

REPORT ON PROCEEDINGS BEFORE

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

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

CORRECTED

At Jubilee Room, Parliament House, Sydney on Monday 17 June 2024

The Committee met at 9:30.

PRESENT

Ms Sue Higginson (Chair)

The Hon. Mark Buttigieg
The Hon. Anthony D'Adam
The Hon. Scott Farlow

PRESENT VIA VIDEOCONFERENCE

The Hon. Peter Primrose
The Hon. John Ruddick (Deputy Chair)

The CHAIR: Welcome to the eighth hearing of the Portfolio Committee No. 7 – Planning and Environment inquiry into the planning system and the impacts of climate change on the environment and communities. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us here today.

My name is Sue Higginson, and I am the Chair of the Committee. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing, so I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for all inquiry participants. I encourage Committee members and witnesses to be mindful of those procedures.

I note that various witnesses today will be participating via videoconference. A few notes just briefly on virtual hearing etiquette to minimise disruptions and assist our Hansard reporters. If a participant loses their internet connection and is disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link as provided by the Committee secretariat. I ask Committee members to clearly identify who questions are directed to, and I also ask everyone to please state their name when they begin speaking.

Could the witnesses on video conference please mute their microphone when they are not speaking. Please remember to turn your microphone back on when you are getting ready to speak. If you start speaking whilst you are muted, please start your answer again so it can be recorded in the transcript. Members and witnesses should avoid speaking over each other so we can all be heard clearly. Also, to assist Hansard, may I remind members and witnesses to speak directly into the microphone and avoid making comments when your head is turned away.

Mrs CORINNE LAMONT, Volunteer, Wamberal Beach Save Our Sands, sworn and examined

Mr MARK LAMONT, Volunteer, Wamberal Beach Save Our Sands, affirmed and examined

The CHAIR: Welcome and thank you very much for making the time to come and give evidence today. Would you like to start by making a short opening statement?

MARK LAMONT: Sure. Thank you very much for the opportunity to speak this morning. We pass on apologies from Justin Hickey, who is a co-founder of Wamberal Beach SOS. He is ill today and can't attend, but we include his comments in our responses today. There is a public trust that beaches such as Wamberal Beach will be here for future generations. The New South Wales Coastal Management Act and its planning objects are meant to back that trust. Unfortunately, when it comes to Wamberal Beach, that trust has been shaken. It's not so much that the planning system for beaches is broken; it is more that the planning principles and processes have not been followed, or, worse, they have been abused or distorted and, for that, there remains what appears to be a lack of accountability.

We would like to share with you a couple of examples of that, which will take one minute. In 2021 the former director of planning at Central Coast Council, Mr Scott Cox, correctly reminded the Wamberal Seawall Advisory Taskforce that in the coastal zone management plan, or CZMP, the action for Wamberal Beach was not an action to build a seawall. That was minuted in that committee, and Adam Crouch, MP, sat on that taskforce. Unfortunately for Wamberal, Mr Cox left council a few months later. He was replaced by Dr Alice Howe, the new director, who has since declared that the CZMP is a mandate to build a seawall at Wamberal. So it seems that black has suddenly become white. You can say that the CZMP process was hijacked.

Since taking up her role at council, Dr Alice Howe has supported the seawall, overseeing council's partnership with the WPA beachfront owners, who are finalising a massive seawall DA submission right now, with council consented as a seawall DA co-applicant. Dr Howe's pro-seawall CZMP read interpretation is supported by Adam Crouch, MP, and Rick Hart, the council administrator. There is now significant opposition to the seawall in Mr Crouch's electorate. So Mr Crouch says the seawall decision is with council. This begs the question as to how Mr Crouch previously could've made the seawall an election promise. For years, the WPA and Adam Crouch claimed the seawall would save Wamberal. They and council marketed that myth, even though the 2017 Marsden Jacob Associates report found no evidence to support that claim. That report was buried.

While council intends to be a seawall DA co-applicant with the WPA, council refuses to recuse itself from writing the assessment report that would accompany that DA for the review by the regional panel. So to us it looks and smells like a bit of a stitch-up. The WPA said they were promised a seawall, the people living along the beach. But they never were. Instead many of them signed positive covenants to restore their fore-dune frontages after storms, but those obligations have not been heeded, nor have they been enforced by council. They knew the risks. And, since then and even before then, experts have insisted that the vertical seawall would be the ruin of the popular beach. There are many other many dimensions to this, which have been recorded in our submission, and we recognise our earlier meeting with this group at Wamberal. We welcome your questions.

The CHAIR: Thank you very much for giving time to come today. We'll have some questions, and, yes, I acknowledge that the Committee did undertake a site visit to Wamberal, and we did get the excellent benefit of meeting with community and some of the experts on the coast there. So thank you. I'll hand to my colleague to start.

The Hon. MARK BUTTIGIEG: Thank you, Chair. Could I just get you to just elaborate a little bit on this—in your submission you mentioned this 180-degree turnaround from the—what was the acronym?

MARK LAMONT: CZMP.

The Hon. MARK BUTTIGIEG: Which is?

MARK LAMONT: Coastal zone management plan.

The Hon. MARK BUTTIGIEG: Could you just elaborate for us on the original justification for coming to the conclusion that, as a result of that, the seawall shouldn't go ahead, and then the subsequent justification for using the same basis to come to a totally different conclusion?

CORINNE LAMONT: The actions in the CZMP were actually to review funding and design of a revetment wall, not even a seawall. After the 2020 storms is when Adam Crouch started or established his State-run taskforce. And, as you know, the taskforce was called a seawall taskforce, so we were going to get a seawall out of the taskforce. That was the action that they were pursuing with the seawall. The options that we were given—

The Hon. MARK BUTTIGIEG: Sorry, Ms Lamont. The chronological order was the CZMP—that was prior to the storm event?

MARK LAMONT: 2017.

CORINNE LAMONT: It was certified in 2017. I believe council were actually working on the CZMP from about 2014. It certified in 2017. Council actually established a working group to look at the actions in the CZMP. I don't think that really moved anywhere or fast enough for Adam Crouch, and I think there was the perfect opportunity, after the 2020 storms, to push the seawall option along. That was definitely taken by Adam Crouch.

The Hon. MARK BUTTIGIEG: So, in other words, the storm event became a catalyst for political action.

CORINNE LAMONT: A hundred per cent.

MARK LAMONT: That's right. There was an expectation, by the beachfront owners and, I think, by Mr Crouch, that there needed to be action because of the storm. But the CZMP actions were specifically around sand nourishment, around dune revegetation and around the review of designs and funding for a revetment wall. As was mentioned by the previous director, Mr Cox, he told the taskforce there was never an action to build a seawall. However, in statements since then, in more recent years and even most recently, when we met with Dr Howe, she has cited—council's websites cites the CZMP actions as a kind of mandate for a seawall, which it's not.

The CHAIR: Could I just ask for one more clarification, because I note there is a bit of granular detail coming now. Could you, for the purposes of the Committee, briefly identify and explain the difference between a revetment and a wall so it is clear what we are actually discussing? I also understand that you have brought a document that you are seeking to table. Is that the case?

MARK LAMONT: That's right, and on the front page of that document you have an example of an illustration of a vertical seawall—a hard seawall. These are hard structures that, as the name suggests, are vertical. That is what we understand is going to be proposed in the DA that's being finalised at the moment. A revetment wall is a totally different structure. It's usually a combination of rocks and loose materials—gabions—sometimes in wire cages that are flexible and are situated, usually sloping, along the beach. Sometimes they are buried.

Speaking with Angus Gordon, who was the expert who was previously on the coastal panel before it was endorsed—the CZMP, that is—had noted that there was earlier documentation around a possibility of a buried revetment but never a hard vertical seawall of the sort that's being proposed here. The CZMP action was not to build anything; it was just to review one. When I spoke to Angus Gordon about this, he said, "We're not sure, as a coastal panel. It needs further investigation." At the time, around 2017, there was an expectation that the Marsden Jacob Associates report by the Office of Environment and Heritage would actually make some findings about a cost-benefit analysis for a seawall. When that CBA—cost-benefit analysis—was released, it actually tabled that the worst options economically were, in fact, the seawall options. It proposed a different strategy and a more adaptive strategy, which is what we and other experts believe.

The CHAIR: Thank you. All Committee members now have a copy of the document. Mr Buttigieg, do you want to go back to detailing the process?

The Hon. MARK BUTTIGIEG: We have the CZMP revetment as one of a suite of possibilities. As you have said, the sand renourishment and?

MARK LAMONT: Dune revegetation.

The Hon. MARK BUTTIGIEG: —dune revegetation. As a result of this hard—as you put it—seawall proposition, what has been the process for people to challenge that train of logic with council, if anything?

CORINNE LAMONT: There hasn't been any.

MARK LAMONT: It's actually been stacked against the community, we would say, because the public consultation, which was quite significant by council, was corralled in such a way that the only options the community were able to respond to were all seawall options. After the Marsden Jacob report came out and said seawalls are the worst options and there are these other adaptive strategies, the council consultation—around 2020—only said, "What type of seawall do you like? Do you like a seawall that is like this, like this, or one like this?"

The Hon. MARK BUTTIGIEG: Was that monolithic option challenged by anyone?

MARK LAMONT: Yes. In the responses, the most popular response, or one of the most popular responses, to that survey that council put on a website was, "Actually, I don't like any of these seawalls. I'd prefer

a different option. Why isn't it here?" There was a significant outcry in the community as to why council had not allowed constituents to actually say, "We would prefer investigation into these other adaptive options," as per the CZMP and as per other actions by other councils.

The Hon. MARK BUTTIGIEG: What was the response from council to those submissions?

MARK LAMONT: Council then formed a view, particularly Dr Howe, when we met with her a couple of times, that it became the adopted position—that was what she would call it. The adopted position of council was a seawall. We then challenged that and said that there was never a time when an elected council had endorsed the construction of a seawall—certainly not a vertical seawall—and, in fact, all of the proclamations by council previously, prior to administration, were that council would not engage in a seawall because it could not afford one. I think their website today still says that the council's adopted position is to build a seawall but to rely on the WPA—the private landowners along the beach—to form as the coalition to fund the majority of that seawall with council acting as a co-applicant.

The CHAIR: Just on that, so that we can be assisted, you are challenging the democratic basis for the adopted position, in terms of where that has come from. It sounds very much like all of the evidence that was before the community and the council—and anyone else, for that matter—was that the seawall was not the best mechanism to go forward. There were a bunch of options on the table, including through the CZMP, and then it would appear that the adopted position perhaps came from council staff somewhere internally. Do you have any view on where that might otherwise have come from?

MARK LAMONT: Civil taskforce?

CORINNE LAMONT: I think you can trace this back to 2003 and even the late '90s where the council actually looked at putting a revetment wall along Wamberal Beach. At that time, sand nourishment and different types of seawalls and different forms of protection were actually investigated. Sand nourishment actually came up as a preferable option or a very good option for the beach but, unfortunately, because it hadn't been studied or had any feasibility studies done into adopting sand nourishment as a solution for Wamberal, it was never pursued.

At that stage, even the environmental impact statement was based on a buried revetment wall. That was back in 2003. As far as I know, council didn't get the funding from the State Government to be able to pursue that. Since then, nothing was really done about a seawall at Wamberal Beach. I've been told recently by a person positioned in council that no-one ever thought a seawall was going to be built. That's certainly the case if you look at a court document back in 2014 where even council's counsel in a legal case basically said that talk of a seawall was just spin and it was never going to happen.

The Hon. MARK BUTTIGIEG: In terms of that council co-applicant, is it necessary for them to be a co-applicant?

MARK LAMONT: No.

The Hon. MARK BUTTIGIEG: How did that come about?

CORINNE LAMONT: Affordability.

MARK LAMONT: The main applicants are the private landowners along the beach, coordinated by the WPA—the acting entity. Council has, more or less, gone along for the ride and has provided them a lot of support in that design process, setting up an EDR and so forth. But council is under no obligation to be a co-applicant for the seawall DA. In fact, there have been cases of DAs being lodged by private landowners previously—I think about the Pacific 5 or Pacific 6.

CORINNE LAMONT: Pacific 6. I think, in this case, what actually happened with the WPA is that it got to a stage in 2021 where, because the CZMP was going to expire—but it did get extended—I think council was getting pressured by the State Government at the time to actually find a solution for Wamberal Beach. But council did have not the funding to do it. I don't think they were going to get funding from the State Government for private property protection. At the time, members from the WPA basically approached council and wanted to discuss a solution. That solution actually ended up being a copycat of Collaroy. That's how we arrived at the solution that WPA are working with.

The Hon. MARK BUTTIGIEG: This evidence that you have alluded to, in terms of all the submissions that were made to council on alternatives—like, "Can we consider other things?"—where would we find that?

MARK LAMONT: The group that did the surveying for council created a report, and it does cite this notable response by the community of their interest in non-seawall options and the fact that there was no non-seawall option there. To Madam Chair's earlier question, I believe that it was the 2020 storms that changed

everything. The 2020 storms caused a massive movement of the goalposts. Before the 2020 storms, most of the landowners along the beach—

The Hon. MARK BUTTIGIEG: Because the owners got concerned and then lobbied the local member?

MARK LAMONT: That's part of it, absolutely. Also, the private landowners knew that most of them had signed positive covenants and indemnities, when they bought the properties years ago or developed them more recently, where they had committed—on deed, on their title—to restore the sand dunes along their frontages at their expense and to replant Indigenous vegetation at their expense, and they took on all risk and liability. When the 2020 storm came and that risk was finally realised, their response was totally different.

There was not a strong effort by landowners to restore their sand dune frontages and plant vegetation, no. A couple did; most didn't. Instead, there was a massive media campaign in 2020. We have the archive footage of WPA landowners and even Mr Crouch going on TV in 2020 and saying, "These storms are terrible. It's putting incredible risks on our properties. We don't want the living rooms of our homes to be the battleground of this seawall issue. We need to have protection et cetera, et cetera." It was then the \$2 million of New South Wales Government and council land was spent on emergency works to put rocks and stones and barriers on the beachfront. The actual emergency plan, which is in the documentation there, says that private landowners were entirely responsible to manage any risk that came from such storms.

The Hon. MARK BUTTIGIEG: On that point, were there any representations made from either the State Government or the local council for the residents to make good on those covenants?

MARK LAMONT: No. This has been a real problem that we know of no cases where council has ever enforced a positive covenant on a property owner. We know that there were some cases where property owners started to take things in their own hands, putting in their own makeshift works. That was shut down, I think, to some extent by council. But this idea that because of the storm and the sympathy that the storm brought upon the WPA, suddenly \$2 million was spent like that to put rocks along there as if that was the plan, that was never—it was actually documented to be the reverse of what was planned.

That was the moving of the goalposts where what was really a risk to private landowners, a risk that was known, that they had factored into their purchasing decisions and their planning decisions as private owners—that risk was then being shifted under the sympathy of the storm damage to become a public problem. If you listen to the news footage, it was, "Where's council? Council won't budget. Council should be jumping in here." The then Minister, I think, or one of the Ministers at the time from the former New South Wales Government was sort of seen as coming to the rescue with all these rock works and emergency works that were put in place.

The Hon. MARK BUTTIGIEG: At this particular point in time when all this was happening, was the council in administration or was it elected?

CORINNE LAMONT: Not at this stage. This occurred in July; council went into administration in 2020. The problem with the covenants that Mark has mentioned—the development and control plans actually state that council should, as part of the development application, there should be a positive covenant put on title. Now, our research into the positive covenants that we've actually undertaken—a lot of new dwellings and developments along the beach have not got them. We're trying to find out from council why it hasn't been applied with every dwelling that has been built, whereas the development control plan does actually say that it should be there.

The other issue with the development control plan, if you have a look at the notes that I've provided—there is a building line that goes across the beach. That building line is basically a hazard line. You are not supposed to build across that building line. But in the DCP and the CZMP, part of the revision that came through at the CZMP was to make undevelopable land along Wamberal Beach developable. If you look at some of the blocks, if you didn't have people building on the other side of the land there would be no land. You couldn't put a house on what was available and classed as developable land. They have allowed building across the other side of the land. It's basically saying, "We support your risk taking."

MARK LAMONT: It's a signal.

CORINNE LAMONT: Yes, it's a signal to keep doing it.

The Hon. MARK BUTTIGIEG: We're in a situation now where council is still under administration until the September elections.

MARK LAMONT: September.

The Hon. MARK BUTTIGIEG: Has the DA been lodged or not?

MARK LAMONT: There has been a pre-lodgement of a partial seawall DA a couple of months ago. It's like a test, I think. That was returned to the WPA. We understand that the WPA is planning to lodge their proper DA at the end of this month, they say, but we don't know.

The Hon. MARK BUTTIGIEG: What has the community response been, from your understanding, to this happening on the cusp of a democratically elected council in September?

MARK LAMONT: There's a lot of community concern about it. There is an overwhelming community objection to a hard seawall of this scale. There's also a cynicism in the community that is palpable that an unelected council administration is taking such an aggressive course, particularly in the face of the CZMP action simply being to review.

The Hon. MARK BUTTIGIEG: Given we're only a few months away from council elections, is the view then, "Wait until there's a democratically elected council"?

MARK LAMONT: Absolutely.

The CHAIR: Can I throw in here one of the things that we haven't raised—although it's throughout your submission and is the basis for which we are discussing the objection and the concern. What about the future of the beach, the future of public access to the beach? The notion around that original deeper planning concern and response was nourishment and possibly revetment. The motivation for that is so that we can maintain a beach.

CORINNE LAMONT: The beach amenity.

The CHAIR: Can you just tell us a little bit about that beach, the public access to that beach and the community's desire to maintain that? Is that something you can provide as evidence?

MARK LAMONT: Yes, if Justin Hickey was well today, he would be here to speak to the fact that he has been a member of the surf club for decades. His family has lived here forever. We know, as residents, that the beach is the heart and soul of the local community. It is a treasured asset for locals and for tourists. It is significant economically as well. When we speak to expert geomorphologists, coastal geomorphologists like Professor Andrew Short, he is adamant that, if there is a seawall of the sort that's being proposed here, a vertical seawall of the scale of one to 1.3 kilometres length, eventually there will be a seawall and no beach. The seawall being vertical is the worst option, as Marsden Jacob Associates found in 2017, and would lead to the attrition of sand along the beach over years and years to a stage where—I asked Professor Short, "Would that mean that you would have to maybe check whether it's high tide or low tide to know whether you can walk down the beach or not?" He said, "It could be worse than that."

The scouring effect along the foot of the seawall could be significant. There's also an adjacent issue of the impact on flooding of the adjacent lagoons. To put things in context—because you asked about the local environment—there are between 40 and 60 homes along the beachfront proper. There are hundreds of homes that are built at low level around the adjacent lagoons—the Terrigal Lagoon, the Wamberal Lagoon. I don't know, I'd hazard to guess there'd be a factor of 10, maybe 20 to 1 in terms of the number of people who would be affected by lagoon flooding compared to those who live on the beachfront. There's a broader collective knowledge of the impacts that this could have on what's a pretty unique beach. It's 1.3 kilometres. It's a very significant surfing beach with tidal lagoons at each end. Even the member of the WPA said on video in 2017 that the whole reason for this end-to-end seawall, in her words, was so the end waters would go into the lagoons. At the time it was lost on her, I think. She was sincere, but it was lost on her that, hold on, if the end waters go into the lagoons, that's where hundreds of people live.

The Hon. MARK BUTTIGIEG: On that point, what studies have we had in terms of those—pardon the pun—flow-on effects?

MARK LAMONT: The Marsden Jacob report and the more recent Manly Hydraulics report actually recommended further studies into what the impacts would be on the lagoons. That was actually an action from those reports. Those studies have never been conducted. We have, however, had Angus Gordon, who has studied the beach significantly, give a professional view that the seawalls ending not far from the openings of the lagoons would create what he calls "efficiencies of the channels"—the inlets to the lagoons—or a deepening of the entrances, which would cause larger volumes of water during high tide, king tide surges to push into the lagoon, exacerbating flooding. Mr Angus Gordon also reminds us, as did Professor Short, that the most significant flooding events around the lagoons were not due to rainfall; they were due to high tide sea surges.

The Hon. MARK BUTTIGIEG: That flooding issue is already an issue now, is it?

MARK LAMONT: Yes.

CORINNE LAMONT: That's right.

The Hon. MARK BUTTIGIEG: Are the residents aware of this potential in the lagoon?

CORINNE LAMONT: They weren't. I think we very much made the people around the lagoons aware of it. Council basically got quite upset with us for doing that and suggested that we were traumatising the community by letting them know that they could be facing increased flooding because of the seawall.

The Hon. MARK BUTTIGIEG: But isn't the logical response to that from council to conduct a proper study if they don't believe that it has any veracity?

MARK LAMONT: That's correct.

CORINNE LAMONT: With the study, we've been advised that there will be a study if the assessors actually request a study into the impacts of the lagoon.

The Hon. MARK BUTTIGIEG: The assessors?

CORINNE LAMONT: The assessors.

The Hon. SCOTT FARLOW: As in terms of the independent development approval?

CORINNE LAMONT: No, it'll be the Hunter regional panel that'll be assessing the DA.

The Hon. MARK BUTTIGIEG: Assuming this is lodged now, that's where the DA would ultimately end up?

CORINNE LAMONT: That's what we've been told.

MARK LAMONT: That's right. Along with that, it's tradition that whenever a DA is passed to the regional panel there would be what's called an assessment report that's prepared and sent along with that, almost like a "This is what we think the call should be."

The CHAIR: And that's normally prepared by council?

MARK LAMONT: That's right. But in this case that creates an issue, in that council is a co-applicant, as we've spoken about this morning, who is so bent on this seawall that we're worried about the independence of that. We know that Angus Gordon is also worried about the independence of that.

The CHAIR: Has there been any suggestion as to whether the New South Wales department of planning would do that? Is that something the community's made loud as an issue?

MARK LAMONT: We have written to council on the issue. We've asked them to clarify whether they would recuse themselves. To date, they have not done so. They've simply come back with a standard line that the DA has not been lodged yet.

The Hon. MARK BUTTIGIEG: Could a potential way through be to wait until there's an elected council in September and then get them to put in the assessment?

MARK LAMONT: Absolutely, because an elected council would be representative of the community cause.

The CHAIR: Although there's still that conflict if the council is a co-applicant. There's still that conflict, potentially.

CORINNE LAMONT: The conflict is there, but the way we see it, we can't stop the home owners from putting a DA through. They have every right to do that.

MARK LAMONT: We're not here for that.

CORINNE LAMONT: But there's no reason why council should be in there supporting the DA. That's the way we see it. If we had an elected council, we wouldn't be sitting here talking to you now.

The CHAIR: We're running out of time, though we have a couple of minutes. We can go over, if it's okay. One thing I would love to hear from you before we do finish is some evidence around nourishment. I know that you have been looking at this issue long and hard and deep for a long time. What can you tell us about beach nourishment for your specific local environment, but also what you know in terms of the future of coastal erosion and other sensitive areas, where we're looking at similar issues, and the idea of nourishment locally and more broadly?

MARK LAMONT: Many years ago, I studied coastal geomorphology at the University of NSW. I don't hold myself as a contemporary expert, but I have the sense—and we have the sense as a group—to ask of experts such as Professor Short, Angus Gordon and to read the work of Professor Thom and others on this issue. Adaptive

strategies are by far the more preferred option. That's where the world's going; I think Angus Gordon has spoken of that in this place. Sand nourishment is an adaptive strategy along with others, which include beach re-vegetation and even voluntary retreat—which, quite contrary to what Mr Crouch has said, does not mean that home owners along the beach are forced off their properties.

Wamberal Beach SOS and the community at large does not carry a view that home owners should just be pushed out of the area and we restore the sand dunes. There might be some who believe that, but we don't. It's not a mainstream idea and it's never been suggested. But Professor Short and others have said that it may be in 10, 20 or 30 years that some homes on that beachfront—some which are further forward of the building line than they should be—perhaps there should be voluntary buybacks where the council or an authority acts in the market. It's happened before in Wamberal. It's happened all along the New South Wales coast. It shouldn't be ruled out.

But adaptive strategies such as sand nourishment have been proved in other parts of Australia and around the world. If we look at the case of the Gold Coast, an area requiring three times as much sand on the Gold Coast was satisfied by a hopper dredge within a matter, I think, of three months at a cost of about \$4.75 per cubic metre by a hopper dredge literally taking the sand up off the ocean shelf in a way that was sustainable and spraying that sand onto the Gold Coast beach. That was seven years ago. Some 75 per cent of the sand is still on the Gold Coast beach and it does it just fine. Wamberal only needs about 900,000 to 1 million cubic metres of sand, which could be furnished in such a way. This is a really important point, though: Council has never, in the last five years or so, requested support from the New South Wales Government for such sand nourishment, except for in combination with their vertical sea wall. That's the real problem.

The Hon. MARK BUTTIGIEG: So, no cost-benefit analysis of the seawall versus the nourishment has been done?

MARK LAMONT: Yes, Marsden Jacob did that assessment and found that the sand nourishment option was far more preferable. It was working within the constraints of 2017.

The Hon. MARK BUTTIGIEG: How much is the seawall expected to cost?

CORINNE LAMONT: It could be up to about \$40,000 per metre.

MARK LAMONT: Forty thousand dollars per metre—we're talking tens of millions of dollars.

The Hon. MARK BUTTIGIEG: Who foots that cost?

MARK LAMONT: Most of it would be footed by the private landowners who contribute for their sections of the beach, but a significant portion would also be funded by council and possibly through State Government grants, noting that the ministerial corporation for public lands within the Department of Planning has ownership or management of five blocks of land along the beach. They're State Government land. We understand that there's been a resistance to include them in the seawall. We are imploring New South Wales Government not to include access rights or licensing arrangements for the walling of that public land. They are dune frontages and they should just be left as they are. They should be benefiting from sand nourishment.

There's also been, we think, some game playing in that, in statements that have been made about the seawall, there's this idea that, once a seawall goes in, everything on one side is private land that the private landowners look after and everything on the other side is public land. That is suggesting—even one of the former leaders of the WPA went and spoke at council and said that she felt it was really the public's obligation to put the sand nourishment in front of the seawall, not theirs, and yet it's the seawall that will cause this increased attrition of sand over time, according to experts.

So we think there's a real public-private issue here. We have a natural, dynamic interface between public and private. What we are suggesting at Wamberal Beach SOS is that council, either now or once there's an elected representative council, take up an action to approach and sit with New South Wales Government to come up with a way of being able to get support for sand nourishment, primarily for the purpose of public beach amenity and improvement but with an incidental benefit to private landowners who sit behind that public beach. Also, that's consistent with the objects of the Coastal Management Act, which says that in all cases, more adaptive soft strategies should be tested first, before hard strategies.

The Hon. MARK BUTTIGIEG: Just quickly, because I know we're just about out of time, on the point that public land should be retained, is there an argument from the private owners to say that we want you to be part of this because otherwise we end up with a toothless tiger effect where you have holes in the seawall and it's not as effective? They're essentially saying to the Government, "Please come on board; otherwise our seawall is not going to be effective."

MARK LAMONT: Exactly.

CORINNE LAMONT: And this is the thing. The CZMP has promoted a lagoon-to-lagoon solution. We know this is not going to be a lagoon-to-lagoon solution. There are a lot of home owners that actually do not want the wall. They actually see and have told us and Dr Reid that sand nourishment is a far superior solution. But they were never offered sand nourishment as a solution, so that's why they've gone with the wall. One of the committee members of the WPA has basically told the beachfront home owners to sign onto a DA whether you want it or not because, at the end of the day, the goal of it is to get them the ability to get a seawall if and when they want it. So the seawall will definitely have walls. We know that there are people that do not want a seawall.

MARK LAMONT: There are what we refer to as federation issues. Sure, they might collectively be able to get most people to sign up to a DA and get council onto the DA. But if that DA is approved—and we hope it isn't, but if it ever was—the WPA has written to landowners saying, "Once we get the DA ticket, it doesn't mean you actually have to go and build it."

CORINNE LAMONT: Yes.

MARK LAMONT: So this could create a situation where some people decide to put a bit of wall here, a bit of wall there. There's also the question of how many thousands of concrete trucks are going to be coming in and out of the beach to build this wall.

CORINNE LAMONT: For how long.

MARK LAMONT: For how long. There's talk about Lett Park, near the surf club, being used as a potential plant and equipment area for the equipment. We don't know where they're going to store the machines, where all the concrete trucks—I mean, how many thousands of concrete trucks are going to be coming up and down, for how many years. It seems to be that some of the owners who have more at risk are pushing for this because they see that this federated perception is the best way of at least getting a wall for the bits that they really want.

The CHAIR: From everything we've heard today and the material, there was a CZMP, which was by its very definition a strategic approach to management of a part of the coastline that centred the public interest, beach access, and balancing the needs of the beach by giving life to the objects of the legal framework, the Coastal Management Act. That got hijacked at some point. Then what we've seen is some form of, it appears, political interference but justifiably on the basis that those 2020 storms were showing some very dramatic implications of the impacts of coastal surge and coastal erosion on some individual private property. But we're literally sitting in a position right now where it's a decision where we either keep going down a path that will make the problem worse, or we pivot to going back to that very strategic staged broader view where we're looking at adaptation because we've hit some hard walls—pardon the pun—some of the harder edges of adaptation.

MARK LAMONT: That's right.

The CHAIR: And it's not too late to do that, by the sounds of it.

MARK LAMONT: That's right.

CORINNE LAMONT: No, it isn't. To your previous question, we have approached council and asked them to defer any decisions regarding the seawall until we get an elected council. They've straight out refused. I asked if they could pass a resolution that'd do that. The administrator said he wouldn't do it. We mentioned it to the director of planning to see what could be done to stop the seawall and she said a resolution, but she said she would not support any resolution to stop the seawall.

MARK LAMONT: We think there's more important work to be done around sand nourishment. As one academic said, sand nourishment isn't necessarily a silver bullet. There are sustainability considerations and management considerations in relation to sand nourishment. I believe that Angus Gordon has spoken a little bit about that, but the CMA is very clear that these more adaptive approaches are preferred as the first step, and we believe that council has not taken appropriate action to advance that option without a seawall. I can understand a landowner thinking, "I've got certainty with a seawall", but that's not necessarily the case. Many landowners along the beach are only two or three metres above the beach. They will be at the low sections. There are others who are six to eight metres above the beach. When there's a sea surge, I wouldn't want to be, with a seawall, the people at the lower ends of the wall because the lower end of the wall's going to get overtopping. Overtopping is a massive issue that can cause a lot of remorse on the part of those who thought a seawall would save them. You might be protecting the back door, but what about the front door?

The CHAIR: It feels a little bit like my community of Lismore. Many of us built houses as high as we thought we needed to, but it wasn't high enough.

MARK LAMONT: Yes.

The CHAIR: Then we had the idea, "We've got a levee that'll protect us from some flood", and then it's kind of all bets are off in terms of what we thought was predictable.

MARK LAMONT: I also want to put on the record that Wamberal Beach SOS, we do not see beachfront owners as enemies. We want them to have a good outlook as well as the beach and we think both are possible.

The CHAIR: On that point, finally, in terms of Wamberal specifically, I think Professor Gordon was suggesting that there were views that there was a sand source and that, when talking to those sustainability issues, there possibly is a source and there possibly is a path to doing that first step—lighter, adaptive nourishment.

MARK LAMONT: Absolutely, but it's a question of scale. The unit costs of sand for beaches like Wamberal drops dramatically down to \$3 to \$5 per cubic metre, as they saw on the Gold Coast, when you have a dredge that is purposed to bring sand on to service a number of beaches. If the New South Wales Government in conjunction with the Federal Government and local councils along the coast were able to find the funding for a hopper dredge that would service New South Wales beaches, this better rated approach could cause the cost of sand nourishment to drop significantly. There can be a lot of coordination around the timing of the dredges arriving at beaches and providing the nourishment. There can be a greater emphasis on local government's role, the community's role, in doing revegetation to re-contour and restore beaches. We've seen it. Was it Woolli, or Woolli Beach?

CORINNE LAMONT: Woolli.

The Hon. MARK BUTTIGIEG: Why can't they use the one that they're using in Queensland?

MARK LAMONT: The one from Queensland was brought on a ship that came all the way from Denmark to Queensland. This is the problem. That's an expensive exercise, to lease a ship all that way. When we spoke with Minister Sharpe's advisers recently on this issue, they said they were looking into this and waiting for potentially a time when Indonesia might need such a ship, so that New South Wales could piggyback off them. Brendan Donohoe, who spoke at this place, rightly said, "Hold on, Australia should be taking the lead on that. Maybe Indonesia should be asking us when a ship is next going to be in the region rather than the other way around." This is the kind of coordination that will only occur when local councils, like the Central Coast, come clean and say, "We are sincerely interested in sand nourishment without a seawall." The laws, as you may know, currently put any request for sand nourishment at the bottom of the list if it is for private protection. This council only sees the sand nourishment at Wamberal as part of private protection, and that is wrong.

The CHAIR: That's wrong, because it's about our beaches and protecting the coastline.

MARK LAMONT: It's about the beach. We know—and experts have confirmed this—that the primary protection of the beach and the Crown land along that beach will, incidentally, give a lot of significant benefit to the home owners. And we say good luck to them.

The Hon. MARK BUTTIGIEG: Ideally what you want is a study of the risks right along the New South Wales coast, and a holistic approach to a cost-benefit analysis based on the purchase of a hopper dredge and the sand re-nourishment that will have to take place over years because of climate change and all the rest of it.

MARK LAMONT: Correct. What you just said almost mirrors the recommendations of the Marsden Jacob report in 2017 that has not been seen since.

CORINNE LAMONT: The last thing that I'd like to add is that the new houses that are being built on—

The Hon. MARK BUTTIGIEG: Sorry, can we get that tabled?

The CHAIR: The Marsden Jacob report?

The Hon. MARK BUTTIGIEG: Yes. Have we got that?

CORINNE LAMONT: I don't think you have.

The CHAIR: I don't think we have. I've seen reference to it, but we don't have the full document. Is that something you would provide on notice?

CORINNE LAMONT: I can provide it, but the problem with it is it disappeared. Even the State Library does not have a copy of it, and it's only seven years old.

The Hon. MARK BUTTIGIEG: But you've got a copy?

CORINNE LAMONT: I've got a copy, yes.

The Hon. MARK BUTTIGIEG: Can you table that on evidence?

The CHAIR: Can you please provide that?

MARK LAMONT: We'll send it.

The Hon. MARK BUTTIGIEG: And also the survey results from council?

MARK LAMONT: Yes. We can provide that, and council could too.

CORINNE LAMONT: The last thing, if I can add, is, with the houses that are being built, if you look at the DAs that I've attached there, they're being built to withstand any type of erosion. They'll be standing in 100 years.

The Hon. MARK BUTTIGIEG: Because of the stilts?

CORINNE LAMONT: Because of the foundations.

MARK LAMONT: The piers go right down to rock.

CORINNE LAMONT: The only reason they want the seawall is so they can put a swimming pool in the backyard. I've got a DA there to prove it.

MARK LAMONT: Number 47.

CORINNE LAMONT: They've built on the other side of the building line, and what's actually going on the other side of the building line is a swimming pool. They don't need it for protection for their houses; they're going to stand forever.

MARK LAMONT: You have well-known seawall-type engineers, like Peter Horton, who have written reports to support these DAs, including the one currently for 47 Ocean View Drive, which say that because it's being deep-piered, it is therefore okay, from an engineering perspective, to place it in front of the building line closer to the beach. This is basically a race to get closer and closer to the beach whilst there is a simultaneous outcry—when there was a storm in 2020—that we are too close to the beach. The seawall is being used as a way to protect the private interest without necessarily having regard for the public interest.

CORINNE LAMONT: Or for the inequity of actually putting a seawall to protect someone's backyard so they can put a pool in it, but at the same time we have to sacrifice the beach and flood the lagoons as a result. It is just blinding to me.

The Hon. MARK BUTTIGIEG: Has there been any attempt at communication between, for example, the WPA, you people and council to try and get some sort of a collective compromise approach?

CORINNE LAMONT: Never.

MARK LAMONT: I don't think that's been done very well. We did set up a meeting with Federal member Mr Reid and Angus Gordon. We invited all beachfront owners to come along for a congenial, open-discussion information meeting to talk about the potential for sand nourishment. A couple of owners came along, but that's all.

CORINNE LAMONT: That was our effort. We invited council and the MPs.

MARK LAMONT: Unfortunately, council characterises us as people who traumatise the community. We have gone to the experts. We intentionally did not want to get out there and start spreading stories about problems of this and problems of that. One of the first things we did as an association when we joined and formed was to get experts up to Wamberal to sit down in the local club and talk it through. We continue to do that, and we get good support from the expert community.

The CHAIR: Our time has come to an end. Thank you very much for making time and coming today. We are very grateful. The secretariat will be in contact about the matters that we've asked you to take on notice and the provision of further documents.

(The witnesses withdrew.)

Ms LARAH KENNEDY, Committee Member, Voices of South West Rocks Community Inc, before the Committee via videoconference, affirmed and examined

Mr BRUCE WEIR, Media Liaison, Jetty Foreshores—Let's Own Our Future, before the Committee via videoconference, affirmed and examined

Dr SALLY TOWNLEY, Environmental Scientist, Jetty Foreshores—Let's Own Our Future, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome and thank you for making time to give evidence. Would anyone like to make a short opening statement? Ms Kennedy, perhaps we will start with you.

LARAH KENNEDY: I would firstly like to acknowledge that I am dialling in today from beautiful Dunghutti saltwater country, and I pay my respects to Elders past and present, and future Dunghutti leaders. In South West Rocks, which is where I am, we are experiencing a trajectory of unsustainable development and rapid, widespread native vegetation clearing. We have a population of less than 6,000 people, so we're not very big. However, there are 13 new subdevelopment sites, and nine are currently under construction or approved to start very soon. Six of those 13 DAs were first submitted between 1993 and 2017. So they're all of significant age and preceding the most recent amendments to the Environmental Planning and Assessment Regulation, which did provide some clarification on what constitutes physical commencement on a development.

At South West Rocks we have one road in and one road out, and we have been impacted quite significantly in the past six years by flooding and bushfires. Future catastrophic weather events are only going to continue and increase in severity the more that we continue this mass clearing and ecological vandalism. We know that regional areas have to plan for future population growth, but development needs to be planned sustainably and it needs to avoid unacceptable impacts on the community, the environment, the economy and our cultural landscape. I believe that regional areas are increasingly bearing the brunt of climate change and extreme climate events, and we need to stop developing on flood-prone and bushfire-prone land. While that might mean that we need to increase height limits in some places and density in regional centres and cities, it still has to be appropriate and we have to avoid fundamentally changing the character of our small towns. We have to look at land carrier capacity and the suitability of land and how it is going to meet community needs, not just meeting growth targets.

Particularly in coastal communities, we need to start really seriously looking at sea level rise as a result of climate change and how that's going to impact development. We also need to start protecting high biodiversity land and sensitive land. Much of the land in South West Rocks is surrounded by sensitive land like national parks, coastal wetlands and threatened species habitat. We need to protect that. We need planning reform that prevents any further biodiversity loss, protects our environment, protects the community from development in high-risk areas and protects us from the vulnerability to climate impacts. I really appreciate being here today. We really appreciate the opportunity to have a dialogue around the impacts of climate change and developments. Our small coastal towns are really suffering under the need for housing, but we need to balance that with climate resiliency. That has to be addressed with the sensible, ecological and responsible environmental planning.

The CHAIR: Mr Weir, did you want to make an opening statement? Or Dr Townley? I understand we may be having some tech difficulties with Dr Townley, but would either of you like to make an opening statement?

BRUCE WEIR: If Sally Townley is there, I would prefer her to go first. But if she's not available, I have a written statement here in front of me that she provided in case this did happen.

The CHAIR: Dr Townley, do you want to give it a go?

SALLY TOWNLEY: Yes, I will. Apologies if my connection isn't so great. I hope it holds up. Thanks so much for the opportunity to speak with you today. I am the Deputy Mayor [inaudible] of Coffs Harbour. I have been an elected representative for 12 years and I have a degree in coastal management and a PhD in wildlife ecology of Coffs Harbour [inaudible].

The CHAIR: Dr Townley, do you want to turn your video off? If you turn your video off, we might get a more stable connection. It's great to have had you appear, but let's go for your words now, if we can.

SALLY TOWNLEY: Okay. I'm part of a community group called Jetty Foreshores - Let's Own Our Future. We're not incorporated but we have over 800 members and supporters. The subject of our interest is centred around the harbour foreshores of Coffs Harbour. We have wrapped around the harbour a long narrow coastal reserve—well over 50 hectares—which was gazetted for environmental protection and public recreation. That's managed by the City of Coffs Harbour as the Crown land manager, and that area contains natural vegetation, parklands, play areas and public art, and is very heavily used by visitors and locals. Immediately to the west of that is a narrow strip of land which, until recently, was surplus railway land.

The North Coast rail corridor runs quite close to the ocean at that part of Coffs Harbour. In the last few years, the New South Wales Government's Property and Development NSW has released a series of concept plans, indicating a very intensive redevelopment of that land. PDNSW acquired that land last year from Transport for NSW. It's about 4.5 hectares and they paid the sum of \$2.2 million. The concept plans indicate building heights of up to six storeys, and Minister Kamper revealed recently that the plans include 450 apartments, nominally 250 residential and 200 short stay.

Our group strongly opposes the plans for the following reasons. First of all, coastal vulnerability zone—the majority of the parkland area is mapped within the coastal vulnerability zone, and a portion of the northern part of the land proposed to be developed is also mapped within this zone. We find it astounding that, after requiring councils to do this work and do this mapping and have it adopted into the SEPP, a government department would then propose something which appears completely to offend that SEPP. There are also littoral rainforests nearby. The Coffs council has spent [audio malfunction] considerable resources undertaking fine-scale vegetation mapping. A very rare vegetation tidal portion of the area proposed for these apartment buildings lies within the mapped littoral rainforest area. Again, it seems that Property and Development NSW is proceeding with blithe disregard of the provisions of that SEPP.

Currently, in the area that we're talking about, the Coffs Harbour city council LEP specifies a height of 5.5 metres, about one storey. These plans before us indicate up to six storeys. We are concerned about the impact of size and bulk. They would obscure the views from the existing parklands. We've also investigated overshadowing, and we know that the shadowing ratio in the late summer afternoon is one to seven—that is, an object will cast a shadow seven times its height. This would potentially be a shadow equivalent to a 42-storey building in these public parklands.

If we talk about the zoning under the LEP, part of the area is zoned for public recreation, and dwellings of all types are prohibited in that zone. The other part carries the zoning associated with the railway line. SP2 infrastructure dwellings are also prohibited in the zone. Because of the radical divergence between the current planning controls and the PDNSW concept plan, PDNSW is seeking a rezoning through a planning proposal. We understand that it's lodged, but it's yet to be publicly visible; it hasn't come out of the Planning Portal. We are unclear which pathway PDNSW will seek for this rezoning, but we will assume that it won't go via the council, given that the resolved position of Coffs Harbour city council opposes the development of apartments in this area. We're not sure if it's going to proceed to one of the other pathways, such as a special activation precinct or through the transport oriented development.

We also note that the Housing SEPP can facilitate bonus building height increases if certain conditions are met. We note that the Minister has made statements about the inclusion of affordable housing in this proposal, so it's also possible that the Housing SEPP might be employed to raise the levels even above what we are seeing in the concept plan. We note that the Coffs Harbour city council offered to give PDNSW two blocks of serviced land in the CBD for the purpose of constructing affordable housing as an exchange for land at the jetty—as an exchange for keeping the jetty land in public ownership. That offer was refused. We note that, in some instances, developer contributions may not be payable on the development of affordable housing. Since the land at the jetty doesn't have sewer or water infrastructure, we are concerned that, if the proposal goes ahead, the ratepayers of Coffs Harbour might end up footing the bill for part of the service infrastructure costs. We draw your attention to the local planning direction—specifically, direction 4.2, which states:

- (2) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:
 - (a) within a coastal vulnerability area ...

It also applies that for the littoral rainforest areas. It seems that any planning proposal—this radical rezoning, regardless of which pathway it takes—is completely at odds with this local planning direction.

Finally, we are concerned about Aboriginal interests. We know that the purview of the inquiry encompasses listening and learning from Aboriginal voices. I draw your attention to a report by the company Murawin, which was a specifically Indigenous-targeted consultation exercise undertaken on behalf of PDNSW. We note that the report identifies that privately owned residential development was generally not supported by those consulted. I also note that an area of land immediately to the north has been granted to the Coffs Harbour and District Local Aboriginal Land Council as freehold title. There doesn't appear to be any recognition of this in the concept plans and how these dwellings would be tied in. We're very aware of the historic and contemporary significance of the jetty foreshores to the Aboriginal community, and we feel that the PDNSW plan is incongruous with those values.

In summary, we believe that this development would ultimately be at risk of coastal erosion. We believe that the process of construction, changes in hydrology, stormwater run-off, foot traffic and vehicles would compromise the parklands and the littoral rainforest. We believe that it's unsuited to residential development of

any kind. We believe that the proposed development is contrary to a whole range of existing laws which seek to protect the coast and the coastal biodiversity and to avoid development in hazard zones. We believe it's inconsistent with a range of strategies and policies, such as the North Coast Regional Plan and the Coffs Harbour city council Local Growth Management Strategy, which identifies areas for future development and seeks to maximise infill. We believe that the concerns of Aboriginal stakeholders and community members have been ignored.

We are curious about the financial situation. The Minister claims that the area will be "self-sustaining and all moneys will be invested back into the community", but no details or the underlying business case have been made available for public scrutiny. Massive investment in infrastructure within and close to the coastal vulnerability zone will only lead to problems in the future, likely at the cost of the public purse. The best way to mitigate coastal erosion is to maintain adequate vegetated buffers. We believe that, overall, the best and highest use for this land is for inclusion into the existing parkland for passive recreation and open space to be enjoyed by the wider community for generations to come.

The CHAIR: Thank you very much. We have a few questions. We will direct them specifically. I would like to start with Ms Kennedy. At the outset, I acknowledge that the Committee did visit some of the areas with you and other members of the community. We got the incredible benefit of standing on site and looking at some of the developments, the areas of concern and those high-biodiversity-sensitive locations in your lovely local community. Could I ask you to give us a little bit of an outline about what you were talking about when you talked about the notion of the contest around substantial commencement and the development and the issues that the community has experienced? We have referred to these as zombie DAs. The Committee has started to understand that's a very broad concept and takes many different forms. Could you please share with the Committee your experiences as a community with the zombie DA notion?

LARAH KENNEDY: Yes. Due to the scale of development in South West Rocks, there is quite a varying number of what would we call zombie DAs, or classed as historical development consents. But one that has been quite controversial for us in South West Rocks is known as the Rise development. It was originally a 1993 development approval that had sort of been sitting dormant for close to 30 years. The original development was for 180 tourist villas. I like to think of it as a Club Med resort style of accommodation. A developer purchased that land during the pandemic and went to council to ask for the construction certificate.

Council said, "No, because you haven't done any work," which then went through multiple rounds of the Land and Environment Court. Eventually, the developer won on appeal on the basis that there had been soil testing done. A small hole had been dug in the ground to test the soil because there were oil terminals across the road. That was because the wording in that did not allow for—that original works had to be substantial. So any works could go towards works having been started. That's something that has been a little bit of a thorn in the side for us, because we don't believe that soil testing, digging a very small hole in the ground to test for soil, should constitute establishment works.

The CHAIR: Thank you. In relation to one of those projects, development is now underway on lands in South West Rocks. That was something that the council defended against in the Land and Environment Court and was successful, and then the proponent appealed. I think that was the case. Was the community involved in that?

LARAH KENNEDY: Yes. So, largely, the actual court case and the legal proceedings were driven by council but the community has been very much involved in this whole development. We've been working with council as much as possible. Unfortunately, what has happened in this instance is, because they lost on appeal in the LEC, the judge requested council to then pay the legal fees of the developer as well. So council had to award the construction certificate and also pay the legal fees, which is quite a hefty toll to take for our council and for our ratepayers. It really does impact us all and it also meant that council was reluctant to take any further action, because they'd already been forced to pay the legal fees of that appeal.

The CHAIR: In terms of the impacts of these decisions on biodiversity and these very sensitive areas that we also had the benefit of witnessing, I think you referred to something along the lines of "any planning reforms and any planning that we're looking at really need to prioritise protecting biodiversity". Is that something that you're not witnessing in your local community? And what does that look like for a local community?

LARAH KENNEDY: Yes, I definitely think we are not witnessing this to the extent that we need to be. I think that there is a lot of legislation in place that is supposed to protect our high-biodiversity-value areas, our wetlands, our threatened ecological communities, but I don't necessarily know that it's doing enough. To give you an example, we have a couple of big developments that are sitting alongside what are categorised as State important wetlands. They have the required buffer zones, which I believe is 40 metres. However, what it isn't taking into account is some of the more indirect impacts that are going to happen to those wetlands, nor is it taking

into account the fact that we've got a development site and then, within very close proximity, threatened ecological communities that potentially are going to be impacted, not just by the actual development—the building, the construction—but also by the stresses of then having more people, fertilisers, gardening, all of that sort of pollution run-off, which I just think we're not planning for in a robust way.

Another example—sorry, if I could just give you one other example as well—is that we know that there have been koalas spotted all over South West Rocks. We know that they're using some of that coastal dune as a wildlife corridor to get from one end of the rocks to the other. What we're seeing in multiple developments is that they'll do a desktop biodiversity study and they'll say, "They're not using this site to traverse the town and, therefore, we don't need to retain these koala food trees." I just think that when we are looking at a species that is potentially going to be extinct in the next 20 years, and we want to avoid that from happening, we actually need to think bigger than, "They're not currently using this site." We need to go beyond that to, "How do we rehabilitate these sites to grow the population?"

The CHAIR: With that, I think you're suggesting that the system is not adequately taking into account indirect impacts, cumulative impacts, and this need to now be planning to recover threatened species and endangered ecological communities, rather than just protect, in some way—and that the system, from somebody in the community that is trying to promote those values, is not allowing you to be successful in that. Is that the summary?

LARAH KENNEDY: That's exactly the summary, yes. The system, as it currently stands, allows a lot of desktop research and being compliant, but compliance is not enough if we are going to have a world that is comfortably liveable in the future with human-induced climate change as an issue.

The CHAIR: Mr Weir or Dr Townley, I have certainly been to the area of the Coffs foreshore that we are referring to, and some members of the Committee had the benefit of attending and hearing from you and other members of the community onsite. In some ways, it sounds very bizarre that you have a current State Government that would appear to be working in the complete opposite direction of what the local council and what the mobilising local community would like to see for the jetty foreshore. It's such an important area of public land for a regional city in New South Wales. I think you've painted the steps of what has happened in terms of council offering alternative land, offering to purchase land et cetera. Is there some insight you can provide to us to help us understand how these things happen? We understand what has happened, but how has this happened? What would be the motivation here to work so oppositional to what the local community appears to be saying?

BRUCE WEIR: Could I have the opportunity to talk to that, Sally?

SALLY TOWNLEY: Yes. Please do.

BRUCE WEIR: Just starting off, in 2020 the project steering advisory committee was established by the Government to bring together what they said would be:

... a diverse range of Coffs Harbour community representatives to provide input into the vision and plans for the revitalisation and activation of the precinct.

It was no such thing. It was a monoculture. It was entirely business people from the town. There were three positions on the steering committee for community representatives out of a committee of 12. The community itself was given three representative positions, not the five to six that we were told originally. Of these three, one was a board member of the Chamber of Commerce and one was a major sponsor of the chamber's golf day. The committee that was meant to provide steering advice—we weren't even on the bus, let alone given the opportunity to steer it. Why the motivation? I can't tell you. The Government kept on coming back to us and telling us, "We've done the biggest community consultation we've ever done in Coffs Harbour." It was a farce. Ethos Urban, in their report, said that the survey was designed to only allow completion once per device or IP address.

This was demonstrably wrong. My wife and I obtained the SurveyMonkey data, and there were 800 responses from 316 IP addresses. So, obviously, there were multiple duplications from people. The Government's response was to tell us that 649 responses can be reasonably considered to have been submitted from different individuals. They had absolutely no way of making sure that statement was true. It is purely supposition. Why did they put that statement in the report when they knew it was wrong? It was in the report: one IP address, one result. Why the Government has done this, we have no idea.

The CHAIR: Dr Townley or Mr Weir, what would you think are the next steps and the way forward? Is there a pass through this? Or is it an impasse? I did hear that council was suggesting it was trying to compulsorily acquire the land. What do you see as the next steps for resolving this?

SALLY TOWNLEY: I'll just keep my camera off if that's all right.

The CHAIR: Thank you.

SALLY TOWNLEY: Yes, that's right. The council is going through the process of compulsory acquisitions. It's within the power of the local government to acquire land for a public purpose. And, given that part of the land actually already carries the zoning of public recreation, we consider that that's justified. The acquisition of these lands into the broader adjoining reserve has been identified, for a long time, in the plan-of-management process. So we feel that those signals have been there for a long time—that the best use of this land is to incorporate into the parklands. The Government trying to acquire this land in development isn't new. This is about the third or fourth time, maybe the fifth time, that successive governments have come forward with different proposals. The community has, I guess, fended them off every time it's happened.

It's hard to say what will happen next. We're not certain of the Minister's powers of refusal in the grounds of compulsory acquisition. I suppose it's quite unusual for a local government to try to compulsorily acquire land from a State government. It's clear that the State Government has already expended many millions of dollars on the project, developing the concept plans and putting forward the rezoning proposal. As I mentioned, nobody's seen a draft. We don't even know what zone they're looking to try and get it rezoned to. Of course, there will be a period of public exhibition and consultation, perhaps even a public hearing, as part of that process.

We've got all these laws in place, about coastal vulnerability and little rainforests, and just to take a really, I guess, precautionary view that—I just would hope that, when it goes through the assessment, sense will prevail. But it's also quite difficult, because it's virtually the same department who is the proponent, who manages the gateway, who then does the assessment and, probably, potentially, stands to financially benefit. We consider that Property and Development NSW has paid a very, very, very nominal price for the land, and someone stands to make a very giant profit. We've calculated the land costs from the purchase price, divided by the 450 units, to be less than \$5,000 of land cost per unit. These are beachfront apartments. They're 50, 80, 100 metres from the ocean. It's just really difficult to know what's going on and whether the assessment will be adjudicated fairly and with due consideration to all of those matters that we've brought up or whether the lure of the profit will be too great. It's really hard to know which way it will go.

The CHAIR: I am just noting the time. I know that we started late, and I am sorry for that. If there are more questions, is there an opportunity for members to submit those questions to you? The secretariat would do that, and we have quite a short turnaround time. But are there any last words that you would like to add, because we do need to finish up? Ms Kennedy, is there anything that you feel you did not get an opportunity to say?

LARAH KENNEDY: Probably one thing that—I don't know if I stressed it, but I think that there needs to be some sort of mechanism in which we can review some of these DAs that are older than five years and that they can be reassessed with up-to-date biodiversity data, climate modelling and all of the science that we have now that we maybe didn't have 10 years ago. I know that is a huge ask, and I'm not going to pretend that I even know how to start going about that, but I just think that this is something that is really important for not just South West Rocks but for lots of coastal communities who are facing these outdated development consents.

The CHAIR: That is certainly something we have heard evidence on, consistent with that. You are right. It is a matter that does seem to be affecting others. Dr Townley or Mr Weir, is there anything you would like to say, finally?

BRUCE WEIR: If I could just jump in there, Sally, I would like to draw attention to the growth management strategy that Coffs Harbour has implemented. Sally referred to that. The council has identified 8,000 potential new dwelling units within very close proximity to the harbour. There's been no commensurate green open space and recreational areas identified to go along with that. I draw the comparison with what you people would know down there as the Moore Park Golf Course. Beside there, suddenly, we've got to repurpose land for potential like that. That's what's happening here. We can jump in early, be proactive rather than reactive and create the open space that this community is going to need as we increase the densities.

The CHAIR: Thank you very much. We are very grateful for your time and your evidence today. The Committee secretariat will be in contact with you on any matters arising from your evidence today.

(The witnesses withdrew.)

(Short adjournment)

Mrs LYNNE CAIRNS, Secretary, Yamba Community Action Network Inc, affirmed and examined

Ms HELEN TYAS TUNGGAL, Member, Yamba Community Action Network Inc, affirmed and examined

The CHAIR: Welcome back. Thank you for making the time to come and give evidence today. Would either of you like to start with a short opening statement?

LYNNE CAIRNS: Yes, I would. Thank you for the opportunity to provide evidence to this meeting. I would like the folder previously provided to the Committee to be tabled, please, along with a document that I will be summarising. On behalf of Yamba CAN, the information I provide is a summary of what has been recently occurring in the Clarence Valley Council LGA in relation to concerns with processing of development applications on the Yamba flood plain. I won't be reading directly from that document because I have summarised it. Helen will then provide historic information.

Firstly, it appears there is a systemic problem whereby stakeholders in the development application and planning process are predisposed to favouring approval of developments. It appears that council is inclined to accept what a developer provides and presumes in a DA without fully considering and assessing the impacts on existing residents and whether an adequate evacuation plan is in place. About three-quarters of the township of Yamba is on the flood plain, a delta of nearly 690 hectares. Yamba has a population of about 6,500 people. In February 2022 Yamba residents on the flood plain woke and, without warning, the only evacuation route, Yamba Road, was closed by stormwater flooding, along with many other internal roads closing or closed. The M1 to Yamba township is about 16 kilometres. Homes on the Yamba flood plain were flooded by stormwater—and some with sewage—that have never been previously flooded. The Clarence River flood crest reached Yamba about two days later and inundated and flooded homes again.

Last week the Northern Regional Planning Panel met to determine a proposed development, Yamba Gardens, for a 284 small lot subdivision on the flood plain down Carrs Drive requiring more fill. Last month, in a council meeting, councillors passed a resolution voting five to two in favour of council making a submission to the panel to not support this proposed development. The resolution was based on council's assessment report that was over a year old and contained some 22 noncompliance and unresolved matters. Then, seven days later, on 4 June 2024, council's up-to-date assessment report recommended approval of the subdivision. Councillors were not provided an up-to-date assessment report for a very important decision. Submissions objecting to the development totalled 328, and two voted for the development. People had two weeks to review 38 documents, 1,750 pages, and 12 people addressed the panel objecting to the development being approved.

The development's documents and council's assessment report provide that the proposed development complies with the required planning instruments. However, upon close scrutiny of the documents there were anomalies, errors and contradictions, and totally overlooked was the stormwater flooding. For example, council requested the evacuation plan for the development to address clause 5.21 (2) (c) and (d) of council's local environment plan. The clause reads:

- (2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—
...
 - (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
 - (d) incorporates appropriate measures to manage risk to life in the event of a flood ...

The evacuation plan does not address 5.21 (2) (c) and (d) because it did not take into account stormwater flooding. The Flood Risk Management Manual recommends councils collect data and review flood behaviour after flood events to capture lessons learnt. Council did not collect post-flood data in Yamba in 2022.

The plan states the development proposal will not exceed the capacity of existing evacuation routes for the surrounding area in the event of flood, yet then states the capacity of Yamba Road is the constricting factor during an evacuation. Council's assessment report—it actually says its considered acceptable, noting capacity of the evacuation routes and warning times and then states it meets 5.2 (1). The plan states, "The flood evacuation centre is the bowling club." It further states, "The club has not been assessed for its suitability for the number of people the club may be able to support and the plan assumes sufficient capacity can be made available." This contravenes clause 5.21 and residents couldn't even reach the bowling club because the roads were closed. These developments will be isolated mound islands in flood events.

The calculation of people on the flood plain requiring evacuation in the plan is incorrect. It is not 6,396; it is 8,618 people. The figures in the plan have not been properly calculated. Also, the current approved and

proposed dwellings on the flood plain is not 570; it is 1,329. The plan states Yamba has an older population: 32 per cent are aged 65 and over. One existing manufactured housing estate has over 200 residents and the average age of residents is mid-seventies. The plan doesn't even acknowledge this estate and it is next door to it. The estate has one road in and one road out and was cut off by flooding in 2022, and this has never happened before. The plan states Yamba experiences four peak seasons in a year, with a potential population increase of more than 100 per cent. What if this occurred with the flood? The evacuation routes won't cope. And what if it coincided with a king tide?

It also states Yamba in a flood would be cut off for two to three days and is large enough that it has sufficient accommodation, medical services and food for this period. In the 2022 flooding, Yamba was isolated for seven days: two days by stormwater and five days by river flooding. Coles ran out of food and closed. Residents were not able to see a doctor for about seven weeks. Doctors are not taking new patients. Yamba does not have sufficient accommodation off the flood plain. Flooded residents evacuated to neighbours' and friends' homes. Toilets wouldn't flush and power was cut. Not all streets are included in the plan and there is no mention of what streets were closed. Residents are discovering they are unable to obtain home insurance or the price of insurance has become prohibitive.

Continuing to fill the flood plain and increasing the population in Yamba will increase the burden on SES volunteers in flood events. Yamba CAN commends the SES for the work they do. At the recent Yamba CAN flood awareness and resilience meeting attended by over 250 residents, SES workers offered to attend a further meeting to collect data and information from Yamba residents about the 2022 flood events.

Another example of a development application is Parkside—136 dwellings, manufactured housing estate, 2,600 truck and dog movements. The development was provided to the Northern Regional Planning Panel in 2022 just after the floods and was deferred twice. The first time an evacuation plan was requested, as the site is in a floodplain area and would become isolated from escape routes and it floods adjacent properties and safe evacuation could not be guaranteed. The second—it was an independent peer review of the evacuation plan provided. The third time it was approved. Three members on the panel virtually dismissed the peer review, which stated the evacuation "is divergent from State guidance and practice" and "Based on these findings, the current proposal is unsatisfactory from a flooding and emergency management perspective."

There are a lot of concerns about this development which is now occurring, filling the flood plain. Overlooking the peer review is one. National Parks weren't even contacted by council, when the stormwater is going to be funnelled into the nature reserve. There is no consideration of stormwater flash flooding without warning, and there are a lot more other concerns. What is suggested—considerations, reforms in the planning process, an immediate moratorium on developments on flood plains. The State Disaster Mitigation Plan 2024-2026, hastened the provision of local disaster adaptation plans. There is a document that has just come out recently, Climate Valuation, which talks about the majority of homes that are highly vulnerable to becoming uninsurable due to climate-exacerbated riverine flooding—uninsurable homes.

We really should need a review of the Sydney and regional planning panels' operational procedures, ensuring all DAs comply with council's LEP. Concern is that council and the developers currently use the same outsource companies to research, assess and formulate documents in relation to development applications, flood modelling and evacuation plans. Council needs to ensure accurate modelling and mapping to include stormwater flooding. Councils also need to have better community consultation and engagement, as it is inadequate, and council should be required to advertise development applications and approved developments in the local papers.

The CHAIR: Ms Tyas Tunggal, did you want to—

HELEN TYAS TUNGGAL: Yes, now I'll have my turn. Thank you for the opportunity and, after more than two decades of questioning council's decisions, being here today feels like a positive step towards seeking sustainable solutions to what is an extraordinarily unsustainable situation evolving in Yamba. With more than 10 million tonnes of fill being dumped onto the Yamba flood plain for medium- and high-density housing development, the question being asked by an exponential number of Yamba residents and visitors when they see what is happening is "How has this been allowed to happen?" A factual historical response is that council's planning processes over the last two decades have resulted in more questions than answers, and the outcomes are visually shocking.

Throughout the planning process there has been a lack of overarching scrutiny by any authority; advantage taken of technicalities and loopholes in the State planning system and regulations; failure to implement what should be council's endorsed preventative strategies in the LEP, the DCP and the FRMP—the floodplain risk management plan; realistic assumptions and crucial information missing from the flood modelling; the ignoring of long-time and new residents' lived flooding experiences over decades; and the ongoing destruction of up to seven endangered ecological communities identified by a comprehensive government report. Community

group Valley Watch has been working hard to delve into the magical workings of local government planning over the last three decades and has produced for educational purposes a summary of this in the PowerPoint presentation, "A brief history of community concerns around floodplain development in West Yamba".

My presentation focuses on West Yamba, but we could also be looking at Park Avenue, Orion Drive or what is the Yamba Quays estate, (which is a total other can of worms) as it refers to Zombie DA. It started in 1995 with the Maclean council commencing planning for development of West Yamba. Then, in 2005, a slim majority of councillors on the newly amalgamated Clarence Valley Council overturned years of planning and voted to increase the density of the proposed development, raising the target population ceiling to 13,000 from the 11,000 set in 2001. You may recognise some of the faces in that council: past and present MPs in this Government. That's just an aside.

In 2006 the New South Wales Department of Planning and the Department of Natural Resources undertook an assessment of the conservation values of the vegetation at West Yamba in the context of the proposed zone amendments for the LEP. The assessment found overall conservation values to be high, containing or in close proximity to seven endangered ecological communities and vegetation communities of high conservation value and planning concern, including coastal saltmarsh, freshwater wetlands on coastal plains, and five different forest types. The assessment found that development proposals would be highly detrimental to the conservation values of a number of endangered ecological communities, would remove the largest remaining near-coastal remnant of this forest type, would likely result in severe and irreversible detrimental effects on flora and fauna, and would negatively impact on the function of the only vegetated corridor linking conservation areas to the north and south of Yamba.

A comparative aerial analysis between 2000 and 2005 showed clearing and poisoning of vegetation. Unlawful clearing—and it's in this report—uncovered an Aboriginal midden archeologically reviewed to be a burial site. CVC director of environment and planning, Rob Donges, told the media that action was being considered. Nothing happened; no action was taken. In fact, the largest landowners in West Yamba, the Birrigan Gargle LALC, were totally left out of the whole rezoning process over 10 years. I know this as a fact, as I was closely involved with them at the time.

There was hope in 2006 when the new, compulsory State government LEP included legislation designed to avoid unnecessary environmental impacts on flood-prone and riparian land. This included Development of Flood-Prone Land—compulsory, if it applies; Acid Sulphate Soils—compulsory, if it applies; Excavation and Filling of Land—compulsory; Heritage Conservation—compulsory; and Water Bodies on Riparian Land—compulsory. But our council staff said that, technically, the draft West Yamba LEP, as an amendment to the Maclean LEP 2001, is not required to comply. What does that tell us?

In 2007 Valley Watch and others formally objected to the endorsement of the draft LEP for West Yamba, detailing concerns with the site being well known as a flood storage area, climate change predictions and cumulative negative effects on the residents and environment. Local knowledge vehemently disagreed with council's mapping of natural flow lines and floodways as no studies were undertaken. In 2007 *The Sydney Morning Herald* did this article, "Coming to this swamp: suburbia". It states:

... even the proposal's architect, the council's environment and planning director, Rob Donges, acknowledges it is out of step with today's planning regime.

"There are acknowledged problems there. It is flood-prone, low-lying land with a high water table," he said. "We have never hidden the fact that if we were to start the process of West Yamba today there would be doubts as to whether council would proceed."

The then mayor said:

"It may be that people who are flood-proof at the moment will be put at risk ...

"A great deal has happened since the council [first] decided to increase [the area's] yield. From the middle of last year a great awareness of climate change issues [has surfaced]. It is a whole different ball game."

This is 15 years ago, again pushing these loopholes, pushing things that haven't been completed. The article continues:

The council has not yet received the findings of a flood risk management plan, commissioned to examine the effects of altering the area's natural drainage corridors, but Mr Donges has recommended the draft local environment plan go ahead anyway.

He insists the wheel has turned too far to stop now.

"It has a long history and commitments [have been] made by the council."

Of most concern to the community has been the lack of implementation of the current Yamba Floodplain Risk Management Plan and study that were unanimously endorsed by council 15 years ago at their 24 February 2009 meeting. The WYURA DCP states:

Extent of any development potential is to be consistent with a final Floodplain Risk Management Plan.

When asked why isn't the Yamba FRMP being implemented, for years the senior council staff—the last three years, at least—have insisted this study has been superseded by the 2013 Grafton and Lower Clarence flood model et cetera, and so these queries in relation to this study are no longer relevant. But Yamba is not in the Grafton FPRMP! So now it has been confirmed that the Yamba FRMP is the current legal FRMP. Had it been implemented as intended, we could have largely prevented the huge problem currently occurring in Yamba. It recommends, prior to the proposed west Yamba rezoning and development:

A practical method of evacuation approved by the SES during the planning process needs to be in place prior to development consent

...

- Filling for building pads within existing zoned areas is permitted ... as long as it does not affect local drainage.
- Filling on a larger scale should only be permitted following a rigorous hydraulic and environment assessment.
- Council should maintain a database of filling to monitor its cumulative effects.

The proposed master plan to be developed before subdivision must also address water-related issues.

None of these things happened, and the study also warned:

- Any further development will exacerbate the flood hazard,
- The proposal is not compatible with two background reports.

I'll leave out the next few things that were happening, but the lack of a master plan—2½ thousand signatures were collected calling for a moratorium on development until it did that. Valley Watch had to take the council to the NSW Civil and Administrative Tribunal because they wouldn't release the floor-level studies that were collected in 2014. They only gave it to the Insurance Council and to the consultant.

There's one thing here that I really think shows it in a nutshell, if you could just give people that. This is the Clarence catchment. It has 55 sub-catchments, and there's so much concern that the current flood model is lacking accuracy. It doesn't include stormwater run-off. It doesn't include flash flooding or wave motion, all of which are not included in there. There are some modelling assumptions supposedly compatible with current guidelines and accepted best practices that don't make any reasonable sense. You can see where Yamba is here and it actually says:

Tributaries of the lower Clarence River are only represented in the model in so far as allowing backwater from the Clarence River to extend into the tributary catchments.

All of these significant catchments around here in the lower river—the Esk River, the Clarence coastal, the Broadwater, Sportsmans Creek, Swan Creek, Coldstream Creek, Shark Creek and Lake Wooloweyah catchments—eight of the 55 sub-catchments assume that there isn't going to be any water coming out of them and that the flooding from the Clarence River-Boorimbah is going to go back zone up those catchments.

In conclusion, the community has been asking the same questions for 15 years to no avail—it's on the back page—about the fill, about the stormwater, about liability, about the master plan. At last week's NRPP assessment meeting, a Yamba resident, whose home now floods during rain since the fill started coming into West Yamba a few years ago, asked, "When my home becomes uninsurable and then uninhabitable, who is responsible? Who is liable?" The NRPP Chair's response was, "We can't answer that question." The planning rules must change now and there needs to be an immediate moratorium on floodplain development until things are properly sorted out with embedded physical climate restarter in all decisions. Thank you.

The CHAIR: Thank you very much. We'll have some questions and we also have some Committee members who are participating by Webex today, so they may have some questions for you, too. I also put on the record now that we have had the benefit of travelling around with members of the community, and some Committee members did have the great benefit of witnessing these sites physically. Thank you for bringing us along and showing us some of those sites. Also, I would put out there that I also attended the Northern Regional Planning Panel in relation to the 284 lots of development that are being considered at the moment.

I think that it is fair to say that you've painted a very clear, detailed picture of a planning system that really just has not properly worked. Even looking at its own structures and systems, whether you agreed with them or not, I think that there is a clear picture that there's just been a failing from one document to the next, from one study to the next and then the absence, if the ultimate objective is to achieve good, sound planning outcomes that don't put people in harm's way. What is your view? And I asked other witnesses this. You've painted the picture of what has happened to get us where we have got to there, but what would you say, as a local community, how is it—I know that's a big question, but even just some inputs into how the planning system has responded the way

it has, and driven development to this point where people are asking those sorts of questions that they're asking at the assessment meetings?

HELEN TYAS TUNGGAL: I'd just like to say something that I ran out of time for. Some months ago, one of the councillors put up a notice of motion to seek support from the State Government to back the land that wasn't developed there and that he had good legal advice. Apparently the council got similar legal advice. The motion was defeated and replaced with something so airy-fairy I can't even think of it. That seemed like a really hopeful situation at the time where it wasn't to the detriment of the developments that were already in place, but it was going to prevent what we were destined for in the future under the present planning regime. That was very unfortunate because legally it seems that that is a possibility, and the council is not liable. I can't understand why our council did not pursue that option, especially when they got their own legal advice confirming that.

LYNNE CAIRNS: Can I just say, too, about what Helen was saying, that the legal advice that council actually got was stronger than what the councillor himself had got, so why did that go ahead, or not happen, I should say? The back-zoning did not happen. But also, what the people of the town—the Yamba CAN and Valley Watch—what we're feeling is that it's got to stop now. There needs to be a moratorium, stopping development on the flood plain. In Yamba—and I know that other areas have got similar problems—people are so fearful. They are so stressed. I talk with the locals a lot. Every time we get a heavy downpour of rain, the ones who were flooded and had sewage through their homes are anxious that they cannot insure their properties now or it's too prohibitive. So it has to stop, it really does.

The CHAIR: You've identified there that council is, perhaps, feeling some hesitancy or looking at State government leadership. Is it a matter of absence of leadership? On the papers that you present and on the materials, it does seem quite clear that we have headed in a particular direction. Some developers' consultant reports seem to suggest, "It's all okay; we're satisfying the requirements." But then the community, the evidence from the ground and the experience that people have lived through doesn't seem to play out.

LYNNE CAIRNS: The council's LEP has been contravened for years. There is a section that talks about when you have rainfall on a property it is not to be dispersed onto any other properties. That has been contravened for years. Unfortunately, we seem to have this environment now, or this mentality, that it is them, council staff, versus the ratepayers. This is why we've been asking and asking why wasn't there any post-flood data collected. And there wasn't. This is why the SES has now taken up the ball and said to us, "If you hold another meeting—Madam Chair, you would there at the Yamba Get Ready – Flood Awareness and Resilience meeting. SES were there asking us to have another meeting so that they can collect the data—what is there—but it is over two years on. A lot of this data is probably gone. People have moved on and sold up. They haven't got their photos and can't remember where the flood height was on their properties or how long it stayed there. That is what is appalling. It really should have been done.

HELEN TYAS TUNGGAL: Regarding the DA under consideration—this came from last week—the best assurance that the CVC staff have, regarding the 22 issues of noncompliance last year, is that their belief is that, according to expert opinion provided in the reports from the developer, noncompliance issues have been addressed consistent with the controls for west Yamba, which are obviously inadequate for current needs. There is something else I would like to add that might help explain things, but I don't know whether I'm allowed to say it.

The CHAIR: You have the benefit of parliamentary privilege, but remember what we say at the outset: Whatever you say in here, you're not covered as to what happens outside.

HELEN TYAS TUNGGAL: No. It's factual—to mention the name of the planner. *The Sydney Morning Herald* called him the "architect" of West Yamba in 2007. He is also, in the last few years since he left council, the consultant for the developers. It's been very interesting. I don't want to cast aspersions if it's not necessary, but it does make people a little bit concerned. A lot of these things were put in place to allow this to happen decades ago. Even when we do have the LEP 5.21, it is just ignored. Expert opinions are ignored.

LYNNE CAIRNS: Sue, you heard me talking about this evacuation plan that is totally inadequate. Council's conclusion of their assessment actually says, "Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported."

The CHAIR: I also heard that there are a lot of older residents that are living in supported residential accommodation, and that any evacuation plan would be of military scale if a flood was worse than the 2022 flood. I heard that and found it very compelling, because all of the evacuation routes are blocked. Let's face it: The 2022 flood had characteristics that were potentially quite generous to some of our local areas—i.e., it could have been so much worse in terms of the flood heights and levels when we're looking at probable maximum flood heights.

HELEN TYAS TUNGGAL: It's interesting. The last riverine flood was not as bad for us as, say, for Lismore. It was mainly the stormwater that came for days beforehand. The fact is that data hasn't been collected and lived knowledge hasn't been sought, like Tweed council is doing to get a better picture. There's a home in Golding Street where the 1974 floodmark is 78 centimetres higher than what our current flood model is. You saw what I said about these eight lower catchments, assuming that the floods are only going to go up them and not come down them. That came out of the SES's flood evacuation dated 31 May 2024. So it's recent. That was based on a report from BMT. They're the council's consultants as well as the developer's consultants. The information was passed on by council, according to the documents, to the SES. It's just incorrect, and none of it includes stormwater.

LYNNE CAIRNS: This evacuation plan was done by BMT, and their figures—their calculations and their multiplication—are not right. It's inaccurate even in the document. It quoted 6,300 and whatever. There are 8,600 people on the flood plain that they feel will require evacuation. How can that be possible with one road in and one road out? Looking at where cars drive in West Yamba, where this 284 small lot subdivision is, there is one road in and one road out. Some of the people that you were talking about in that manufactured housing estate of over 200 require medical treatment from a nurse if they have wounds to be dressed on a daily basis, or maybe antibiotics or whatever. They were cut off as well. One particular old fellow who had a four-wheel drive actually drove through the floodwater and risked it. There were no managers on site during this event. We were cut off for seven days. He went up to the pharmacy to get medication that people were running out of. That's not good. When council is saying "no substantive risk to life", how can that be guaranteed?

The CHAIR: We really are talking about life and death.

HELEN TYAS TUNGGAL: I have one thing about BMT that has come out of a Valley Watch submission a few years ago, because we could not make head nor tail of their flood modelling and hydrology. There were so many omissions and mistakes. We got to the last page of the 164-page document, and the FIA states, "This report is prepared by BMT for the use of BMT's client. Where this report has been prepared on the basis of information supplied by the client or its employees, consultants, agents and/or advisers to BMT for that purpose, BMT has not sought to verify the completeness or accuracy of such information." It doesn't give you confidence.

LYNNE CAIRNS: How do we overcome this? Is it a conflict of interest?

The CHAIR: These are all matters that we will consider. We've run out of time. I want to say one last thing and ask for your comments very quickly. After the 2022 flood, both the Premier and the Prime Minister said there will be no more development on flood plains. What's your response to that, given we're now in 2024?

LYNNE CAIRNS: Honour your commitment. Honour your promise.

HELEN TYAS TUNGGAL: It must stop until things are sorted out. We're heading for a disaster.

LYNNE CAIRNS: Moratorium.

HELEN TYAS TUNGGAL: It's really, really scary. We keep asking the council. They talk about making decisions in good faith - the sincere belief is that they're making decisions based on accurate information. They can't deny the information that has been given to them by groups such as Yamba CAN and Valley Watch, and residents—photographs and videos. I can't see how anything can be decided in good faith when there's all this evidence that it's wrong.

LYNNE CAIRNS: Compelling evidence that it's wrong.

HELEN TYAS TUNGGAL: Compelling.

The CHAIR: Thank you both so much. The secretariat will be in contact with you if there were any matters taken on notice. Thank you for tabling the documents. Thank you for your time.

(The witnesses withdrew.)

Mr PAUL SCULLY, Maclean local resident, affirmed and examined

Ms JANEEN SCULLY, Maclean local resident, affirmed and examined

The CHAIR: Welcome to both of you. Thank you for making the time.

PAUL SCULLY: For clarity, I am no relation whatsoever to the Minister. Probably way back when, but not that I know of. We are retired Maclean residents, upstream from Yamba. We will be presenting our views on what happened in '22 et cetera.

The CHAIR: Would either of you like to start by making a short opening statement?

JANEEN SCULLY: Sure. I'll do the honours.

PAUL SCULLY: Thank you, darling.

JANEEN SCULLY: This is a little overwhelming, but I'll do my best. Thank you for the privilege of being here today. Thirty-three years ago we built our home on flood-prone land. It was what we could afford. We were fit and young, and had three children. We physically built our own house to a one-in-100-year flood standard, so we have a highset double-brick home with internal brick walls. The town's main river levy, flood mitigation systems and preparedness have protected us well so far. What we didn't anticipate 33 years ago was some major goalpost changing: that a cane field and flood-prone land where the town's detention system drains into would be filled and re-contoured to become a development, that a horse paddock on flood-prone land next to the town's detention system could become a development that had three metres-plus of fill on it, that the council would have little power to reject a DA without incurring a court case and huge expense, that a highway upgrade would dump huge amounts of fill on a flood plain, and we didn't anticipate climate change. Most certainly, the insurance industry anticipates and believes in climate change, as indicated by the increased premiums we are experiencing.

So here we are today saying we aren't necessarily anti-development, but the situation we have where we live is probably best represented by the question that we all ask as locals as we walk past the development: This isn't right, surely? Respectfully, could you please refer to the three images that I have distributed today. I really feel that in this circumstance you need to look at pictures as I describe what's happening to us. Disclaimer: We do not claim to be experts. This is our understanding according to our experiences and our ability. So we're not experts. We're just saying, "Hey, here we are. We've been directly affected by what's going on."

Page 1 shows the northern end of Maclean, which is 15 minutes by road to the mouth of the Clarence River at Yamba. It's a small town with a largely much older demographic. The Clarence River is the largest coastal river system, with the largest catchment in New South Wales, if not the eastern seaboard. It's immense. Page 2 roughly identifies key features in this area. The dotted red lines are the town's stormwater detention basin and its flow direction. We understand the catchment that this basin caters for is about 54 hectares and collects significant fast-flowing run-off from the nearby hills.

The solid red line is a levee that stops floodwater from the north and south entering the detention basin. It is a separate levee to the main river levee. The larger green line outlines just some of the hills that filter run-off into that area. The orange oval is a development approved in 2006, 2007 and 2015. Intensive filling and land contouring commenced in 2023, some in 2016. We're still trying to find out the engineering details for the diversion of the main drain and the two detention basin outlets. The blue oval is a potential development. The DA was withdrawn in 2022-23 but proposed three metres plus of fill and cutting out a portion of the hill. The darker green oval is a C3 conservation area—a community-valued remnant wetland area, forming part of mapped significant biodiversity corridors and wetland bird habitat connections.

Page 3 gives a better illustration of the spread and volume of water that the detention basin caters for. Please note that the ponded stormwater and run-off was much larger in 2022—page 3 is 2007, and it was a smaller event than what it was in 2022. That red line, as I say, is the levee that separates the detention basin from the development. The development is on the left-hand side; that's the existing development. It's just covered in water. If you look at the 2022 picture, it will show that they have started their filling, and it's well exposed—or at one end; the other end of it, which is yet to have the earthworks done on it, is still well and truly underwater.

In 2022 flooding illustrated what happens when exiting downpours of stormwater and run-off is held back on the other sides of the basin levee. We, along with many of our neighbours, are really concerned that by raising land heights, removing pervious ground, filling in and diverting major drains on the northern side will create a similar scenario to 2022. A second development on the eastern side would create a pinch point where water will rush through, as this and the detention basin will be the lowest point, and that feeds through into the town. There are so many unanswered questions but one that only seems fair to ask: Would any developer choose to live in their forever home in the areas we outline today?

In closing, we would like to put forward the following outcomes: an existing zombie development on flood-prone land to please stop now and work with the community for better outcomes, reflecting contemporary conditions; a halt on potential development on neighbouring flood-prone land until the stormwater, run-off, flooding and environmental issues raised by community are addressed; development applications to include combined or cumulative existing and potential developments in their flood, stormwater and run-off planning; the condition of local stormwater assets to meet increased demand; local stormwater and run-off impacts on a town's detention basin and properties surrounding it, not just downstream but also around and upstream; legislation to support council in rejecting a DA without incurring expensive legal fees and time-efficient strategies for unfinished developments gone broke—which is relevant in our situation as well; the community-valued conservation area to be utilised as an asset, to be rehabilitated for positive environmental outcomes that will contribute to efficient soakage and value-adding aesthetics; and government to impose on insurance companies to provide affordable insurance, to factor in flood mitigation changes which owners make to their properties and to offer the option of no flood cover, bringing the premiums into line with other properties who are not affected by flood. I give our sincere thanks to the Committee for conducting this inquiry. We are grateful for the opportunity that this has presented.

The CHAIR: I'll start with a couple of questions. The first is some clarification on the final part of your statement, where you were saying to stop the zombie DA now. Were you referring to the DA in the orange and the blue circle, or one or the other?

JANEEN SCULLY: I'll clarify that. It would be the orange one. As I say, that's underway, but it has stalled.

The CHAIR: Sorry to interrupt, but I acknowledge that some members of the Committee had the benefit of meeting with you, other members of the community and First Nations Elders. We did get to have a look at some of the sites that you're referring to. The one in the orange, would that be the site that we saw where we had an interaction with a gentleman who was doing his own drainage work on the day?

JANEEN SCULLY: Absolutely, yes. That is an approved development. It has actually swapped hands at least two times, if not three times. It's halted; we understand that it's in financial difficulty. We've been left with this unfinished development that has contoured the land but left huge mounds of earth around, where there are weeds and the like growing over it. It's already causing problems for neighbours. You're quite right.

The CHAIR: For the purpose of the hearing, we had an interaction with a gentleman who lived adjacent to that land. There were predictions of an east coast low or something coming our way—some heavy rain about—which actually didn't eventuate, fortunately. The forecast was for heavy rain. He was literally out there with his own shovel and mattock trying to make some drainage channels because he was worried that his property would be inundated, wrongly, from—

JANEEN SCULLY: Absolutely. That's sort of what you do. When we hear of an east coast low—Paul's the one who does the weather watch.

PAUL SCULLY: It's interesting. As you say, with that development that you're talking about, there have been at least three iterations of that, dating back to 2005. It started with 23 lots, and then there was an addition to that, an addition to that and an addition to that. Then, in 2016, there was another amended application which incorporated more drainage stuff—a report we've never seen, but it would be interesting to read it. It would probably be one that would be suitable for the developer, I'm sure. They seem to have a playbook that they follow. When it got to 2022 or 2023, the latest stage of it has stalled and stopped because they have run out of money or their backers have stopped. Again, where the gentleman was shovelling out, he was trying to fix where rainwater et cetera accumulated on that block. The council, I'm sure, is not in a position to do any work on it, and the developers are not going to be forthcoming with any moneys to remediate it to where it is at the standard, or even complete it.

JANEEN SCULLY: It's not just drainage issues that's caused for the neighbours—we're in a bit of a cane toad problem area. This has extended. They have created this bund area with still water. The local toading people, so to speak, have gone, "That's turning that into a massive toad breeding area." We're left with that, and nothing appears to be able to be done.

PAUL SCULLY: Over the years, the accumulative effect is you've had fill, fill, fill, stalled build, stalled completion, and we are left to suffer the consequences of that, either at this stage or, impossibly, when it gets to be completed. As Janeen has pointed out, there was another application to one. When you were on the walk, there was another one where they foresee that they're going to fill up three metres of fill. They'd excavate half a hill—well, that's an exaggeration.

JANEEN SCULLY: A significant portion.

PAUL SCULLY: They would excavate down there, which, again, was going to affect it. Subsequently, that was withdrawn. And so it sits there at the present time still as a parcel of land that potentially, depending on legislation et cetera going forward, could be built on.

JANEEN SCULLY: I believe that is still being looked at, quite seriously, for development. It hasn't gone away.

PAUL SCULLY: We're sure, in our town, that there are a lot of people who are apathetic as to what can happen. At the end of the day, you look at it, the Clarence River and its tributaries are 394 kilometres long and it has a catchment basin of 22,850 square kilometres. All that water funnels down between a hill behind us and a hill over there, and funnels past our town and then distributes into the basin that you saw from the lookout in Maclean, which is pretty impressive. As far as I'm concerned, any truckload of fill on that flood delta is detrimental to flooding—

JANEEN SCULLY: Stormwater, yes.

PAUL SCULLY: It could be there is flooding. The town itself is protected on one side, on the river side, for the riverine flooding but then we have the stormwater which accumulates inside, which has to be pumped out. You have to pump it out at such a rate that when the river comes up your outlets into the river to drain the stormwater are not compromised.

JANEEN SCULLY: And, essentially, what this existing development does is block off—in fact, that's what's going to happen. The main drain that goes through our detention zone goes through their property. They're going to fill that up with fill and divert around, so they're putting something right in the direct path of the outlet of the detention zone.

The CHAIR: Having been in a close, long-term relationship—for want of a better description—with that local environment, is it your submission that, if we are being sensible, Maclean isn't a place that should take any more fill or any more development? To do that, it would end up like what our Yamba colleagues are saying, that—

JANEEN SCULLY: It can't accommodate it. In my opinion, it's just silly. This area of development is a soak. It's a low-lying soakage area. That's what it's designed to do. It takes in seven or eight watercourses from those hills above. When you look at those pictures, you can see this is stormwater; this is not just riverine flooding. So it's just crazy to think that on that land they want to put about 157 house lots. It just belies belief. And then to redirect the stormwater so it takes longer to exit out of a detention basin—it's putting a dam in front of a jolly detention basin. It just doesn't make sense.

The CHAIR: I suppose they don't call it the "Mighty Clarence" for no reason. I'm just remembering the amount of times I've heard it described as that.

JANEEN SCULLY: Yes, it's big river country.

The CHAIR: In terms of that, we say 57 lots but, in effect, what we're talking about are significant impacts on the hydrology because we require the fill and drainage, whatever that looks like.

JANEEN SCULLY: Yes, it's not just the fill; it's the impact on the drainage and those main drains. When I look at the reports about the stormwater drainage, it almost underplays the role that these drains play that feed into that main drain. They call them an "unnamed channel" in some reports, and it just takes in huge amounts. If you look in my previous submission you will see photos that indicate the amount of water that just pours down into that area. So to underplay it by calling it an unnamed channel is just ridiculous.

PAUL SCULLY: Just to add to that, we ask with regard to these development applications and their drainage assessments by nominated companies, "How current is the data?"—and I defer back to our Yamba colleagues here. How current is that data? It seems to me that they compartmentalise a development, and once they come up with a solution for that they just punt it downstream or drain it off to somewhere else and wipe their hands of it, and that's job done.

But there is actually one aspect to the development that's stalled at the present time, where they have created their own retention basin. They basically bulldozed an extension of the C3 conservation area. They just flattened the whole lot. Now, whether the council, when they looked at the DA, gave any consideration to that, I don't know. But it seemed to me like it was definitely a form of environmental vandalism. We see that everywhere, don't we? I'm speaking generally now. We just totally ignore the biodiversity, and that was just in one example of it.

The CHAIR: Just on that point—and I know we're coming to the end of the session—for the purpose of the record now, when we did visit we were in the company of Aunty—

JANEEN SCULLY: Aunty Lenore Parker and Elizabeth Smith.

The CHAIR: Thank you. There was discussion about that conservation area, and there was an incredible story. I think it was the first ever Lions environmental group that had started the regeneration of the area, and there was some real concern about the loss of opportunity and the misapplication of the planning system to that. You were touching on that there, Mr Scully.

JANEEN SCULLY: Yes. Lions environmental is the only environmental-specific environmental group that's dedicated to fauna and flora. It's a small group in Maclean that started, and I have brought some information today about that too. They were trying to rehabilitate that area, or put in their bits and pieces. There were demonstration gardens commenced for local endangered species. There's a local endangered coastal emu. Lions environmental have been instrumental in raising funds and awareness of that particular group of animals. Part of that was to have plants, to show the community what these animals eat. They've done that; they've started that. And also koalas—for koalas around our area—that started as well. There has been time and effort and energy put into that. It's well and truly valued within the community from that perspective. The Lions Club had to halt that because part of the post-2022 flood was that they have designed this concrete path to go along the top of the levee wall. That has slowed everything down. They can't do anything because of that. It's not started yet, but they've had to halt everything. It's just been a real problem.

PAUL SCULLY: There was one other thought we had following on from that: Where the DA was withdrawn for the land where they were going to put three metres of fill, perhaps in light of changes to the planning laws that could actually be acquired as public land and regenerated as an extension of the C3 conservation area. I know that sounds a little bit far-fetched.

JANEEN SCULLY: I actually put that to our local council: that, perhaps for where the existing development is, or part of that land at least, they could extend the C3 and make everything work.

The CHAIR: Essentially, that would be, in your view, the highest and best use of that land because not only would it provide those immediate community benefits, but it would also allow the flood plain to function as the flood plain and the existing development has the best chance of adapting to or maintaining its presence.

JANEEN SCULLY: Absolutely. And, in this day and age, it raises awareness in a high-profile area in the town. We just have belief that it's an environmental educational opportunity, as well as being able to blend it with the drainage necessities of the town.

The CHAIR: Thank you so much for making time and coming here today to Sydney from Maclean in order to provide the Committee with your evidence. It's incredibly helpful.

JANEEN SCULLY: Thank you very much.

PAUL SCULLY: Thank you for the privilege.

(The witnesses withdrew.)

Dr RICHARD GATES, Evans Head local resident, before the Committee via videoconference, affirmed and examined

Dr PETER ASHLEY, Evans Head local resident and conservationist, before the Committee via teleconference, affirmed and examined

The CHAIR: Thank you, and welcome to both of you, Dr Ashley and Dr Gates. Would either of you like to start by making a short opening statement?

PETER ASHLEY: Yes, I would. I thank the Committee for their invitation to contribute to this important inquiry. As a matter of interest, the IPCC, the Intergovernmental Panel on Climate Change, in 2022 said that socio-economic costs arising from climate variability and change have increased, and nuisance and extreme coastal flooding have increased due to sea level rise superimposed upon high tides and storm surges in low-lying coastal and estuarine locations. The large-scale residential development proposed at Iron Gates in Evans Head, a case study in my submission, is one such low-lying coastal and estuarine location. Iron Gates is also declared bushfire-prone land.

About 71 per cent of the proposed lots, about 98 of them, have a high-risk Bushfire Attack Level or BAL, which measures heat flux exposure in kilowatts per square metre, a cause of great concern. The NSW Rural Fire Service recommends the grouping of rural residential buildings into clusters, which allow for the establishment of APZs, or Asset Protection Zones, around them. In cases of isolated locations with poor access, such as Iron Gates, dual occupancy should be discouraged. However, the proposed lots are not clustered, and the application of dual occupancy has been signalled.

These factors, coupled with the about 120 lots proposed in a relatively small space, have led to the development being labelled as a sardine development or sardine city. Iron Gates is also a sensitive coastal location, declared core koala habitat and mapped as a regional corridor under the NSW National Parks and Wildlife Service's key habitats and corridors dataset. Part of the site is also mapped as key fish habitat, contains SEPP 14 wetlands, littoral rainforest, coastal vine thickets of eastern Australia and nine threatened fauna species, including various bat species. That concludes my opening remarks, Chair. Thank you.

The CHAIR: Dr Gates, did you want to add anything?

RICHARD GATES: Yes, if I may make an opening statement.

The CHAIR: Yes, please.

RICHARD GATES: The community is the test bed for laws and policies and whether or not they're working. Climate change, planning law and human behaviour are inextricably linked. Failed policy and rules-based solutions may be the result of little regard for the human condition rather than the laws themselves. A failure of a law or policy may lead to the false conclusion that the law is not working, when it is the failure to apply the law which is the problem. Our previous submission to you, with 17 recommendations, doesn't address the human element directly but draws attention to it and how it must be included in planning law application. An invited amicus brief might be useful to give independent advice to the Committee about how human factors play a role in application of planning law and what might be done to deal with compliance failures, poor decision-making and genuine engagement of a disillusioned community which has much to offer by way of expertise.

Outstanding Land and Environment Court orders from 1997 for the Iron Gates to remediate the fire- and flood-prone land—the focus of our submission—with promises of fines and jail if not done, have had no consequences. The same developer, with what appears to be a phoenix company, had an application for a new DA accepted by council apparently on the invitation of the then general manager. Ten years later and despite planning panel refusal and independent recommendations for refusal, the application looks set to get the nod from the Land and Environment Court. What message does that send to the community?

There are three matters which I will draw to your attention. First, there is no peer review process for consultant reports. This is a big problem. Peer review would force governments and developers to lift their game. Second, there must be strengthening of the public voice so it is properly heard and not just a tick-the-box exercise. The LEC made reference to lay evidence "done at the kitchen table" with regard to the Iron Gates case—an insult when many of us have spent years and thousands of hours providing valid, professional criticisms in the public interest. Third, noise and risk issues associated with the proximity of Iron Gates residential development to the RAAF's Evans Head Air Weapons Range are being ignored. Not only will residents be subject to fire and flood risk but loud noise and dangers inherent in living close to an active practice range, which has been there since the 1940s, with live ordnance and low-flying aircraft. All of this begs the question: How can an application for an

isolated residential development with all of these factors in play—and set to intensify in the future—be accepted in the first place? Thank you.

The CHAIR: Thank you very much. From what we learnt when we had the benefit of visiting the site, what you have just explained and what the submission refers to, what is quite striking about this is the length of time that this area of land continues to be subject to these applications. Given your closeness to the issue, what do you think, ultimately, should have happened to prevent where we are now? What parts of the planning system clearly have failed if your ultimate submission is that this land is dangerous for development—inappropriate for development—and should not be subject to development? There are various expert reports that suggest this. Where do you see that the system should have behaved or responded differently? I ask that to both of you, if either of you has a view on that.

RICHARD GATES: Peter?

PETER ASHLEY: I think Dr Gates has a view on that, as I do. But I will leave it to Dr Gates to respond to that question, Chair.

The CHAIR: It's in your hands, Dr Gates.

RICHARD GATES: I think part of the problem relates to the LEP system itself. We've had objections for years to this particular site being developed for residential purposes. When the 2012 LEP was being put together, we asked that there be a formal hearing, which was covered in the legislation at the time, to discuss the matter. Council refused to have the hearing. We subsequently organised a community meeting. At that meeting, all the evidence was considered and I think it was concluded at that meeting that this was an inappropriate place to put a residential development. We invited council to come to that meeting. It declined, on the basis that it didn't have sufficient notice of the meeting so it was unable to attend the meeting. So there was a failure to begin with.

When we actually raised this in other quarters, nobody paid any attention to it. It was as if we didn't exist. Yet we had valid, long-term criticisms and there was a substantial litigation already which said this was not an appropriate site, including litigation in the Land and Environment Court, various court orders—which I mentioned in the introductory remarks—and then subsequent stuff in the Queensland Supreme Court where an agreement was reached between council and the developer. That never played any role in the current LEC hearing as far as we know, but we don't know what went on because so much of it seems to be secret and behind closed doors.

There was an agreement that came out of those Supreme Court cases when the former company was in liquidation, which was how the land was to be carved up—and it looks remarkably like a land carve-up that is going on now—and it was between council and the developer. What role that played in the current process, we don't know. That is one area where the planning system failed us. The other side is local government itself in the way in which it treats local residents. We have no recourse. Often we are just shut out and we can do nothing about it except take expensive steps in litigation. None of us has the resources to be able to do that. That is probably one example of where the planning system fails.

The other side would be where there is no attention to the expert reports which are provided to councils and to State Government to make decisions. I'm just looking, for example, at the 2014 flood planning maps, which were used for Evans Head for the Iron Gates. We couldn't get two of the three reports for flood planning to examine them and to test them. It took us ages to actually be able to extract that information from council. When I did get a hold of it, it ultimately confirmed what I already knew—that they were missing a third of the catchment.

That raises the question about where is the independent assessment of these reports? As an academic, if I publish something, it goes to others and they take it apart and come back and say, "No, it doesn't work," or, "Yes, it does work." In this circumstance, there was no peer review. They were operating off incorrect information, and that question comes forward to now. How correct is that information that is being used? What mechanisms are in place in planning to help us deal with those circumstances, often involving the human condition where people do stuff which is not quite right?

The CHAIR: I am going to ask one thing on that, Dr Gates. When you said that it took ages to get the 2014 flood planning maps, the assumption always is that we have freedom of information laws and councils in particular have obligations to proactively release material. Is there something you experienced that was not how the surface situation would tell us it is?

RICHARD GATES: Yes. In fact, I looked it up on the SES site—the river flood planning et cetera—and I found there were three reports. I could access one, and I read it, and it was a summary document. I then tried to find the other two and it said, "Please apply to council for these reports." I then applied to council for those reports and ultimately council said, "We don't have them." And I thought, "Well, how can you be making your planning decision about flooding if you don't have two of the three reports—the modelling et cetera—and how

are you going to make an assessment of the summary document and not examine the actual original material itself?"

I pressed for that, and it turned out that Rous council, an overarching council, had that information. I finally had to go to the mayor, who was chair of it at the time, and say, "Why can't I get access to these reports?" I eventually did, but it was all too late and well down the track. But it told me how difficult it was to get information that should be readily accessible. I have other instances where information has been refused, and I am sure Dr Ashley will be able to inform you about that similar situation. Does that answer your question?

The CHAIR: Yes, very much so. Thank you. I have a follow-up question on that. Dr Ashley, did you want to add anything in terms of what Dr Gates has just provided?

PETER ASHLEY: Yes, Chair, if that's alright. Going back to your question, the Iron Gates property is 100 hectares. Now, 80 per cent of that is zoned environmental in one form or another and only 20 per cent of it is zoned residential. I think that carve-up into the predominantly environmental zoning with a little bit leftover for residential development was a result, probably, of some deal that was done regarding those court cases that Dr Gates has detailed. Also to bear in mind that across the other side of the river—and the Evans River is not very wide—is Bundjalung National Park.

In the beginning, it could well have been that the northern boundary of Bundjalung National Park could have easily crept across the river to encompass the land on the other side—that is, the Iron Gates property. It has been used for Aboriginal access and camping et cetera for a long, long time—before our knowledge, anyway. But that gives some—in terms of the zoning, anyway. And the problem there, of course, was probably inappropriate zoning, but there was some compromise there to give the landowner something rather than give it all environmental zoning, which it could well have had.

The CHAIR: I see. I think you're alluding to the fact that perhaps what we have done here, or what has happened, is that it has been a situation of compromise rather than the best and highest use and most appropriate use for the land and, therefore, that was not reflected through the planning instruments over time. Would that be fair?

PETER ASHLEY: Yes, it is fair. But it also has an implication for the valuation of the property. The valuation is done on an environmental management basis for zoning. Even though 20 per cent of the property is zoned residential, that affects what the developer or the owner pays to the council and also land tax. I've suggested to the Valuer General—and now Valuation NSW—that this is underpriced in terms of what this land contributes in land tax and council rates. They've agreed in principle and they are waiting to see what the outcome of the Land and Environment Court case is that concluded on Friday last week.

RICHARD GATES: Madam Chair, if I could just add something, is that okay?

The CHAIR: Yes, please do.

RICHARD GATES: To do with the Iron Gates property itself, it's interesting. If you go back 20 years, the National Parks and Wildlife Service actually asked for the Iron Gates property to be incorporated into the national park. You have Bundjalung National Park, as Dr Ashley has indicated, to the south, and you've got Broadwater National Park to the north. So it was a corridor that joined up the two properties. National Parks was refused on four separate occasions for acquisition, on the grounds that there was no money. But it is a wildlife corridor which has been identified and it has a number of Aboriginal cultural properties and they're Aboriginal properties under native title all around the Iron Gates itself. There have been other attempts to acquire it and in fact I made an application to the Biodiversity Conservation Trust and they declined to take it up because it had been subject to legal matters and so on at the present time.

I also met with the State Cabinet secretary on 30 April 2022 when the State Cabinet visited Evans Head to announce the Evans Head aerodrome being put onto the State Heritage List. I asked that it also be acquired for National Parks to make that corridor and to be used as a site for Aboriginal folks for training and learning, and also for some eco cabins but with a lot of constraints on that. So it's not that we haven't tried to actually get it acquired and put to a higher and a more appropriate purpose, but it's just failed repeatedly. I'm not always sure of what the reasons are. But there is this enormous push for development and none of it takes account of the fact that we are already past the carrying capacity of the land. You just only have to look at the state of the Richmond River—which feeds into the Evans River, by the way—and what a sewer line it is. We're not taking account of any of those variables and looking at what it is that we're doing. That's a tragedy of the commons which is being played out and it's a really sad state of affairs.

The CHAIR: Going back to an earlier point that you made around the 2014 mapping—that there was not sufficient data available to councils in real terms to make the best decisions about what we were doing in

terms of the LEP and the zoning and so on. Is it because council staff—when they are assessing DAs, rather than relying on their own materials, it is a case-by-case relying on the developer's consultant reports and that is the kind of fallback system. If that is the case and that is your experience, is that how we come to failing implementing strategic planning?

RICHARD GATES: It could be the case. There was a bit more to that story which I didn't tell you about. That is that I actually discovered that there was the missing catchment before the actual plans were approved through my own research. I raised that at the time and I was told by Rous council that they would fix the problem. It didn't happen. Council knew that as well. It didn't happen. So there's a failure going way back and it's kind of like talking into the wind on some occasions. I'm not sure how you correct that problem. It's as if we don't exist. I'm not sure that answers your question.

The CHAIR: That's helpful. Just to be clear on the current application, it was refused by the planning panel and it's now in the Land and Environment Court and that hearing has been heard. Is that correct?

RICHARD GATES: That's correct. It finished, as Dr Ashley indicated, last Friday. Now, it is based on more recent flooding information. But I have yet to examine that critically because it doesn't cover the entire area. It says that, and of course the criteria that council sets for what's acceptable and what's not acceptable is very conservative and doesn't take account of what's happening here with this climate change really ramping up dramatically. If you read the latest literature, it's not a good look. So I am worried about this stuff being out of date.

The CHAIR: In that context, then, the materials that the court is relying on at this point—they are the private proponent's consultants reports. Is that correct?

RICHARD GATES: That's correct. We have seen them. They were dumped on us with the latest iteration last November—I think 2,300-something pages of consultants' reports. We had 28 days in which to reply, which is truly remarkable when developers have had years to put it together. They have relied on those in their Land and Environment Court hearings, but it's all done behind closed doors, where the consultants come to some agreement about whether or not they approve something or not, so they line up on the things they agree with and the things that they don't agree with—but we're not privy to that. We're not privy to the statement of facts and contentions that are going on in the court because the solicitors—in this case representing council—refuse to make those documents available to us.

I only discovered just at the end of the trial that, in fact, if I applied directly to the court, that statement of facts and contentions could be made available. But I want to know why a council's counsel is refusing us access to critical information here that will allow us to assess the quality of the consultant's reports and the agreements that they reach. Often they are problematic and do not take account of information and decision theory or current literature. For example, to do with this development, they are talking about "shelter in place", something which I don't believe the State Government has signed off on yet. There's a whole literature devoted to that and the human factors which are involved in it, which are not addressed anywhere by anybody, including the bushfire people. There could be any agreement that's been made about acceptance which does not take account of the human factors in all this—but we don't know.

It's like the laypeople: We're treated as if we're dummies. We're not dummies. We have professional backgrounds and bring a lot of experience. I don't mean that to sound arrogant, but it's kind of this binary system: If you're an expert, you count, but if you're not a "qualified expert" it's as if you count for nothing. We've got to do something to break down that binary system so that the experience which is in a community is acknowledged. I've seen lots of consultants' reports where they actually have not been out in the field to look to see what's going on. It's truly remarkable. I just think of one example, where a consultant came up with a report saying, "These are the water flows," et cetera. When we checked it out, they were in the opposite direction to what the consultant said, and they'd never been out and done the necessary measurements. That's why we need more scrutiny and visibility of the information being available to the courts to make decisions. I think there needs to be a review of some of those processes.

The CHAIR: Dr Ashley?

PETER ASHLEY: Just on the subject of these expert plans et cetera that Dr Gates has commented on, the public has had only access to the plans that were submitted to the court to do with a notice of motion to amend the plans on 30 November last year. It's now, as one would appreciate, over six months later. I and others have tried to get these plans but they've been denied. For example, on 1 May there was a hearing at the Land and Environment Court at which 28 new A3 pages of plans were tendered to the court. There's been many other changes made since 1 May, particularly in the last two weeks, which were the two weeks of the trial.

These are all plans that the public know nothing about. They're all arrangements made between the consultants and the parties, their legal teams et cetera, and the public have no access to these new plans. I believe that the DA that was lodged, to which the plans of 30 November applied, probably no longer applies—but we don't know. In fact, from what we're picking up from the court process over the last two weeks, it almost could be construed as a new DA. That's a real problem, this communication to the public, after the DA having been in process now for nearly 10 years.

The CHAIR: In that sense, are you both suggesting that the community is being locked out or is not being as involved as it ought to be and, from your experience, that actually manifests in worse outcomes or less-informed outcomes when we're talking about the public interest?

RICHARD GATES: Yes, both.

PETER ASHLEY: Yes is the short answer. Thank you.

The CHAIR: We have come to the end of the session. I know that we have been running a little bit late. Are there any final things either of you would like to add?

PETER ASHLEY: Yes, Chair, very briefly. Obstacles to change needed here include—as you probably appreciate or the Committee would appreciate—bureaucratic inertia; the business-as-usual approach, which is a big one; the development lobby, which is another big one; and the political will, which is also another big one. The whole sorry saga of Iron Gates over 30 years now deserves and demands its own inquiry, I believe. Thank you.

The CHAIR: It certainly reflects a very good case study. Unfortunately, we've got so many of them that seem to have appeared. Dr Gates?

RICHARD GATES: I agree with Dr Ashley. This is really a zombie development, which should have been knocked on the head a long time ago. As I see it, there are major problems with the planning system itself, before you ever get to the overlay of climate change, which is a whole domain in its own right which is not getting the attention it deserves. It seems to me the thesis that the human factors are major players in all this—which, certainly, Dr Ashley has alluded to and we've certainly alluded to—needs to be taken up. That's why I suggested that perhaps the Committee might like to think about an amicus brief which got professional advice about the psychological and related components of what goes on with all of these processes, as has happened elsewhere. I think it could be extremely useful. Thank you.

The CHAIR: Thank you both very much for your evidence and for giving time today. The secretariat will be in contact with you if any matters were taken on notice.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr JAMES BARRIE, Founder, Save Wallum, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witness. Thank you for making the time to give evidence. Mr Barrie, would you like to start by making a short opening statement?

JAMES BARRIE: Love to. In the case of Wallum, a clause 34A certificate under the Biodiversity Conservation (Savings and Transitional) Regulation of 2017 has been issued and resultantly has cost the community and the developer a lot of time, money, worry and effort. If the 34A certificate didn't exist to reanimate laws that have been repealed at the expense of current laws, it wouldn't be able to cause the divide and expensive trouble that it has. We as a community have become alarmed to discover the inadequacy of the proposed offsets legitimated under clause 34A and the erosion that this loophole has had on our planning laws. The zombie nature of this proposal has insulated it from the proper protections for threatened species and sensitive habitats.

This situation has entrusted a developer with stewardship of threatened species that they've repeatedly harmed on the site, and ecological consultants have provided evidently tailored data to suit a development proposal's approval over threatened species conservation. It is incomprehensible that the NRPP, who approved the DA and issued the clause 34A, could have been unaware of the many aspects of this development that have not been satisfactorily assessed. There is nothing satisfactory about the biodiversity impact assessments that have been made in ecological reports of this DA. The offsets are afforded to only three of the 22 threatened species on the site and are not based on accurate species distribution data. They are woefully inadequate for threatened species conservation and they are not established methods with longitudinal precedents, nor are they best practice; but rather, they are experimental and temporary relative to intact natural habitats. Therefore, it is not guaranteed into the future that this measure will be successful.

All proposals for purchasing offsite offsets were rejected by the director general of the planning department as being not representative of Wallum, as it is so rare. This triggered the proposal of onsite offset arrangements, such as the artificial frog ponds. It was then spun that Wallum is degraded land that they will rehabilitate and ecologically enhance, and they minimised and grossly under-represented the true extent of the Wallum froglet habitat, as pointed out by the director general when he recognised it actually comprised 12.29 hectares of the site. But this went unheeded and was never updated. Wallum was set to be rezoned in 2008 as E2, E4 and R2 in the Byron Shire Council draft LEP, but that was blocked by the developer when they lodged the concept plan at the last minute to prevent the zoning being completed. Wallum became a part 3A major project under the EP&A Act.

Part 3A, major projects, has since been repealed. Its repealed status reflects its legacy of failures, revealing it was insufficient in upholding the values it is meant to uphold. As part 3A, major projects, has been repealed, any DA under that repealed legislation should be reassessed under current legislation. There's a democratic obligation to meet the current expectations of the community. We recommend the BAM system under the BC Act as it is more rigorous, requiring a BDAR and approved assessments. It should be the minimum standard, and all projects under the clause 34A certificate should be stopped and reassessed under the BC Act immediately. Wallum contributes a deep cut to a much wider story of extinction risk in the State. As we know, Wallum is one of many such historically approved projects, and together they cause great harm to our environment.

The CHAIR: Thanks, Mr Barrie. I just note that Committee members did have the benefit of attending the Wallum site and meeting with members of the community and members of the First Nations community, and had the benefit of receiving that direct communication and connection with the site and those members of the community. There's something that I'm aware of—obviously, coming from the Northern Rivers, it's impossible not to be aware of the community resistance, for want of a better term, on the ground in relation to the Wallum development. But part of that, as I understand it and been part of it, was writing to the New South Wales planning Minister to try to engage the Commonwealth environmental law through the New South Wales planning system as well. Are you able to tell me what has happened there, and what the response was to those pleas from the community that the planning Minister engage the Federal Minister under the planning system?

JAMES BARRIE: We put quite a bit of effort as a community into engaging the New South Wales planning Minister, Paul Scully. He eventually looked at the case. After quite a bit of advocacy—even having the mayor write to him as well—he replied, essentially, that councils have an ability to stop these zombie DAs, and they should do so. He hasn't provided us yet with anything meaningful in terms of his willingness to refer the project on to Tanya Plibersek, the Federal environment Minister. That's quite disconcerting, given that this week we'll quite likely be back on the front line again trying to stop contractor entry to the site, because the wheels continue to be in motion. We continue to lack that critical support from the parliamentary level.

The CHAIR: So your advocacy to the planning Minister is because he is uniquely positioned to refer a project to the Commonwealth Minister for assessment under the Australian environmental laws when a proponent doesn't refer the project themselves. Is that your understanding?

JAMES BARRIE: That is my understanding. We've lobbied the proponent to refer themselves and they've refused that. We've lobbied that from multiple angles. We've lobbied Tanya Plibersek as well, and her office. My understanding is that Tanya Plibersek herself is also not accepting that responsibility. Her requirement appears to be that the State planning Minister, Paul Scully, make that referral to her directly and then she would act upon it.

The CHAIR: So the community has now found itself, again for want of a better term, in an advocacy conundrum. You're appealing to the people who have the legal power to undertake to make sure that this development proposal is examined by the Australian threatened species laws or biodiversity conservation laws, but nobody who holds that power is willing to exercise that power. Is that correct?

JAMES BARRIE: Yes, that is correct. And that has been correct for the last nine, almost 10, months now.

The CHAIR: In terms of your statement just now that the wheels are turning, things are hotting up and there's likely to be more resistance on the front line, what has the experience been to date? Have people been arrested? Do you have any rough figures around what that looks like? What is the community cost at the moment?

JAMES BARRIE: The community cost has been enormous. There are a great deal of people who have given up a lot of agency in their own lives in order to exert their agency onto the Wallum protection, simply because they believe in it so much. They are concerned for the threatened species, concerned for what is Indigenous sacred land and concerned for the local community and what it means that a place like this can be subject to loopholes in planning legislation and therefore subject to destruction. I think there has been something in the order of 22 arrests. There's been a repeated arrest. There's been targeting of certain members in the community who've been vocal about their protection by police, even someone being visited at their home and arrested for a trespassing fine. This approach appears to be requiring some sort of parliamentary input, and it's not getting it because the community is now taking up the protector role. The community is just not resourced to do it. A lot of us have given up so much from our normal lives, from the lives that we need to upkeep and from our families, which we really shouldn't have to do. We're doing that because the system is not protecting in this case.

The CHAIR: On that, you mentioned the Mayor of Byron Shire Council had written to the planning Minister. What is the situation with Byron council? I have some insights, but for the purpose of this Committee—and I know we did meet with the deputy mayor on site, and we heard from her when we visited Wallum. But in terms of council, how does it work? Are we looking at a council that doesn't want this development to go ahead or doesn't think it should? Could you explain to us what has happened?

JAMES BARRIE: Yes. Of the councillors on staff, I believe that the mayor and all but one of the councillors have condemned the development, condemned its legitimacy and said that it wouldn't pass if it was given to council and put through the local DCP—if it was put through the normal processes of local approvals. So it's quite concerning that it has gone through this process with the NRPP and has been, in a sense, taken out of the hands of the local people. The mayor has made it quite clear that this would never be approved if it was on his desk. It has caused a lot of political division and political difficulty on the ground. Along with the resources of putting time and energy into this, there's also the divisiveness, pitting the community against contractors, the developer, the councillors and one another when it comes to the difficulty of these decisions. They feel bound and confounded in different ways. That's then leading to complexity and difficulty in understanding the decisions that councils have to make when they get into a situation where they have to administrate the steps in an approval that has been pushed through on a State level because of the way that the planning department and the NRPP have handled this proposal and its DA.

The CHAIR: Were there Byron councillors on the NRPP?

JAMES BARRIE: Simon Richardson, the former Mayor of Byron Shire Council, is on that NRPP panel. He, along with Anthea Sargeant and a handful of others, approved the Wallum development. He did so without visiting the site. He also did so having been the mayor during the time when the concept plan objections were lodged by multiple expert ecologists back in 2012 and 2013. He would have seen all of those lodged objections. He would have been well aware and had an understanding of that, and yet he didn't visit the site in his duty as someone on the panel of the NRPP, who was elected to that panel by some of the other councillors.

The CHAIR: What is the development for? This is a housing development. Could you give us a context? Is this part of Byron council bringing housing on because we need more houses? Where does it fit within a housing needs framework?

JAMES BARRIE: In the context of the cost of this housing, the location and the draft plans that council has in place at the moment, they are only looking at this place in terms of a housing option in that it was rezoned a long time ago. That '08 rezoning occurred because the developer applied for the concept plan to be put in place right when the drafting for the site was being put in for more conservation value for the site in terms of its zoning. The zoning in place meant that it was very difficult to repeal. The concept plan seems to be a very difficult and overriding thing. Again, that's under part 3A—the major projects issue which we have contention with.

In terms of providing meaningful opportunities for housing, it doesn't really cover that base when there are a lot of other housing options that are on the land that maybe contains weeds. Maybe it's denuded farmland, of which there's a great deal within the Byron shire, and is out of the flooding zone as well. This is on flood-liable land. It's on high bushfire risk land, which also risks further land clearing to the surrounding bushland of that area, should fire enter that area—which it will. It just seems to be an out-of-touch-with-local-values proposal, and that has been shown to be the case. The vast majority of people that are very active in the Save Wallum campaign are victims of the affordable housing crisis and victims of the flood crisis. Some people have become homeless or are now in modular pod accommodation in order to cope with the dislocation they've had from their homes as a result of the floods. We're in a situation whereby action and by virtue of who and how these people are, they're showing that this is not a project that is meaningful for housing. This is not a project that is meaningful for the community. It's out of touch with the community.

The CHAIR: Could you elaborate a little bit more? When you said the offsets that the proponent had proposed for this development were not approved, let's say, by the secretary of the Department of Planning and that all off-sites are now required to be provided on the site, what does that look like? Why are you and other members of the scientific community not satisfied with what the proponent is suggesting? My understanding is that they're saying that threatened species under their plan will be better off than they currently are.

JAMES BARRIE: They are saying that. They're saying it will be an ecological enhancement. They did attempt in the past to use five different other properties as offsets that they could purchase to offset the uniqueness of Wallum, but they couldn't find a property that had similar values ecologically, so that got rejected by the director general. Then they'd come along into the space of doing the onsite offset. That looks like, for the most part, artificial frog ponds. It looks like temporary nesting box measures for some of the nesting animals. It looks like planting saplings for some of these big, old trees that are on the site. It really only covers three of the 22 threatened species and it actually really doesn't cover them at all. It's pretty dismal from an ecological perspective. It appears to be an option that's been put in place that can just greenwash over what is very simply a very effective ecological system in and of itself.

On a scientific level, what we're looking at here is threatened frogs that live in these very specific ephemeral pools that rely on the coffee rock substrate that's underneath the soil. There's a thin, sandy surface and the coffee rock takes thousands of years to develop, with peat moss and sand compacting over time. That coffee rock is quite well established there, and every time it rains, quite a bit of water is filling up in the space. The water will sit there more than it sits anywhere else in the surrounding areas. While it sits there, it starts to change colour as the coffee rock starts to stain it. It creates an acidic environment that's specific for these frogs. They can't compete with other frogs and with toads when they don't have this coffee rock filtration and acidic infiltration into the water. The coffee rock is holding that water. It's slowly making its way down into the shelving of the coffee rock, then moves laterally, sinks again and makes its way slowly towards the creek. In the meantime, it supports those acid frogs.

The proposal for the artificial frog ponds literally looks like the digging of a hole in the ground with an excavator. The three such ponds that are on the site that have been put there as trial for the last few years—the threatened frogs won't go near them. They are populated by toads and they are populated by rocket frogs, but not by the threatened acid frogs. They really need a specific kind of water body with the specific moss that lives in it: the stagnant moss. All of that takes a very long time to establish. Then, on top of that, there are the wildflowers that surround it and amongst that the surface water that pools.

That surface water will, in any given rain event, fill up those deeper channels that the frogs breed in and then it will spread out into the surface water areas that are not being recognised in the plans, proposals or management plans at all. That is a foraging area, but also it feeds the water and acidifies the water as it makes its way back to the central areas that have the deeper depressions, where the water gathers for a longer period of time. Those external surface water areas aren't being considered, and also the trees around aren't being considered, which is where the female wallum sedge frog lives.

In the non-consideration of that, it's being proposed that it's enough to dig these ponds out, these artificial pond structures—which is, again, the hole in the ground—and that the frogs will just magically jump into those. We questioned the ecologists on that. They really did say and have been really clear that they just expect the frogs

to just hop into the new ponds that they would dig with machinery. There are no threatened species translocation plans. Even if they were successful in getting whatever number of frogs in there, they're not going to survive, longitudinally, because they don't have that surface water external area that they need. They don't have a decent buffer from the development proposal footprint. It would be quite serious for those threatened species—likely to lead to local extinction. There isn't any precedent of success for these frog ponds. There's no longitudinal precedent for success, unfortunately.

The CHAIR: For clarity, the wallum frog that we're speaking of is a nationally listed threatened species as well as a State-listed threatened species?

JAMES BARRIE: Wallum sedge frogs are nationally and State. It's the most vulnerable of the frogs on that site, in that it lives there in lower numbers. I did find it on the site in a location that the assessors from the developers, paid ecologists and consultants didn't find it, and I had to show them that. They reluctantly saw it. I don't know that they lodged that. It's in more locations than it has been mapped as being in. Because of the concept plan, which then refers to the 2011 JWA ecological report, the wallum sedge frog isn't surveyed or mentioned at all. It's not included in any of those reports.

There's the State-listed wallum froglet. Its habitat, in terms of area, has been quite severely minimised, relative to what it actually is. Even the director general said, "No, it's over 12 hectares of space here that this frog relies upon." We've seen that across the site. We've seen that in the developer's own BDAR. Because of clause 34A, they were able to throw out this biodiversity assessment report, which was done in 2022, that, again, mapped the larger area. That's what would have been used if the BC Act, the Biodiversity Conservation Act, was the used legislation here instead of the repealed legislation, through the loophole. Yes, it's concerning.

The CHAIR: I feel like that you're painting a picture here of a planning system that is running parallel to the reality of the local knowledge and the scientific knowledge about the site. You have a system that is saying—and I suppose that's a consequence of the fact that this is an unusual character of a zombie DA. It's a slightly different zombie DA, but, in essence, we're still more or less working on an approval that happened back under part 3A, which has been repealed, that had a savings provision. In essence, there's still no development on the land, even though this is going back over a decade. What I'm hearing is that there's all of this new knowledge about the ecology, but that's not really able to be integrated properly into the planning system—if anything, the system is shutting it out. Is that a fair enough characterisation?

JAMES BARRIE: That's an amazingly useful characterisation. Yes, I would totally agree with that.

The CHAIR: Going back to the social dynamics, there are police resources being deployed. There are people being arrested and, as I understand it, the site is guarded full time by security guards. But there is this determination by the community. Have there been any signs of how this could be resolved differently? Have the community come forward? What is the vision from a locally-driven perspective? What are some of the views?

JAMES BARRIE: There are quite a few views. At its most ideal, the site would be preserved as a wildflower reserve and there would be firestick farming practices by the local Indigenous people that would support the Wallum ecology. There are groups that have come together under the banner of Save Wallum that are looking at what it would take in order to purchase the land. There's a group that has formed within the community that is looking at what it would mean for there to be acquisitions through community-led acquisitions that would involve the Government and would involve offsets for wider projects. There are these creative ways that are coming into the space that aren't just deleterious of the developer and their investment.

The developer has made it clear that they would sell the site for a cost. They would like it to be off their hands. For them, it's a great hassle. It has cost them quite a bit already, obviously, in security and fencing and the difficulty of that. A great deal of police resources have gone into that. We experience such a strange representation of crime in the Northern Rivers. We've got quite a few missing persons at the moment, and none of that is being solved or resourced adequately in terms of police resources, yet, for whatever reason, they're certainly showing up for this Wallum protest opportunity.

There's that concern within the community as well, and it has been vocalised quite a few times. Why are police resources going into this when it's the community standing up for the environment? Why isn't the Government stepping in for this to be seen properly? There are legal options that have been sought as well, but it costs so much money. Again, the onus and the onerousness of that is on the community in order to raise \$50,000 to get ecological reports done in order to get an injunction represented in the court. There's a great deal of money that goes into that stuff, and that's hard on the community.

The CHAIR: Our time has come to an end. Are there any final things that you would like to say, Mr Barrie?

JAMES BARRIE: Yes. I'm really encouraged that this inquiry is occurring. It is really helpful for us to have this issue looked at on this parliamentary level. It certainly helps us all gather our thoughts around it and consider that there are parliamentary opportunities for input and intersection into this issue. It's very disappointing that that seems to have failed us again and again, but the resolve is quite strong because the care for this land is quite strong. We would like to see those wallum froglets, wallum sedge frogs, koalas, glossy black cockatoos, coastal planigales, square-tailed kites and all of the threatened species—and all of the species that are quite enigmatic and totemic to the local Indigenous people—preserved, if we can, and an alternative be floated for the developer. Whether that means they get a buyback at another site or a land swap or something like that, that's something we wish the State Government would take up.

We would certainly like Paul Scully to advocate for the referral of this development and consider the site being rezoned. It's quite a significant site for us ecologically. It's the last of its kind in Brunswick Heads, and we really don't want to lose it. We appreciate the interest in this issue. I appreciate how Wallum is just one of many of these deep cuts into the biodiversity of our coast and our State. We'd really like to see due diligence done and any of the proposals that are under clause 34A or part 3A—any of those proposals that use repealed legislation—be thrown out and reassessed under appropriate legislation that is current and more representative of the community's values.

The CHAIR: Thank you very much for your time and for presenting your evidence today. The Committee secretariat will be in contact if there are any further questions.

(The witness withdrew.)

Mr STEPHEN WARHAM, President, Save Myall Road Bushland Incorporated, sworn and examined

Ms LILLIAN WARHAM, Member, Save Myall Road Bushland Incorporated, sworn and examined

The CHAIR: Welcome. Thank you for coming in today and giving evidence. Would you like to start by making a short opening statement?

STEPHEN WARHAM: Sure. Save Myall Road Bushland is a group of about 70 members at the moment. We held a roadside protest there a couple of years ago and we had about 200 people come along. That's about the extent of our group. We have other supporters. We have various petitions that we've run, where we've had thousands and thousands of signatures and things like that. But basically it's just a group that was specifically set up around this proposed development that's a zombie development from a DA from 2013, but it has links back to provisions from 1984. Save Myall Road Bushland thanks the Committee for welcoming submissions on this important environmental and community matter. We look forward to recommendations from your work and the advice that you provide. We call it SMRBI, so I'll just use that term as we go throughout.

Our comments relate to experiences whilst seeking to protect and retain the bushland off Myall Road, Cardiff, in the Lake Macquarie area. The proposed development is by the proponent Landcom. Interestingly, in our discussions with most parliamentarians, the nature of the dire situation with the housing scenario, it's a wedge issue for them, is what my assessment is—their concerns about not wanting to be seen preventing a development that's providing housing going ahead, whilst at the same time considering the environmental factors. So we'll talk a little bit about that today as well. I feel for the politicians in that situation, trying to represent the whole community.

The community and the environment, in our opinion, are being negatively affected by the New South Wales planning system in that it's resulting in the continued loss of biodiversity, of habitat, green spaces, and impacting community wellbeing and diminishing faith in the planning consent authority's processes. I know this time should be dedicated to what we think, but I think it's important to reflect greater thinkers than ourselves in that sense. When Dr Ken Henry was presenting the final report of the review of the New South Wales Biodiversity Conservation Act, which I'm sure you're familiar with, he said:

Biodiversity is not being conserved at bioregional or State scale. The diversity and quality of ecosystems is not being maintained ... we must commit to "nature positive" [approaches] ...

I'm sure you're hearing that term a lot. He continued:

...the fact of humanity's dependence upon the quality of the biosphere, in both social and economic dimensions, is as immutable as the laws of physics. The case for giving primacy to environmental repair is inescapable. Our future depends upon it.

I think we all agree on that aspect of it. I know it may seem like a motherhood statement, but what we've done is devise systems and have systems in place that are actually working against that. I think those comments succinctly explain the way people in our group feel and some of the disillusionment in that. That imperative need to protect community assets is fundamental. It's not a one-dimensional aspect, where housing is the result. In fact, this development, which I'll mention—I'll go into it now. The proposed development of Myall Road impacts 38.8 hectares of land, with a plan to clear-fell 12 hectares that has protected species within it, both threatened and vulnerable. The development is for 66 standard lots, with three super-lots, and only a total of 105 dwellings.

It's not a very big development. It offloads the responsibility of Crown land management to the local government and others, which is a separate interest of mine: hoping that Crown land can be preserved and managed appropriately, rather than seen as an opportunity, in a local government context, where people transfer community land to operational land so they can dispose of it or use it for their own means—not personal benefit means but the council's means. In this case, Crown land is being disposed of to find other managers for it to reduce their burden. There's a perverse incentive because Crown land gets 50 per cent of the benefit financially from this development and Landcom gets the other 50 per cent of the benefit.

This project has never had an environmental impact statement undertaken, and it's never been referred to the most relevant staff in the New South Wales Department of Planning and Environment. The project DA was lodged in 2013 and went on to State significance because it was over the \$5 million threshold, so, therefore, the Hunter joint regional planning panel assessed it. It took them seven years to provide conditional approval in 2020, and that was without the promised stewardship agreement that Landcom was meant to put in place for the offset. Of course, in our opinion, we feel they erred in their decision, and we are arguing the things they missed in that. The development benefits from those safe provisions, I mentioned before, like the LEP from Lake Macquarie from 1984, where it was potentially reserved for housing, going forward, in some context.

We'd suggest that it's unreasonable, using these dinosaur provisions, to consider a current development. I'd encourage you, if you are buying a house or a car in the near future, to not purchase something with safety considerations or design considerations of 1984, which we're being asked to accept. You should look for the standards of 2024 in that protection. That's what we should be doing with our environment. We have requested to anyone we possibly could about cumulative impact statements. A site-specific assessment does not provide the overall insight into the impact of a development. Certainly, we'd expect Landcom as the State Government-related entity to be able to undertake a cumulative impact assessment. We have significant other developments happening in this area. The interesting part about that is that developers, as the proponent, get to justify their development by highlighting the other bushland that is around a particular area.

By not stating what is planned for that area or knowing what is happening in that area, they can usually say, "There's this aspect here that will be kept", or that "may be kept" or that "exists now". They can use provisions or argue that they can justify their development in the fact that there's other bushland, but we can't justify that other clearing is happening in other areas for a site-specific development. When this was submitted, also, the development said there would be an offsite offset. Landcom worked for four or five years to try and find one. It did not find one. They have now decided it's an onsite offset that will be happening. They are going to clear 12 hectares and retain about 26 hectares, supposedly, through a stewardship agreement.

My argument has always been that—please don't take this seriously—it's similar to saying to someone, "You have three children. We're going to take one of the children away, and you should be happy that we're going to promise to protect the other two children." The problem with that is you don't even get to choose which child they're going to take. I say that having four children—one of them being here today. Basically, their assessment is that they want to clear-fell that area rather than protect the whole area through the process. That's what our concern is: that there's a net loss. Net loss is net loss. You can't promise to protect something when you're taking 12 hectares away.

We say the development proposal is inefficient, as I said. Some lot sizes are up to 900 square metres. We believe in a more densified development, which seems strange for what we're saying from an environmental point of view. Here we are—locals who, financially, will probably benefit from the development in our area. But we are saying that we think a more densified approach along existing road lines is preferable and could be achieved with that many lot sizes in three hectares. It preserves the connectivity but doesn't impact the flora and fauna of that area in the same way. It reduces the impact on the connectivity.

Other aspects are just the community notification process. The number of people who've come to us and said, "What's this thing about a development? We moved in here five years ago. We know nothing about it, because there's been no contact happening at all." Even when Landcom advertised their EPBCA referral for the protection of a plant species, going to the Federal Government for consideration that they could destroy a third of this plant species on the site that's protected on the EPBCA register, they couldn't even give the correct contact details for Landcom. When we notified them of that, they didn't extend the consultation period. They just said that they'd accept submissions over the weekend. Seventy-eight submissions were lodged about the EPBCA approval of that plant species being destroyed, and 77 of them were against it. One was for.

The other thing about this development is it benefits from being considered by council and the joint regional planning panel, that it will cause significant damage to the environment but that it's in the community benefit. We have a need for housing, so land has to be cleared. But the idea of densification achieves these outcomes without needing to clear so much bushland. The other thing about the site is that its level of destruction is significant for the powerful owl, which has roosting in there. Forty-six per cent of the large hollow-bearing trees will be destroyed, and hundreds of other smaller hollow trees will be destroyed, and the smaller trees are the ones that provide the homes for the possums that the powerful owl eats and requires. This requires the powerful owl to travel further, wider, and they're more likely to be hit by car strikes. That's why our concern is that council has not undertaken appropriate assessment of that, neither has the joint regional planning panel. And, in fact, council developed in 2014 a large forest birds protection plan and guidelines, and this goes against the very guidelines that they developed, but the DA was submitted in 2013, so it wasn't assessed, considering the 2014 work.

The other thing we did was that—they failed to identify some of the microbats—we got a microbat expert in there. They've undertaken a survey. The test of significance that's required was not met. They've indicated that that hasn't been accepted by the joint regional planning panel. They've just said more remediation work will have to happen. This aspect of it particularly concerns us, that, even when you've got protected plant species on the national register, when you've got vulnerable species like the powerful owl, the little bent-wing bat, feather gliders and squirrel gliders, we can't seem to get the voice or the ear of the appropriate people to address this.

The other part that bothers me is that Landcom hasn't even followed its own reconciliation action plan in regards to Aboriginal and Torres Strait Islander people. My daughter will mention that side of it because it's part of the things that she's very passionate about as well. There's been very poor or zero engagement, other than sending a letter off to the land council around the Aboriginal community and considering something else that she'll mention.

In living in that area for 25 years, we're still waiting for—I wanted to highlight this point before I wrap up. That is that, when consent's given, we at the local level are still trying to see that conditions have been met—of previous approvals. There's a development right near this proposed area that from 25 years ago; the conditions of approval from then have not been met or enforced by council. And we're still waiting for those aspects from 25 years ago to be met and see justice in regards to that. Yet we're meant to take a reassurance that the conditions as prescribed by the joint regional planning panel will be met by Landcom, who, in their case, may sell on two of the super lots to another developer, who will then go back to council and seek additional variations. It's the chipping away of these provisions and protections that we're worried about. What does "in perpetuity" really mean? We're a bit concerned about that. It usually means that a DA may go in the future to try and repurpose some other land or get some other land rezoned. We see this happening to this location if this development does proceed.

These zombie developments with their delayed consents mean that people who move into the area know nothing about the potential destruction that's about to happen. The people who live there who know about it haven't been able to change the opinion of the council or the joint regional planning panel. We need to highlight that the planning process is not protecting our biodiversity. We appreciate the opportunity to speak today. I will pass on to my daughter to mention a few things before we wrap up.

LILLIAN WARHAM: Hello. I'm a student in year 12 attending Cardiff High School, which is pretty close to the bushland development. At my school we have students who live in the Kirinari Aboriginal hostel, which is just up the road from the school. Alongside that hostel is where the development will take place. The hostel homes students who are from more rural areas and possibly do not have access to more of a wide range of educational opportunities. Having it set in this bushland environment is what I would believe is a very important factor. My mother is an Aboriginal woman herself. She has links to the Kamilaroi country, but she has lived on Awabakal-Worimi land for the past 30 years. She's raised me and my brothers here. The Kirinari Hostel has always been there. There have been so many students going through that hostel. Having it in that area with the surroundings of bushland is an important thing culturally, not only in terms of connection but in relation to back home. It's very important, I believe, and I know that it is to other people as well.

I think that the lack of consultation from the Aboriginal community is what I would put as embarrassing. There has not been a good enough amount and not enough to say that we've got the opinions and voices of Indigenous people in the community. I think that it needs to be more. There needs to be specific people who are spoken to, whether that be individuals at the hostel, such as students themselves or the den mother kind of people and the carers at the hostel. It's very important to hear those voices—also Aboriginal education officers within the school who can provide a voice and have a level of authority in that space, and they know what they're talking about. It's very important to hear these people out and people who have been in the area for so many years. I think that is a very important form of consultation that needs to take place.

The other thing is that the Aboriginal community in this area does not benefit in any way, shape or form from the development taking place, which is quite a large downside, in my opinion. I have talked to people at my own school and I will mention that the bushland is, at this point, threatened, and people look at me weird and they say, "I didn't know this," or, "I wasn't aware of this." Nobody is hearing it, which is what we're trying to do—to spread this to all cultures and to all communities. I think the Aboriginal community definitely needs to be hearing this because it's such an important area for students and for the Kirinari Hostel.

STEPHEN WARHAM: In that context, our summary is that the marginal approval process that has allowed this development to proceed to where it is now has been based purely on a subjective assessment of what community interest means. The environmental considerations have been hoped to be achieved or addressed through various treatments rather than demonstrating or acknowledging that there's a net loss of bushland and a net loss of the space. In relation to climate change, obviously, with clearing of the 12 hectares, the heat scenario that comes from that is an aspect that we're concerned about.

Generally, we're concerned that, when you have a new development like this clear felling does, instead of selective clearing, you end up with the replanting having a survival rate of about 30 per cent. About 70 per cent of the new trees that will be planted in the new suburb won't survive the plumber running over them, the person parking on the verge or the other works that go on in the site over the period of time. This happens right across

subdivisions across New South Wales. The planting goes in and the majority of it is lost. It doesn't rectify the situation in a significant way. It's achieved in that it was planted, but it's lost to the community.

The only other one that I would mention is that we've developed an alternative management plan, obviously. We've sent that to the Committee. It has 22 recommendations in it. It outlines more in depth the things that we mentioned today. We appreciate the time. We believe that there is a way to protect our biodiversity, and it is by resourcing the monitoring of developments. We have that fiscal imbalance in the State-Federal. We have the fiscal imbalance from the State to local council as well. Councils are beset with trying to monitor these sorts of scenarios. Anything, from my point of view, that addresses the ability to monitor and improve how conditioning is reported on, or becomes more visible to the community, would be of great benefit.

The CHAIR: That is very compelling evidence about—I can't quite remember what description you said there, Ms Warham. I think it was that you were "embarrassed" about the consultation process. I suppose my question to you now is, with this development and the fact that in 1984 the land was identified for housing and now we've seen the 2012 and the plans moving forward—I just had a quick look and understand that last year we were also looking for feedback about a native species called the black-eyed Susan, which is interesting. Sorry, that's my name.

The Hon. SCOTT FARLOW: It's not a black-eyed pea.

The CHAIR: That's right. The *Tetradlea juncea*, I think it is. That's a nationally listed plant and I think it's located in your region. What I would be asking at this point is if it is too late. Have the plans gone on for so long that it's inevitable and it's a fait accompli? I hear that you say, loud and clear—and you have a really good vision and you can identify all these flaws and problems in the process, some of which the knowledge now is that this is an area that is significant to First Nations young people and educators in the area. Is it too late? Where are we? What do we do?

STEPHEN WARHAM: Where it's up to is that, with the *Tetradlea juncea* or however you say it—let's just stick to TJ so we don't have to say the word.

The CHAIR: I don't mind black-eyed Susan.

STEPHEN WARHAM: Or the black-eyed Susan, yes. In regards to that plant species, unfortunately, the Federal Government—we just found out, seven months after, that a piece of paper has been signed to say that the developer is given permission to destroy significant amounts of that federally protected species on this site. But, even before that, Landcom determined they would go and do soil compaction tests. Next minute, I see people traipsing through the bushland with excavators before they have got their consent in place and they are destroying plant species that are federally protected by driving through there with the excavators.

So I go ask the guys what they are doing and they are digging 20 holes and they take about a 10-kilogram sample bag out. You and I could do that with a shovel, but they are driving excavators through this area that has a federally protected species. They have done that in 20 locations. They have cleared out spaces the size of this room to get that sample bag because of the excavators going in there. This should be done manually in an area like that. That has happened to 20 locations across the area.

The CHAIR: Is that one of your examples of the holder of the land not following the right rules?

STEPHEN WARHAM: Yes, the holder of the land doesn't—this is where compliance is useless, writing it. You may as well be a parent telling your child 50 times and never following through. Getting back to what you are asking about, I'm saying that with the Federal Government approving the destruction of 628 clumps of this plant species across the part where the development is, because they're going to clear-fell that, the outcome should be that they look at a redesign of the lots and they try to align it closer to the road line rather than going deeper into the bush.

The diagram within our submission shows you the transect lines of the plants and animal species across that area and how it connects into the broader Lake Macquarie region. It shows you other preserved areas that this specific site connects to, and we are trying to protect that connectivity. I have told my four children, who have been worried about me pursuing this for years, that 99.9 per cent of this development will go probably ahead because Landcom are doing it and people don't want to go against Landcom. But the 0.1 per cent says that we will do the best we can. If we can get a better outcome for the environment, that's what we're going for.

We would say that unless they get a stewardship agreement, it can't go ahead. Unless they get approval for the traffic upgrade that they're planning to do, it doesn't go ahead. If they hadn't got the Federal Government approval for that destruction of that species, it wouldn't go ahead. At the moment, they've still got consent up until December next year to get this development on its way. We're continuing to work up to there to make them meet their conditional approval from the Joint Regional Planning Panel, and then the council says, "Yes, you have met

these 26"—or whatever there are—"conditions. You can go ahead with your development." But until that point, they haven't demonstrated that they can commence the development. Meanwhile, they're driving excavators through the site, expressing arrogance in saying, "Well, we're going to get it done anyway. We're going to clear all this so we can damage this anyway."

The CHAIR: With that 1 per cent or whoever you are suggesting—

STEPHEN WARHAM: The 0.1 per cent.

The CHAIR: —you still hold hope that there is a chance that actually there could be a different use for this land entirely?

STEPHEN WARHAM: Yes. Our first approach was a judicial review through a barrister. Our second approach was to lobby Tanya Plibersek not to sign that agreement to destroy the protected species. Our third approach will be to go to more of a political approach and to look at each of the components that they have to comply with to make it happen.

The CHAIR: In terms of your local government's housing strategy, are you aware whether there are other areas where housing is going to be built to address the housing supply issue?

STEPHEN WARHAM: Sure. I cut down my presentation, obviously, because of respect for your time. But, basically, just down the road there is a lead smelter that is selling lots of land that had been repurposed, and people are paying hundreds of thousands of dollars for those sites. That's what we should be doing: not clearing vital bushland but repurposing grey land—land that is being repurposed. In the Hunter, there is a large amount of former industrial land that can be repurposed for housing and there is a large amount of former agricultural land that is being repurposed for housing. In fact, there is an oversupply, I would say, of lots available right now for housing in the Hunter.

But what has shown in the purchaser's eyes is that people have predominantly bought infill land rather than going to those outer regions, because infill land is where—knocking down and rebuilding is where you will get all the services already: the transport, the shops, the nice cafe et cetera. Yes, there is lots of land that we can use and Landcom should be using, rather than clearing vital bushland with the powerful owl in there, and one that's got an Aboriginal hostel on site that rural kids from Moree and Brewarrina and Bourke are coming to. In our submission you will see some of the totems they've practised in the bush and some of the trees even, which we didn't know about until we went in and had a look. I will stop rambling now.

The CHAIR: Your ultimate hypothesis here, though, is that it's not too late, we should be stopping this plan and Landcom should be doing the ultimate highest and best use for the land and that that is actually to protect it and regenerate it. That's what I'm hearing.

STEPHEN WARHAM: Exactly.

The CHAIR: And really respect and explore what young people and First Nations people are suggesting would be best for them into the future as well.

STEPHEN WARHAM: Yes. When we went to the joint regional planning panel, Landcom was there. We asked Landcom the question, "What is one example of best practice in property development that you're doing on this site?" The spokesperson for Landcom at that hearing couldn't give us one. That shocked me because I thought they'd come up with a quickfire five or six examples. Not one. We're saying that this development—in fact, because it's dragged on for so long for them, the joint regional planning panel and the council have been very accommodating of Landcom to try to get this across the line as opposed to what they would be for a private developer. That's concerning in a sense that they would—for 105 lots. Down the road near the train station, there's a development on about a hectare and a half for 95 lots—housing units not housing lots. That, to me, makes more sense than destroying—so we're here to protect the bush. It doesn't make any sense what Landcom is doing. Landcom should be our friends because they are the government. I know they're at arm's length et cetera. But they should be doing best practice to show developers how things should be done, not doing this drawn-out et cetera et cetera.

The CHAIR: Dragging 1984 to 2024. Thank you. Our time has run out. I also really thank you, Ms Warham, for joining and presenting today and coming and giving evidence. It's not often we have the absolute privilege to hear from young people directly. I commend your courage and thank you very much for your time.

(The witnesses withdrew.)

Mr EBER BUTRON, Chief Community Officer, Lismore City Council, affirmed and examined

Mr ANDY PARKS, Co-ordinator, Strategic Planning, Lismore City Council, affirmed and examined

The CHAIR: Thank you both very much for coming along. Would either of you like to start by making an opening statement?

EBER BUTRON: I might start. I'd like to say we're probably not as prepared as we normally would be. We were given very late notice of the session today, but I guess a broad overview, really, about the planning system itself—I've had this conversation with many colleagues, but we're working off the Environmental Planning and Assessment Act 1979. So the New South Wales legislative planning system is based on a document that is over 45 years old. Over that period of time there have been amendments to SEPPs, to ministerial directions and other bolt-ons along the way. However, invariably we're still working off a document that's pretty old. The environment and the planning systems and the challenges faced by the community through the planning process have come a long way over the last 40-plus years.

Just from my own personal experience, I've worked in South Australia, Western Australia and Queensland as well as New South Wales. Each of the other States has gone through various changes in legislation. They've all amended their relevant planning Acts. Even Queensland has gone through, I think, at least four if not five iterations over the last 15-plus years. When we're considering whether it's climate change, whether it's economic issues, whether it's environmental issues et cetera, I think New South Wales is probably due for a review of its planning processes and all the documentations and legislation associated with them.

Once again, broadly speaking, whether we're dealing with climate change or otherwise, if we do a review of the planning process, you shouldn't necessarily be reviewing it through the lens of one issue. It should actually have that holistic approach and the triple bottom line, as we always speak about, in terms of the environment, social and economic aspects. They should all be considered on their merits. Whilst climate change is a very important issue, the community across New South Wales and even across the nation is going through a lot of its own challenges, whether it's housing supply, provision of housing issues, affordable housing or challenging economic issues. I think any review of planning legislation should address all those items in their entirety.

Also, our current planning system really is guided by the DA process. I believe it should have a stronger focus from a strategic planning perspective. The front end is probably the most important critical element when dealing with planning matters. I think you should front-load the planning system and have greater emphasis in terms of strategic planning, and, along with that strategic planning, greater emphasis in terms of community engagement. Consultation with all the relevant stakeholders, including traditional owners, as well as the broader community should all be done at the front end.

If you get your planning right, through master planning and broad strategies that are provided at the front end, it should actually facilitate the development assessment process. The current criticism of local government and the planning process is of a lot of the delays being experienced by the community, by the development industry and by other stakeholders. I think there should be greater emphasis on the strategic planning process at the outset—we get our LEPs, our strategic plans and our master plans correct, which should actually facilitate quicker turnaround times from a DA perspective.

One last item, in relation to climate change principles in the planning process itself: Planning's just one tool when dealing with climate change. We can make a lot of changes, whether it be through legislation, through our own strategic plans or through our own measures, but it needs to be complemented by broader Federal and State government initiatives and interventions to address climate change issues. Local government, through planning processes, can't do it alone.

The CHAIR: Thank you. Mr Parks, did you want to add anything?

ANDY PARKS: No. As I said, I'll just follow up on whatever's said. We've probably been a little less prepared than we would like to be. I'll just comment that we're assuming Eber and I have been invited as senior planning positions within council. The comments we make today are those of the planning staff, not necessarily of our elected councillors. I guess Lismore is in a pretty unique position in that, from the disasters of 2012 and our relationship with the Reconstruction Authority, there's probably some lessons to be learnt there. I guess that's possibly what we can add of value to this inquiry.

The CHAIR: I'm sure my colleagues will have questions; I certainly do. Thank you very much for coming along. Lismore is, I think, a council on the front line—ground zero, to some extent. I'm just curious if you can talk just a little bit about what the relationship is with the Reconstruction Authority. It's something that we've kind of been prodding around the edges of as a committee as we've been discussing the issues about flood impacts,

fire et cetera. Where is Lismore Council and, as planning and strategic planners, what is your relationship with the Reconstruction Authority? Where is it really assisting, if it is—and, if not, where is it not? What suggestions might you have now that we're a couple of years on?

ANDY PARKS: I'll just start by saying that we are making a submission to the separate inquiry, which is closing today, into the reconstruction Act. But, Eber, if you want to start and I'll add anything that I think is needed.

EBER BUTRON: Thanks, Andy. What we might do is actually put forward the submission that we're putting in to the other inquiry and send that through your way as well.

The CHAIR: Thank you.

EBER BUTRON: I guess our relationship with the State in terms of the recovery process has gone through several iterations. We started with the Northern Rivers Reconstruction Corporation and that transformed into the NSW RA, so we've had a few resets. We have been working with them, whether it's the NRRC or the NSW RA, over that period of time. That's come through various avenues. One critical aspect, really, is the reconstruction of our city, and that's our roads, our bridges, our buildings et cetera. There's a significant amount of reconstruction that needs to occur, in the hundreds of millions of dollars if not into well over \$1 billion, to reconstruct the city's assets.

That relationship has been ongoing with the NSW RA, and it's really about how quickly we can set up a framework for moneys to be provided to council to actually commence the proper reconstruction. I believe there have been ongoing conversations over the last couple of years and longer to actually achieve that. We've gone through, for lack of a better word, a bit of frustration, but I think we're nearly there in relation to actually formulating a proper framework in that space.

From a planning perspective, we've been in constant consultation with the NRRC and now the NSW RA in terms of establishing relevant frameworks. Sometimes it's a frustrating relationship, but sometimes we've achieved outcomes. They've included conversations around the Resilient Homes Program and the Resilient Lands Program, and various conversations in terms of just communicating between NSW RA and council to establish what we can do to actually better support the flood-impacted community that still haven't managed to return to their homes.

ANDY PARKS: I might just add that when the NRRC was set up, it was a new agency and I think there was a lack of clarity in their role. There has been a massive turnover of staff in the two years that they've existed, and I would say a kind of lack of urgency in some of their responses and a bit of a lack of genuine community participation in how to proceed. I'd suggest that we've been encouraging the RA to utilise some of the powers that they have in their Act. There seems to be a reluctance to do so, which I think has delayed the delivery of new land release and infrastructure that could provide flood-free housing for the Lismore community. There's been a range of issues, particularly in the Resilient Homes and Resilient Lands programs that we've had interaction with the RA on.

The Hon. SCOTT FARLOW: Mr Parks, just picking up on that answer you provided there, what are the powers that the authority are reluctant to use, explicitly?

ANDY PARKS: There was an example of the reluctance to rezone land, the reluctance to enter into joint ventures and the purchase and acquisition of land. They went through a process; There were 300-and-something submissions made for private landholders to submit. We're two years down the track and there have been two announcements but no real progress. I think it really just goes to that urgency. The Act gives the authority extraordinary powers to respond once there's been a declaration by the Minister, which we've had, but those powers don't seem to translate into the urgency to actually provide the land and the infrastructure required.

At the moment we've got a situation where the Resilient Homes Program has been—there are over 300 houses in the Lismore urban area that have been purchased. That number is likely to get to 500, and much more across the region, but no land within sight of—you know, years away from people being able to relocate to it. So there's just a real mismatch in the delivery of those programs and the ability to utilise powers to act quickly, which is clearly there in the Act.

The CHAIR: On that, at this point in time are you seeing any development proposals or just the exercise of existing uses and so on—that people are placing themselves back into homes or even commercial premises or retail premises? From an ideal perspective in terms of flood and danger from flood, because of that reluctance or that slowness or that lack of urgency, are we seeing people within our communities of Lismore simply placing themselves back in positions of harm because they aren't seeing any alternative?

EBER BUTRON: I'll start, Andy, and you can jump in afterwards. I guess as part of the Resilient Homes Program, it didn't include commercial or industrial land. What we do have is some businesses moving back into North and South Lismore to re-establish their businesses so that they are moving back into flood-liable areas. In relation to the broader community, we do have community members that have moved back into their houses. There are several programs that make a couple of rooms habitable in each of their houses, so people have moved back in there. We still have people who have moved back in there and we've got many more people still living in pod villages as well as hotel/motel accommodation. I think a significant part of our community is still impacted.

ANDY PARKS: I'll just add that anecdotally we're aware of a number of situations where people have accepted a buyback and potentially got \$450,000 to \$500,000 for a house in a high-flood-risk area, but then taken that cash and just moved down the road to an area that's not within a buyback but still in a high-flood-risk area and potentially bought something for \$250,000 and essentially have been able to pay off a mortgage, but they're still living in a high-flood-risk area. That's a limitation of the program—the raising criteria. At the moment, South Lismore is a really good example. In order to be eligible for raising funding, it's only eligible to people who are impacted by a kind of one-in-20-probability event, whereas with the Queensland program, anybody who was below the flood planning level was eligible for raising.

There's another example. There's a clause in the standard instrument LEP that allows the rebuilding of a dwelling within five years of a natural disaster. That might be suitable after a bushfire where you can build to a higher standard—you can build to a kind of flame-zone standard. But a flood risk is a flood risk. There's an example in Lake Street, North Lismore, where all the other houses in the street have been bought by the Reconstruction Authority. One house was completely obliterated by the flood. Somebody bought a vacant block of land and they've now lodged a DA to rebuild a house in that area because the planning legislation allows them to do so.

The CHAIR: That's really interesting because that was precisely the next part of my question. What are you seeing in terms of the planning system? Obviously, without predetermining or pre-empting the outcome of that, how do you think you now deal with that? What tools do you have as a council and as a planning department within a council, experiencing these kind of very novel and front-of-the-line issues in terms of responding? How will you deal with that as a planning proposal?

EBER BUTRON: I guess that's an ongoing issue that we need to get our heads around. I guess what Andy's described is what we were fearing as part of the buybacks program and that was, potentially, a checkerboard effect that would occur in terms of people wanting to stay versus people wanting to move on. That has a significant impact to our infrastructure delivery. The example that Andy provided, if we're required to provide water and sewerage infrastructure to individual homes along streets, that's going to be difficult just in relation to our infrastructure requirements that require a certain capacity, especially sewerage capacity, to be moving through that to get that infrastructure to work. We're still waiting to understand what that checkerboard aspect looks like for council so we can address and fully understand it. It goes back to my previous comment that there was a decision to commence a buyback program without the strategic planning in terms of what were going to be the next steps if we did have a checkerboard approach, how do we avoid a checkerboard approach and what is the best use of that land post-buybacks and post the Resilient Homes Program.

The other aspect—going back to the previous question as well—is, anecdotally, as Andy was saying, we still have people living in some of those houses that have been bought back. They're in that waiting pattern until further land comes on board. In terms of the more recent announcements, some land might come on board in the next six to 12 months at Mount Pleasant. The other lands that have been announced—at Southern Cross uni and we're aware of another one that is imminent—are literally two- or three-plus years away before they come on as potential sites for relocation. We're in this state of abeyance until we find alternative opportunities, whether it's on rural land or other land which might be able to come on board quicker. Our impacted community are expected to stay in their current residences for a considerable period of time post the 2022 floods.

The CHAIR: It's one thing for people to stay or return to premises that are part of the high-impact area, but it's another thing to experience what you're suggesting is happening at Lake Street—that somebody is actually coming with a new proposal. I understand that you're waiting for new lands to be released and be available for the community to move to, but are you waiting or are you looking to the State Government for guidance? Do you have the tools you need to be addressing the checkerboard or the potentially perverse consequences of somebody brand-new coming and proposing something and being the last woman standing, or the only woman standing, on an entire flood plain?

EBER BUTRON: It's a bit of both. We're waiting for more information from NSW RA. What is absent in that space is the strategic planning, especially in that North Lismore area, as to what is going to be the long-term outcome for that area in terms of whether it gets rezoned for other purposes. We still need to have that conversation

with the community, with our elected members and with the broader stakeholders in relation to what northern parts of south-eastern Lismore look like in the long term. It's a little bit of an unknown. There's a lot of options there, and some people have spoken about public recreation space, others have spoken about naturalisation, others have spoken about community gardens and others have actually spoken about other uses that might be a complement or still be within a flood area. There's still a lot more planning to be done. I guess we are thinking about further advice and guidance from the State Government as well, whether it's through NSW RA or through the department of planning. Invariably, depending on what the future looks like for North and South Lismore, we'd be seeking further funding to actually implement that future vision for that area.

The CHAIR: Do you think there should be some interim measures? I am literally anticipating council being dragged to court because they refuse a development on a flood plain in the interim as we are trying to strategically work out the future. Should there be some form of interim, moratorium, pause or hiatus? I'm interested in your views on this, Mr Parks.

ANDY PARKS: I'll talk about a couple of the specific clauses if you like. Clause 5.21 of the LEP requires councils to consider climate change for development in the flood planning area, but it doesn't say how we should do that. It's basically up to councils to determine their own way that they consider climate change. I would say the State should lead there. We've done a draft DCP, which essentially takes a worst-case scenario out to 2100 and sets the flood planning level there. That has not been adopted by our council. It basically puts it down to an individual council level as to how they are going to address climate change.

The scenario I mentioned at Lake Street and that clause—which is 5.9—that allows the rebuilding within five years of a natural disaster is not a common thing. The one at Lake Street is the only one I'm aware of. As a simple amendment, that clause could specifically relate to bushfire rather than all natural disasters, because nobody wants to be in a situation where all of the other houses in the street are being removed and council's only recourse for rejection is to rely on a public interest thing under the EP&A Act. It's a pretty weak one. We can't even rely on 5.21—consider the flood risk and consider climate change. The only fallback council has to refuse something in that instance is to say it's not in the public interest and then try to defend and justify that.

The CHAIR: In terms of the information that is informing any development decision in relation to flood, do you feel that you now have adequate flood mapping? Are you working to the PMFs? Who is doing that, and what's your view in terms of your reliance on materials?

ANDY PARKS: It's a very good question and it's a very grey area in Lismore, because we've had new modelling done and a draft DCP that was not endorsed by our council. The RA has the power to set flood planning levels across the State. That's another example of a power that they have that they haven't used to date. The State could mandate a flood planning level rather than leave it to individual councils.

EBER BUTRON: Through you, Chair, can I provide a bit more comment on that. To go to the heart of your question, we don't have flood mapping for the whole catchment. That body of work is currently being undertaken by CSIRO and coming from Queensland, where it was just accepted that there was holistic flood mapping for the whole catchment. What we have in Lismore is flood mapping for part of the catchment. Kyogle has something similar, as well as Richmond Valley and Ballina. We don't have an overall flood map for the whole area. That's forthcoming by the work being undertaken by CSIRO.

In the absence of that, I think there has been criticism in terms of the accuracy, the assumptions made and the current flood mapping and modelling we have. In a proper environment, we'd have a full flood map for the whole catchment. It's probably a project that should have been led at a State level, because it crosses over various local government boundaries. That's what we're waiting on from CSIRO. The next critical aspect is the implementation of that. Each local government area has to take flood risk management as part of that. The first aspect is for CSIRO to complete their flood mapping for the whole of the catchment. The second is what flood risk measures need to be incorporated, and the most critical aspect is funding at a State and Federal government level to implement those flood risk measures.

ANDY PARKS: I will echo what Eber said: Flood risk is done at a local council level rather than at a catchment level. One of the requirements, too, is that in order to implement any of the actions in your floodplain risk management plan, councils must stump up 33 per cent of the cost from general revenue. It can't be from separate grants or other projects. We can identify a range of measures but, if we can't fund at least 33 per cent, then the State won't even consider co-funding. There's a real disincentive there for councils to pursue particular projects identified in a floodplain risk management plan. As I said, it should probably be done at a catchment scale rather than local government, because you get discrepancies between how different councils will carry that work out.

The CHAIR: We have had fairly consistent evidence around that. All the Sydney coastal councils made representations around that and the problem with the financing. I'm ticking and thinking aloud. It seems almost absurd that the State wouldn't fund this work, given the recovery money that they have to front up through bad planning from not getting flooding right. I heard some submissions in relation to development on the flood plain in Yamba recently. There was one submission that was made, which I found very compelling, about how, for development assessment, flood considerations need to be much more than floor height. I feel like Lismore council strategic planners would have some view on that. In terms of how the planning system needs to factor in flooding at the development consent as well as the strategic planning level, I imagine you have some fairly novel insights. If you would be willing to speak to that, I would be very grateful.

EBER BUTRON: I'll start once again. Andy, you can jump in afterwards. Once again, it needs to be front and loaded at the strategic planning aspect. If you don't get that strategic planning right—and all the master planning and all the mitigation that needs to occur—then it makes your life at a DA assessment process much harder. From a DA perspective, we do take flooding into consideration, not just the flood planning level in terms of the building height but also in relation to access to the site and in relation to will that development be cut off during significant events? The difficulty for our development assessment planners is trying to make an assessment of a particular development based on the current planning DCPs, LEPs and principles versus what might have occurred following that. A case example is the February 2022 flood. Whilst you've got two bits of legislation and events that aren't necessarily talking to each other or haven't been adapted to represent what happened in the 2022 flood, it makes our development assessment planners' lives very, very difficult to assess properly.

ANDY PARKS: I will add in that evacuation routes are the next biggest consideration after flood planning level: What is the ability for somebody to safely evacuate an area? There are parts of Lismore, because of where the rivers and bridges are located, that are seriously constricted. Fill is another consideration. There have been parts of Lismore that have historically been filled to allow buildings to be at a higher height, particularly our industrial areas. Obviously, filling a site has impacts on surrounding land, so that's a bit of a contested area. Again, different councils have different approaches to fill within the front line and how that could be used. It also potentially puts quite a financial burden on small developments wanting to do a small amount of fill. If we require them to do a site-specific flood impact assessment, that can be tens of thousands of dollars to get that kind of very localised assessment. The other thing that I will throw out there that we've had as a conversation is one of the tools that we don't have in the planner's kit at the moment is the idea of a hazard zone. You've got an area that, because of its flood risk, community and council generally agree should have very restricted development opportunity. We just don't have anything in the zone kit, other than calling it public recreation or an environmental zone. There's no such thing. Again, historically there used to be a kind of risk zone.

The CHAIR: On that, can you elaborate a little bit, given you've given some thought to that?

ANDY PARKS: Not a lot of thought. We're talking about the areas where the Reconstruction Authority have deemed that it's not suitable for future habitation, so there's a whole much larger question about what happens to that land in the long term. But as a tool for councillors to declare through the planning process that there's a hazard there that should limit future development to only suitable activities, we just don't have that zone available. Essentially, it has to be recreation or an environment zone, otherwise you revert back to a business or a residential zone.

EBER BUTRON: Just to jump in there, that adds to the inflexibility of planning legislation and its inability to adapt to a changing circumstance. Going back to one of your previous questions in terms of some of the community members still being within the flood zone, it's really about giving impacted residents choice and whether they want to wait another six months for any land to become available to relocate or to purchase and construct a new home or whether they want to wait another two-, three-plus years to do the same, or whether we can amend our LEP to make more short-term opportunities available—whether that's making rural land available or looking at alternate sites. The planning system doesn't allow for that flexibility or that adaptability to actually be considerate of a significant disaster that we experience.

The CHAIR: On that, perhaps it would be fair to summarise—and we have heard this from other councils on the far South Coast—that the inflexibility of the standard instrument has actually not provided or has been a hindrance to good planning, particularly for areas that are experiencing the onset of climate impacts and novel risk factors. Actually a better approach now might be to allow for more of those not just local provisions but actual local zonings—allowing those back into our LEPs would be a beneficial thing. Is that what you're suggesting there?

EBER BUTRON: I would agree with that at a broader planning level. We're going back to prior to LEP template days. It just provided a better context at a local planning level to actually have appropriate zoning for certain uses. The other element in relation to the inability for the current legislation to adapt is—post or

immediately post the flood, council was supporting temporary uses, whether they were pop-up shops or whether they were people trying to relocate their businesses and work from homes. We understood the need for that because people still needed to make an income. The legislation doesn't readily provide for that, and it doesn't provide for that humanitarian or social need to adapt accordingly, even if it's for a temporary period of time, whether they're six months or 12 months, and for businesses to get back in. It doesn't actually have that business or that economic focus as well. I think it just needs to be much more flexible with regard to emergency disaster events, which are invariably linked to climate change.

The CHAIR: I know we're out of time, and we're running over. We are so grateful to have you attend today. Thank you. On another foot, given that there is such a need to relocate in these release areas, is Lismore council—sorry, are you as strategic planners finding any difficulty in relation to now moving into biodiversity lands? One of the terms of reference of this inquiry is looking at how the planning system—are you experiencing or expecting any unanticipated consequences with the desire to relocate en masse, let's say, homes and settlements and communities, given that the Northern Rivers is such a high biodiversity area? What's your experience to date?

EBER BUTRON: In relation to future land release, we've got quite a bit of land already, either rezoned or can be rezoned, that doesn't necessarily have significant biodiversity impacts. But in relation to proper biodiversity environmental planning, once again I don't believe we have that properly mapped across the whole LGA. There has been a guideline, though, that has been in draft for quite a while in relation to the koala plan of management for the whole LGA. We currently have a koala plan of management for a limited part of the LGA. Once again, with support—

ANDY PARKS: I'll just jump in there, Eber. It's not so much the mapping; it's the guidelines for the creation of a new KPOM. We've been waiting on guidelines from the State Government since about 2021. Until such time as those guidelines are done, Lismore council can't complete a koala plan of management for the rest of our LGA—for the whole LGA.

EBER BUTRON: Yes. The next step for that would be the implementation—or it would be the mapping component, and we would need funding to actually properly do a biodiversity map for the whole of the LGA. In relation to relocation of dwellings in terms of biodiversity-impacted areas, I don't see that as a significant impact. From a broader planning perspective, I think we need greater guidance from a State perspective on biodiversity matters but also funding to actually map those areas properly. It goes back to my original aspect that we need to get that strategic planning undertaken at a better level—at a higher level. That would facilitate protection of environmental lands but also facilitate future development applications that aren't impacting on biodiversity or aren't constrained in such a significant way.

The CHAIR: Are there any final things you'd like to add?

EBER BUTRON: There's a lot. When we're talking about planning, there's many items we can talk about. From a climate change and disaster management perspective, planning needs to change. We need short-, medium- and long-term measures. That ranges from making quick changes to our LEP, all the way through to implementing a broader strategic planning framework. Medium to longer term, we need legislative reform to actually be representative and reflective of the current environment that we find ourselves in from a planning perspective.

ANDY PARKS: It's a really big question. The terms of reference for this inquiry are quite enormous. The thing that is really on my radar at the moment is the development of disaster adaptation plans, or DAPs. The State obviously did its State disaster adaptation plan. The RA is now tasked with doing regional and local DAPs. My concern is that the legislative weight of those is very weak. It only requires councils to "have regard" to the DAPs in carrying out their functions under the Local Government Act and the EP&A Act. The term "have regard" is very weak. If DAPs are supposed to be the tool that the State wants to have meaningful impact for how we prepare our communities for future climate change, the DAPs could have considerable weight. But the way that the legislation is at the moment will require significant updates to both the Local Government Act and the EP&A Act if they're to have real teeth.

The CHAIR: You're actually saying, as a council on the front line, that if we're going to actually make the planning system responsive, we're going to have to require more prescriptive ways in which we take planning forward. Rather than ultimate discretion, DA by DA, we need to have a good strategic focus, and those DAPs will need to actually prescribe what can and can't happen. Otherwise, we're going to be facing some pretty catastrophic consequences on people's lives and the environment. Is that what I'm hearing?

EBER BUTRON: Correct. I'd say the key is the strategic planning. Whether it's at a local level or a regional level, the key is strategic planning. Out of that will flow the DAPs. Out of that will flow the development

controls that are required. More importantly, out of that will hopefully identify what mitigation implementation measures need to be undertaken not just across the region but within Lismore itself.

The CHAIR: Mr Parks, you're saying that you do all of that, but then you actually have to make it happen.

ANDY PARKS: That's right. There's no point in doing all of that work if all you have to do is "have regard". The North Coast and, I think, the Hawkesbury-Nepean are the two pilot projects for doing regional DAPs. The Reconstruction Authority is putting a lot of weight and resources into that process. I would just love to, at the end, make sure that the outcome is that it has some statutory weight.

The CHAIR: Thank you so much. If there were any matters taken on notice or any further questions, the secretariat will be in contact with you. I think you committed to providing a copy of your submission to the RA inquiry, which we would be very grateful to receive. Thank you so much for your attendance.

(The witnesses withdrew.)

The Committee adjourned at 15:03.