister through his direction is for us to deliver sustainable housing and to meet a direct affordable housing target. In particular, half of that target of 10 per cent will be constituted by affordable rental housing.

No doubt, if not almost certainly, the delivery of that will be by Landcom in partnership with—or direct delivery by—community housing providers, which is critical. The other 5 per cent of the 10 per cent will be delivered by a combination of that as well as first home owner products or lower-cost products in terms of land. Also we are looking at the opportunity for innovative shared ownership models and the like, to see whether that helps to give people a foot in the door—excuse the pun—of the property market in Sydney, so they can move forward. That is what the Government direction to us is very clearly about in the third term. As you indicated earlier, in the first and second terms it was a very numerical supply target.

**The Hon. ADAM SEARLE:** Okay. Thank you, Mr Brogden. Mr Betts, in relation to the ePlanning portal, can you tell us what has been the total cost to develop the portal to date and what are the projected costs?

**Mr BETTS:** Mr Ray will just source those figures. It is very nice to get a question about the budget.

**The Hon. ADAM SEARLE:** I think you were talking about another \$92 million over the next four years. Is that right?

**Mr BETTS:** Mr Ray has got the figures.

**Mr RAY:** Yes, sorry. To date, noting that the ePlanning commenced in 2013, it has been \$78 million.

**The Hon. ADAM SEARLE:** To date?

**Mr RAY:** To date.

**The Hon. ADAM SEARLE:** What are you projecting to spend on it going forward?

**Mr RAY:** For this current financial year we are expecting to spend 16.9. We have a figure that has been provided to us that since financial year '19, which is 1 July 2019 until 30 September 2020—so, 15 months—ePlanning delivered \$75.2 million in benefits to people in the planning system.

**The Hon. ADAM SEARLE:** How many complaints has the department or the Government received about the operation of the portal?

**Mr RAY:** Look, I do not have numbers—

**The Hon. ADAM SEARLE:** I am happy for you to take it on notice.

**Mr RAY:** —but I can take it on notice. But obviously there are a range of things that people ask about and we attend to them.

**The Hon. ADAM SEARLE:** Sure. What is the department or the Government doing to address those concerns that have been raised by industry in particular?

**Mr RAY:** The department meets with people and groups that are concerned about the way the system operates and the results of that are usually combinations of better explaining how the system works in some cases. In other cases it is additional training in the program and in some cases the department makes changes to the various modules that comprise the ePlanning system to make it easier and address some of the concerns.

**The Hon. ADAM SEARLE:** Are you aware of concerns that in many cases the portal just does not work and that is creating duplication problems for various firms that then need to keep redoing things or need to contact the department? There seems to be a number of glitches with your system. Are you aware of that?

**Mr RAY:** One of the key areas that we are putting a lot of effort into is the interoperability of the ePlanning system with the system that individual councils operate and also that individual firms operate. The focus over the past two to three years has been working on that interoperability with councils. We are working directly with councils and their electronic vendors to make that as seamless as possible and we have a number of councils where that has been implemented, but there is more to do. We are also working and will be working in this year to assist other users of the system—high-volume users of the system like accredited certifiers—on the questions of interoperability.

**The Hon. ADAM SEARLE:** But is the system crashing regularly?

**Mr RAY:** No, the system is not crashing regularly. The system did crash once in the past few months but that was a general Microsoft outage and that affected everybody who was using that Microsoft product. The system does need regular maintenance but that only happens once every four weeks.

**The Hon. ADAM SEARLE:** The budget papers say that stage four of ePlanning will increase revenue from the sale of goods and services by \$44 million over the four years to 2023-24, but in the midyear budget review that figure changed to \$92 million over four years. Can you tell us what prompted the change? Does this represent sales to councils? Do councils have to pay for this? Is this the revenue stream that you are talking about or are we talking about something else?

**Mr RAY:** No, there is no charge to councils in relation to this, but it is proposed to introduce some small fees on particular transactions in order to provide a revenue stream to ensure that ePlanning can be maintained and also can be enhanced as we go along. At the moment there is no independent revenue stream so that is the proposal.

**The Hon. ADAM SEARLE:** But it is proposed to get \$92 million over four years. Who will be paying that?

**Mr RAY:** It will be people that are making certain transactions.

**The Hon. ADAM SEARLE:** What kind of transactions?

**Mr RAY:** There will be a range of transactions such as a complying development certificate or a certificate relating to other accreditation, those sorts of things. The certificate might be a certificate in relation to planning certificates. It is representative of the additional convenience of being able to get those certificates without having to go into council and to be able to get those certificates online generally at any time of the day. The fees that will be brought forward are quite small. They range from around about \$10 to maybe \$40 or \$50 for certain more complex transactions, so they are not large fees. They are not a large percentage of the fee that the proponent would otherwise pay and they are commensurate with the benefit. We are working to make sure they are commensurate to the benefit that people get from actually being able to just get that certificate on a weekend, not having to go to someone's premises—all of that sort of thing.

**The Hon. ADAM SEARLE:** Can you provide on notice the list of the fees and charges that you are envisaging putting in place? Or perhaps I should ask: Are they already in place or are they proposed to be in place?

**Mr RAY:** No, they are proposed to be in place.

**The Hon. ADAM SEARLE:** When from?

**Mr RAY:** At this stage, I think it is from 1 July.

**The Hon. ADAM SEARLE:** A complete list would be very useful, thank you.

**The CHAIR:** Thank you very much for appearing today. The secretariat will be in contact with you in relation to questions you have taken on notice.

**(The witnesses withdrew.)**

**The Committee proceeded to deliberate.**