SECTION 7 EVIDENCE

Development Issues and Development Processes in Warringah Council

CONTENTS

7.1 State Government Policies and Development in Warringah Council

7.1.1 Comparative Growth Rates

7.1.1.1 The most constant theme raised by the Submissions, both written and oral, is the pace and scale of property development in Warringah. At the core of most of the complaints about the Councillors and the Council can be found dissatisfaction with the way in which development has proceeded and how it has been managed.

In response to the broad concern about development within the community, the "Majority" Councillors have constantly argued that they are captive to the State Government's policy of urban consolidation. In his Submission in reply Councillor Caputo expressed the views of the "Majority" Councillors quite succinctly.

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The State Government adopted Dee Why as the regional growth centre of Warringah in 1998. We now are seeing the results of a large number of developments in the centre, with building works disrupting traffic, overhead cranes, hoardings, and bill boards presenting an unsightly appearance. This has created the perception that development is out of control in Warringah. Warringah is simply complying with the State Government urban consolidation (medium density) policy. We do, however, believe that Dee Why Town Centre needed upgrading, and will benefit in the long term. I personally suggest that this government policy may be too much for the area without the appropriate infrastructure improvements.

This perception of over development has resulted in many unwarranted complaints to the Minister and Department of Local Government. Commissioner, Warringah Council is in a difficult position – we must comply with the Government policy, we must approve complying development applications, and we must cope with the concerns and complaints of the residents affected. Commissioner, this is not a reason for you to recommend dismissal of the Council.

7.1.1.2 In her final oral presentation on April 10 2003 Mayor Sutton identified a compounding problem that the Council has to face: '*the whole world wants to come to Warringah*'.

Public Hearings Transcript – April 10 2003

> One of the big things we've got to do, Mr Commissioner, is to educate a bit better the community about the issue of over-development and it's a challenge we've got to take on. When I read that letter in the paper today: why does the whole world want to come to Warringah? Really that is a gem, why does the whole world want to come to Warringah? Because it's got such a great mayor, Mr Commissioner, that's why they want to come here. Back to serious things.

Despite her jocular delivery, the Mayor was raising a genuine point of some importance. She believes that the attractions of Warringah are so great that the number of people wanting to move there puts substantial growth pressure on the area.

So, the summary argument is:

Warringah, with its many attractions, generates a high level of population and housing growth; the State Government dictates the form of the housing generated by this natural growth.

The community, in turn, needs to be educated so that they will understand the twin pressures faced by Warringah, and realise that the Councillors, in making their decisions about development, are working in the best interests of the community.

7.1.1.3 In this part a comparison of Warringah's growth with other large metropolitan Councils is made. Table 7.1.1.1 lists the growth rates of the 15 metropolitan Councils whose populations exceed 100, 000 people. The data refer to the comparative ranking of each of the Councils in terms of the relative pace of growth between the Census years 1996 and 2001, and the size of that growth. The Councils are ranked according to how fast, or how large, was their growth across the 172 Councils in NSW [1].

The Table shows that Warringah's growth has been relatively tardy, rather than exceptionally fast. There were 69 Councils in New South Wales that grew faster than Warringah between 1996 and 2001. Amongst the 16 largest metropolitan councils, Warringah had only the 9th fastest rate of growth.

[1] Australian Bureau of Statistics "Regional Population Growth 1991–2001" Publication 3218.0 (2002)

Table 7.1.1.1

Ranking of Population Growth Rates and Size of Growth 1996–2001

Council	Growth rate ranked across NSW Councils	Growth rate ranked across Metrp'litan Councils	Size of Population Growth ranked across NSW Councils	Size of Population Growth ranked across 15 Metrp'litan Councils
Bankstown	62	9	15	9
Blacktown	27	4	2	2
Canterbury	132	15	173	15
Fairfield	115	14	77	14
Ku ring gai	90	12	43	11
Parramatta	75	11	20	8
Randwick	97	10	47	13
Sutherland	61	7	10	6
Warringah	70	9	25	10
Baulkham Hills	6	2	3	3
Campbelltown	103	13	45	12
Gosford	42	5	8	5
Hornsby	44	6	12	8
Liverpool	3	1	1	1
Penrith	49	7	11	7
Wyong	17	3	5	4

The number of additional people that were added to Warringah's population in the inter-censal period is not exceptional. There were 24 Councils in NSW with larger growth than Warringah. Amongst the 16 largest metropolitan Councils, Warringah ranked only 10th in terms of its additional population.

The idea that in recent times Warringah's growth has been exceptionally large or exceptionally fast is wrong.

7.1.1.4 Another argument concerning relative pressures that Warringah has to face in managing its growth relates to the price of property in the area. The argument is that the high price of property, the rate of increase in its value, and the pressures of the market have increased the overall difficulties of managing it all effectively. Mr. Fletcher, the Local Approval Service Unit Manager, raised this point in his first appearance at the Public Hearings on March 21 2003.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: Yes. You also mentioned that the value of land in Warringah is generally pretty high?

MR FLETCHER: Yes.

THE COMMISSIONER: How does that affect what you are talking about, the DA process?

MR FLETCHER: Well, I don't think it affects actual processing applications any different from normal, but the pressure is put on the community and the staff and the Council because if people in reality pay $2 million for a block of land, they are not going to put a little fibro house on it. They look at trying to maximise their economic value of the site, as well as providing - whether it is a house, or residential flat development for themselves.

THE COMMISSIONER: Yes.

MR FLETCHER: But these are enormous pressures that Warringah has been going through in the last couple of years.

The arguments were tested by comparing the dynamics of Warringah's property market with those of the other 15 metropolitan Councils with populations above 100,000.[2] From Table 7.1.1.2 it can be seen that Warringah ranked 13th in the rate of increase in house prices in the three years to 2002. Warringah ranked 10th in terms of the rate of increase of land values. Warringah ranked equal 7th (with two other Councils) in terms of the rate of increase of home unit prices. There is clearly nothing exceptional about the rate of property price increases in Warringah compared to other large metropolitan Councils.

Table 7.1.1.2 **Rate of Increase in Property Prices (3 years to 2002)**

Council	% price increase: house	rank	% price increase: land	rank	% price increase: home units	rank
Bankstown	25.3	15	13.6	15	26.4	13
Blacktown	48.7	2	49.5	5	44.1	2
Canterbury	25.6	14	-15.0	16	25.0	14
Fairfield	42.4	4	42.0	7	28.0	11
Ku ring gai	29.5	10	23.4	13	19.1	15
Parramatta	30.4	9	26.9	12	27.8	12
Randwick	40.2	5	61.6	1	32.6	5
Sutherland	26.9	12	32.2	9	30.0	7
Warringah	26.8	13	30.9	10	30.0	7
Baulkham Hills	23.8	16	23.0	14	30.0	7
Campbelltown	39.7	6	56.0	4	36.3	4
Gosford	39.4	7	58.5	3	40.6	3
Hornsby	29.4	11	28.0	11	33.2	6
Liverpool	44.0	3	43.5	6	46.3	1
Penrith	49.0	1	59.4	2	24.6	16
Wyong	33.3	8	36.2	8	28.3	10

[2] Source: J. Allen *Real Estate Yearbook 2002 Edition* (Sydney: Fast Books)

When Warringah is compared to the Council that had the highest rate of price increases for the 3 years to 2002 amongst the 16 large Councils, its price pressures might be considered fairly modest:

- Penrith had the highest rate of increase of house prices. Randwick had the highest rate of increases of land prices.
- Liverpool had the highest rate of increase of home unit prices.
- Warringah's rate of house price increase was 54.7% less than Penrith's.
- Warringah's rate of land price increase was 43.7% of Randwick's.
- Warringah's rate of home unit price increase was 67.8% of Liverpool's.
- Warringah's rate of home unit price increase was just 44.3% of Hunters Hill, the Council with the fastest rate of increase in metropolitan Sydney.

7.1.1.5 Another way of testing the relative pressures put on Warringah by the expanding Sydney property market is to look at the volume of transactions. This was done by using the volume of house sales as a % of the number of homes. Again, the comparison was made with the other 15 large metropolitan Councils. In this comparison Warringah sits exactly in the middle of the group. Its level of activity is only 67.4% as high as that of the group leader, Parramatta. It is only 27.6% of the Metropolitan Sydney leader, City of Sydney.

Indicators of the dynamics of the property market suggest that, rather than suffering a market frenzy, Warringah's performance would have to be considered average to poor in terms of the leading growth councils. There is nothing striking about the operations of the property market in Warringah to explain the huge focus on development issues reflected in the Submissions.

The explanation for this focus must relate to other things. The most likely explanation lies with the mismanagement of the development process by the Council.

7.1.1.6 Ms. Samios, the Director of Local Planning Metropolitan for Planning NSW, indicated that there were no exceptional features about the pressures Warringah has faced compared to other parts of Sydney. At her appearance at the Public Hearings on April 8 2003 Ms. Samios made the following observation.

Public Hearings Transcript – April 8 2003

MR COMMISSIONER:
The first thing I would like to start with is the concept of over-development, what that might mean and whether or not what has been called in many submissions and in the hearings over-development in Warringah has been caused by State Government policies. Would you like to comment on those things?

MS SAMIOS: Yes. The concept that you're referring to as over-development is not one that has been only singled out by Warringah. There are a number of council areas in Sydney who have seen the change that is occurring in Sydney as being what they class as over-development. I think what we need to understand is that Sydney is undergoing growth and change and for the last 8 years that process has been led, or been established in a framework by local councils as well as the State Government.

The fact that we initiated, the Government initiated, a process of residential development strategies that were undertaken by Council gave them the responsibility of working out where this growth that Sydney was undertaking, or was undergoing, was going to occur within their own areas and what has eventuated out of that growth is that many councils have highlighted areas for quite radical change and the change that has occurred has occurred over probably - over a period of time that no-one had anticipated and that was probably mainly caused through the market forces that Sydney was facing at the same time.

7.1.2 The Role of the State Government

7.1.2.1 As noted above, the "Majority" Councillors blamed the urban consolidation of the NSW Government for the pressures that have faced Warringah Council over development. Mayor Sutton expressed this in her first appearance at the Public Hearings on March 20 2003.

Public Hearings Transcript – March 20 2003

MS J SUTTON:
This Council has asked the State Government many times to release - relieve us of the heavy medium density constraints that are put upon us and we have - we submitted to the State Government some years ago, but within this Council term, a strategy for a low density development and that was rejected. We tried again and that was rejected. We had our Local Environmental Plan 2000 which is hailed and is the basis, I believe, for Plan First of the State Government and they said that that - they really did metaphorically hold a gun to our head and I don't think they'd actually deny that, that the - we either submit to having higher density or our Local Environmental Plan wouldn't be put through or we could lose our planning powers.

Now, the Minister, Mr Refshauge has told us many times that there are 55,000 people every year coming into Sydney and every Local Council Group has to have its share, and driving in, Mr Commissioner, from Frenchs Forest, I must say that the huge buildings don't hit my eye until I'm well out of the Warringah area. There are some in Dee Why, there is not what you would call high rise, but mainly three-storey, some a little higher and so the Council is in this incredibly difficult position that we have to keep our heads above water by taking a share of the 55,000 people who wish to come to Sydney every year.

7.1.2.2 This was an opinion that was persistently put by the "Majority" Councillors, but not accepted by everyone in the community. It is not the opinion of the Member for Manly.

Public Hearings Transcript – April 10 2003

THE COMMISSIONER: Thank you. To come down to another level of the relationship between the Council and the State Government, it has been argued at various times, various places, that the level of discontent at Warringah Council has been caused by the State Government imposing particular policies on the Council - that, in a sense, it is not the Council's fault that somehow these policies have come down to them and they are just doing what the State bids them to do.

MR BARR: Yes, that is an apologist's view that I don't accept. This Council has far exceeded any residential development requirements that may have been imposed on it by the State Government. It is far in excess of that, and I don't know if people here have - people have presented you with that data, but I could give you that data anyway in terms of the number of dwellings approved and how far they are exceeding what would be required under State Government pressure, so that has been used, I think, in a political way to say: well, it is not our fault, it is all the State Government's fault.

That is not the case. This Council has got to look at the way it has been conducting its affairs and the way it has been going about its urban planning.

Others in the community have also challenged the Mayor's argument.

Public Hearings Transcript – March 25 2003

THE COMMISSIONER: Okay. You also raise the point of blaming someone else for decisions instead of taking responsibility. Who is blaming who and who should be taking responsibility? What is the context of that?

MS SHARP: This does happen with developments. Sometimes the State Government will be blamed because of their urban consolidation policy. Sometimes the community advisory committee is blamed because they were involved in the Local Environment Plan and I think sometimes that blame is not - it is an excuse rather than a reason to justify the decision and I have observed that a couple of times.

7.1.2.3 The argument put by the "Majority" Councillors expanded the general proposition, that the Council was forced into a program of urban consolidation by the State Government, into a particular assertion that the State had set population targets for them to achieve. This issue was explored with Mr. Kerr, the manager of strategic land use planning at Warringah Council, when he appeared at the Public Hearings on March 21 2003.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: So that growth strategy that you are talking about in the residential development strategy, it wasn't actually nominating targets, was it? It was talking about a means, whereby growth could take place in an orderly fashion and using the resources of the area, etcetera. Is that right?

MR KERR: Well, with regard to targets, my understanding is that there was no set number of dwellings that had to be built by the year 2021, rather, the Council - all Councils were offered a low, medium and high growth scenario and had to look at population projections, occupancy rates of houses and the ability to provide future housing opportunities in order to come up with a strategy for the Minister's committee to consider.

THE COMMISSIONER: So contrary to some things I have heard, there are no actual numbers of dwellings that have to be done in a certain time, there is a notion that you build a strategy that is in harmony with the broad population projections over a period, is that right?

MR KERR: That is correct, because obviously the occupancy rates of houses differ in all different Council areas. The occupancy rates in Warringah are substantially lower than those in Baulkham Hills, for example, and are higher than the City of Sydney, due to the size and type of dwelling houses. So you are correct in that no number was ever set down by the Department of Urban Affairs and Planning, rather, they set these scenarios of medium, high and low growth.

THE COMMISSIONER: Right. The outcome of these residential development strategies, you have just said, may well be very different in different parts of the metropolitan area and they are meant to be in harmony with local conditions and so forth. The end result is that the metropolitan area as a whole can provide enough accommodation to

Public Hearings Transcript – March 21 2003 (cont.)

house a projected population, is that right?

MR KERR: That is correct, because the figures that you will get from the Department of Urban Affairs and Planning will say that 55,000 will be coming to the Sydney region every year for the next 20 or so years, and those people have to be housed somewhere and that means new dwellings.

THE COMMISSIONER: Yes, so there has been no particular pressure put on Warringah to do something that is different to any other part of metropolitan Sydney?

MR KERR: Well, the only difference I would say is that the State Government has preferred a policy of urban consolidation - now, that does not just relate to Warringah, it relates to the majority of the inner and middle ring Councils in Sydney - in response to concerns over infrastructure provision and urban sprawl in the outer areas of the north west sector and the south-west around Bringelly.

THE COMMISSIONER: Yes. So I guess - I wouldn't like to argue the merits, or demerits of the urban consolidation program, but the point I guess I am making and that you seem to corroborate, is that in no way was Warringah put in a position where it had undue pressures put upon it. Every part of the metropolitan area was in one way or another related to this urban consolidation program and they prepared the residential development strategies in relation to that.

MR KERR: That is correct.

Mr. Kerr's evidence leaves no room for doubt. The State Government has set no targets for Warringah Council. The assertion that it has is wrong. It cannot be used as an explanation for the Council's development strategy, which has produced extraordinary community concerns with Warringah Council's management of the development program.

7.1.2.4 Ms. Samios corroborated Mr. Kerr's evidence, when she appeared at the Public Hearings on April 8 2003. The idea of targets appears to be one held principally by the "Majority" Councillors.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: - - - Another issue which I would appreciate your comments on, and which also has been mentioned a number of times at the hearings, is the question of population targets. Now, you've just said that, as background, Sydney has undergone in recent times a very substantial population increase. That population increase has to be accommodated somewhere. Both the State Government and councils have undertaken roles to accommodate that growth. The particular role of the councils is to find out where to put the growth within their own boundaries.

What is not clear about that is whether or not the State has said to individual councils - let's say there is 44 metropolitan councils in Sydney - has said to each of those 44 councils: we expect you to accommodate X number of people in a certain time frame. Has that happened?

MS SAMIOS: No. In fact, the Government and the Department was very clear about not giving any of the councils targets when they were preparing their residential development strategy. I know a number of the councils had kept pestering me, or kept requesting more and more information and wanted a target figure so that they felt as though they knew numerically how much they had to produce but the Department was quite firm about not giving any target figures. What a number of councils like Warringah did use was the population projections and I think initially they used - there were a high, medium and low range and I think initially they - - -

THE COMMISSIONER: Can I just interrupt?

MS SAMIOS: Yes.

THE COMMISSIONER: Who did the population projections?

MS SAMIOS: The population projections have been produced by the Department. They come out on a regular basis and they're based on information that we get from the councils and from the development industry so that we have a fair idea of what sort of populations would be expected in particular areas. We didn't use these as targets. The whole concept of the residential development strategies was to provide variety in housing as well as numbers and also to address issues of what was happening in the demography of that particular area and also then to balance it with their own physical capability. So no council in Sydney was given a target.

7.1.2.5 Councillor Caputo on Public Hearings March 24 2003 contradicted Mr. Kerr's evidence, clinging to the argument that the State Government had ordained set targets as part of its urban consolidation program. Councillor Caputo's persistence is probably grounded in a confusion between the broad policy of urban consolidation and the particular need for all councils in Sydney to develop residential strategy plans.

Public Hearings Transcript – March 24 2003

MR CAPUTO:
I mean, the other reason I think that - for the amount of development - and it has been - I didn't mention this when I spoke at the beginning. The other reason why we - we having so many developments in

Warringah, it is through the State Government and planning authority policy. To get the exemption of Sec 53 in 1998 we had to make application to the State Planning Authority to get exemption. We made three applications, the first one I believe was from our 6000 dwellings and they refused that application.

The second one was for about 7000-odd I believe, around that sort of figure, and they refused that also, and the third one was for 9000-odd, and they gave us exemption but - and we got the exemption on the basis that we gave them - provided them with enough medium density in the area, and I believe that some of the problems that we have got at the moment are from development and, of course, you are going to get submissions from residents. You know, I mean, some of the places like Dee Why, Collaroy, I mean, there has been a lot of development, but it has been forced through the State Planning Authority and the Council can't be blamed for that.

THE COMMISSIONER: Could I just explore that a little further?

MR CAPUTO: Yes.

THE COMMISSIONER: On Friday last week we had Mr Kerr helping us.

MR CAPUTO: Yes, I was here, I listened too.

THE COMMISSIONER: Well, you would have heard him say, first, that there were no targets.

MR CAPUTO: Yes, I did hear him, yes.

THE COMMISSIONER: So I'm puzzled by the 6000, 7000, 9000 figures?

MR CAPUTO: Well, Mr Commissioner, I actually spoke to him after his address and I said to him - I said - actually, he wasn't that position at that time, so he probably didn't know - he didn't know all the - all the information about it, but I just - we had a bit of a discussion afterwards and I said to him: did you know about the three applications that were made to the State Planning Authority? And he said: well, yes - he said: yes, I knew that we - that Council made three applications, one around the ..... under the SEP - and I think he said he didn't quite understand your question.

So I think if you get the opportunity, Mr Ryan is the director of that

Public Hearings Transcript – March 24 2003 (cont.)

area, maybe you should ask him that question and maybe he can give some details because we have correspondence from the State Planning Authority and I'm sure he will be able to supply that and it will give the information. But we were under threat from the Minister for Planning at that time and I've got - I can supply you with copies of the Manly Daily, which says: Warringah Council threatened to lose planning power, in headlines on the front pages of the Manly Daily, so I can supply you with those, but I think Mr Ryan will be able to answer that for you, or the general manager.

7.1.3 The Residential Development Strategy

7.1.3.1 Information supplied to the Inquiry has helped to develop an understanding of the residential development strategy issues that appear to have created such confusion amongst some Councillors.

In 1995 the then Department of Urban Affairs and Planning (DUAP) introduced metropolitan residential development program that was designed to increase the quality, diversity and quantity of residential development in each local area. The background was an estimate made by DUAP that an additional 640,000 dwellings would be needed across the Greater Metropolitan Region by 2020, with an additional 520,000 of these dwellings to be located in Sydney.

There were two clear goals in the policy. One was to satisfy the perceived future needs of Sydney by providing enough dwellings. A subset of that goal was that, given the limited land stocks of Sydney, the percentage of multi-unit housing as a proportion of the housing stock would increase. The second was a general need to increase the variety of the housing stock. This was to accommodate such social and demographic shifts as an increase in single person households, smaller families, and an ageing population.

7.1.3.2 Each Council in Sydney was required to create a residential strategy that focused on achieving the two goals.

In relation to the first goal, the strategy was required to estimate the number of dwellings of different types that were expected to be realised by 1998 (medium term) and by 2005 (longer term). The DUAP publication *Population Projections* 1995 clearly stated: *"the projections are not targets or the results of economic demand for housing. They represent the most likely scenario of population distribution based on a given set of assumptions established from past trends and the latest policies."*

The test of the strength of a strategy was the degree of increase in variety of housing, the percentage of multi unit housing, and match of changing demographic profiles, economic profiles, and housing stock. Councils were asked to estimate the number of dwellings of different types that the strategy would deliver.

Councils were asked to opt for one of three growth scenarios: high, medium, or low. Warringah Council opted for low growth estimates, given the transport limitations of the area.

Warringah's first residential development strategy projected 5,600 –6,200 dwellings based on the Dee Why Town Centre Strategy, urban villages, unique sites, and infill granny flats.

7.1.3.3 Mr. Kerr, in his evidence given to the Public Hearings on March 21 2003, demonstrated that the professional officers were aware of the intention and structure of the policy.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: . . . Could you start by telling us the relationship between a residential development strategy and the LEP, where it fits in.

MR KERR: Okay, I can do that. The residential development strategy is an outcome of State Environmental Planning Policy 53 which was imposed in 1998 by the then Minister for Urban Affairs and Planning. It basically required Councils to indicate, over a 30 year period, where future housing opportunities would be able to be accommodated. The relationship between that residential strategy and Council's LEP is a very simple one. The LEP is the vehicle for the implementation of Council's residential development strategy.

Public Hearings Transcript – March 21 2003 (cont.)

THE COMMISSIONER: Thank you. I would just like to talk a little more about this residential development strategy. Could you describe, briefly, what the main features of the residential development strategy have been? The call through [SEPP] 53 was: how do you identify areas of growth and change and so forth. How did you respond to that, what is the features of the - - -

MR KERR: Well, I need to say that I wasn't responsible for the preparation of the residential development strategy. I've only been in the position - - -

THE COMMISSIONER: Could you help me by saying: when was the first residential development strategy created?

MR KERR: In 1998.

THE COMMISSIONER: Right. Sorry, to interrupt, go on.

MR KERR: Sorry, I just needed to say that I have been the manager of this development since 10 December 2001, and wasn't involved in the preparation of Council's strategy, but I can give you an outline as to what that strategy contains. The strategy identified a number of components in response to the then Department of Urban Affairs and Planning's Compact Cities Policy, which talked about - as Mr Fletcher talked about development being close to transport nodes and existing commercial centres.

So the main component of the Residential Development Strategy 1998, was the Dee Why town centre, additional medium density opportunities in Collaroy and Narrabeen and Manly Vale and a concept known at the time as Urban Villages, which urban villages were development to a smaller scale of multi-unit housing around neighbourhood and local shopping centres, so what traditionally is called, "shop top housing", and some associated higher densities within 400 metres of those neighbourhood centres.

THE COMMISSIONER: Okay. Could you explain the process. You create a residential development strategy, that is created in relation to Sec 53, [SEPP] do you then have to get approval for that strategy from what used to be the Department of Urban Affairs and Planning, if we go back to that point?

MR KERR: The process is that Sec 53, [SEPP] as you may be award, [aware] allowed the - allowed any person to build a dual occupancy development anywhere in Warringah. Now, the State Government basically directed

Public Hearings Transcript – March 21 2003 (cont.)

to Council that if Council prepared a strategy for its growth and that strategy was accepted by the Minister, that Councils would be exempt from the provisions of Sec 53, which means that dual occupancy development would no longer be able to be implemented in Warringah, so it does have to - the strategy does have to be approved by the Minister's approval, but prior to that it goes - it went through a Residential Strategy Advisory Committee, which was a committee that consisted of senior Department of Urban Affairs and Planning planners and demographers and people who looked at whether or not Council's strategy would provide for an appropriate level of housing, based on the population projections at that time.

7.1.3.4 Ms. Samios from Planning NSW explained the general rationale of the policy at the Public Hearings on April 8 2003.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: Could I just explore that a little further? You said that the policy was at least dual in focus. That is there was an interest in getting enough residential units to accommodate the population but the other part of it was variety. Am I right in interpreting that to mean that large parts of Sydney have a very similar type of residential structure and that sometimes it's been referred to the fact that you might think that the whole population was built up of families, two married people, two children and the average age of the married people was 35 to 40, and they demand a certain type of residential structure. Was the aim of this variety part of the new policies to change that unidimensional structure in certain places to a more multidimensional structure where other parts of the population can be accommodated?

MS SAMIOS: You're right, Commissioner. What we had found was that the demographics were showing us that the two people at home with the two kids were becoming a minority and we were required to have a variety of housing types, not just for each of the different demographic groups, but as they move through different stages in their lives. It's more common for the housing now to be with two adults without any children. That's a far more common housing topology that can require different forms of housing. If I just go back to where the councils were producing their residential development strategies.

A number of them, including Warringah, looked at we keep the status quo in terms of the suburban housing and then go for apartments to supply the number that we needed but in fact the Department is very concerned that we're not catering for the full range of people wanting to remain in their homes in their areas that they've lived in but do not want to live in apartment-style housing. So the issue of variety of housing becomes very important, just as important as achieving numbers.

7.1.4 Warringah Council Delegations to the Minister for Planning

7.1.4.1 The blame for the adverse reaction to levels of development in Warringah has been placed at the feet of the Minister for Planning and Planning NSW by a number of Councillors. In much publicised meetings, Councillors Moxham, Jones and J. Sutton, when each of them was serving as Mayor, led 'delegations' to meet the then Minister for Planning and senior bureaucrats. The Mayors, and their delegations, argued that Warringah should be released from its obligations under its residential development strategy.

Public Hearings Transcript – March 27 2003

MR JONES: . . . Look, I led a deputation in the company of Councillor Coleman, to Dr Refshauge, the Deputy Premier of this state and the Minister for Planning. Dr Refshauge said, in very clear and concise terms: that under no circumstances was his Government going to relax the density on the transport nodes. You want to pick some other area and then swap something around, he said: the onus is on the Council to do that. But - and I will use his words:

I am not going to relax along the transport nodes.

We went in primarily about Collaroy.

THE COMMISSIONER: When was this? Do you recall? Roughly - I don't need precise dates.

MR JONES: 9 months ago, about half way through my term as Mayor. Now, there has been Councillor Sutton, the Mayor of Warringah. There is also - had a senior deputation, and I know that Councillor Moxham, the previous Mayor, also had a deputation, and I might just say this, that one of the agitators against this thing - one of the leaders of the focus group, also was invited to accompany me in to see Dr Refshauge.

It was led by Brad Hazard, the State Member for Wakehearst, who has just been returned to Parliament, and very, very clear. Unfortunately for the resident objector, he didn't hear what he wanted to hear. He has remained silent on what the Planning Minister for New South Wales said, but still sits to condemn Warringah Council for not doing anything about it.

Unfortunately, some people don't understand the process and this is one of the difficulties you have, Commissioner, in dealing with people that don't understand the process; that tend to lay blame at the Warringah Council, when in all reality, resolution of the problem does not lie with Warringah Council, but lies with a higher authority.
It is a difficult task. The challenge lies with you.

7.1.4.2 Ms. Samios (Public Hearings April 8 2003) provided a different view on the context of the meetings to that put by various Councillors.

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THE COMMISSIONER: Okay, thank you for that. It has been put to me that - on various occasions, I think at least at 2 and possibly 3 - Warringah Council sent deputations to the Minister, and as I understand it the purpose of the deputations was to plead with the Minister to reduce the amount of growth that Warringah had to accommodate. I wonder if you know about those deputations and whether you could comment.

MS SAMIOS: I was probably present at a number of them that happened. The Minister had always indicated at those meetings that he would - for any council in Sydney who had prepared a residential development strategy and he had agreed to it - that if they wanted to review that strategy he would be quite happy to have that strategy re-reviewed, or reviewed, and in fact he had an advisory committee still set up that would review the new residential strategy, but one of the things that he was very firm about was that if a council wished to review it it wasn't about a loss of numbers or a change of numbers but about maybe redistributing the numbers that they intended to be able to provide.

So if a council wished to down-zone a particular area he would have expected that they would be increasing the density in another area, or if they wanted to reduce one form of housing within their local government area that they were substituting it with another form of housing, but without a loss of number. That message was quite clear to Council at each meeting that they had with him, or the ones that I was present at.

THE COMMISSIONER: Okay. At that point I get a little confused. You have said just a few minutes ago that there were no targets set. So what's this reduction in numbers? It implies that there was some sort of number out there that the Minister was expecting the Council to achieve.

MS SAMIOS: Once the strategy was agreed to that became like a contract. That council agreed that it would do all of this work and many of the councils then calculated that out to be a number. Most of the councils did that so that they had a way of being able to measure whether they were successful in delivering what they had promised to the Minister and so he was then using their numbers that they had calculated out through their strategy as being the number that they said that they were going to produce. It wasn't a targeted figure that he had

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set before they prepared their strategy. It was one that came out after they prepared their strategy and then they did the numerical computations.

THE COMMISSIONER: Let me see if I can get this straight. Councils were asked to develop residential development strategies. Those strategies were approved by the State Government. They were submitted and approved by the State Government, were they?

MS SAMIOS: The strategies were put in. They were reported by the Department, by the planning team. The reports then went to an advisory committee that was set up by the Minister that had a combination of developers as well as local councils on that committee and then they made a recommendation to the Minister about whether he should accept, not accept, or accept with conditions that strategy that was submitted to him.

THE COMMISSIONER: Okay.

MS SAMIOS: So in the end the Minister would sign off on any agreed strategy.

THE COMMISSIONER: A large part of the strategy was the mix of housing and the way in which that would accommodate growth without that growth being specified.

MS SAMIOS: Yes.

THE COMMISSIONER: Am I understanding that [correctly?] Then when the Council went back to the Minister they said: look, we want to vary this strategy; and his answer was: yes, but we still want something like the outcomes that we got before or after it went through these advisory committees and so forth. We're looking for the same sort of outcomes in terms of accommodating people, okay.

MS SAMIOS: One of the - can I just continue that? One of the issues that the Minister was concerned about was that in the initial residential strategy Council had not only indicated that there would be growth at Dee Why, which was providing a certain type of housing, but Council had indicated it would be developing an urban village strategy, looking at different smaller nodes throughout Warringah that would have provided a variety of housing for people from within those areas and none of that had developed or been implemented. So when Council came in wanting to review its residential strategy the Minister was very mindful of the fact that they hadn't completed what they had originally agreed to do.

7.1.4.3 Warringah Council first residential development strategy was accepted by DUAP in 1998. The Council exhibited a revised strategy in July 2000, and then in December 2000 the revised strategy was submitted to the Minister. In March 2001 the Council made a further submission. A principal aim was to drop its urban village component, and upgrade its estimate of the capacity of the Dee Why centre, as well as take into account capacity in other areas for the next 20 years.

The urban village proposal had been to create shop-top housing and some associated higher densities within 400 metres of neighbourhood and local shopping centres.

The upgrading of the Dee Why centre and the abolition of the urban village concept became sticking points between the Council and the Department. In the public arena the Councillors claimed that they were fighting for smaller population targets for Warringah. As the evidence given by Planning NSW (discussed above) showed, the Department had never had a focus on such targets, but were anxious that growth would take place close to transport and services, and that the residential development strategy would provide adequate housing choice. The concern, from the Department's point of view, was that the abolition of the urban villages removed the range of housing available. As well, if Warringah were to meet its obligations agreed to in its 1998 residential development strategy, growth near transport nodes would be essential.

It is difficult to avoid the interpretation that the delegations to the Minister, by pro-development Mayors, represented an exercise in blame shifting. Throughout the life of the current Council, levels of development have been a continuous issue with the community (as the Submissions demonstrate). If the blame for development could be pushed on to the State Government, Warringah could be seen as being unfairly victimised, the Councillors could appear to be blameless, and development could continue apace.

7.1.4.4 Ms. Samios (Public Hearings, April 8 2003) quickly dismissed the argument that Warringah has been unfairly targeted, in relation to other Councils.

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THE COMMISSIONER: Okay. I will move on to another point which is related to some of the things you have already said but I will put it because it has been discussed specifically. That is the view that Warringah somehow is unfairly targeted, that more is expected of Warringah in terms of accommodating this population growth in the metropolitan area than other parts of the metropolitan area. What are your comments on that?

MS SAMIOS: I think I have heard that story from every council in Sydney. They have all said that they have been unfairly targeted. Their areas are special and unique. With the role that I have had when I was Director of Sydney Region East I visited nearly every council to talk about their residential strategies. We targeted every council - not targeted - we worked with every council in developing their residential strategies from councils as small as Hunters Hill to the large councils such as Warringah and Sutherland.

Every council was expected to provide for housing choice and an increase in housing and it was left to them to determine how they would accommodate that within their area.

THE COMMISSIONER: Related to that - this is a supplementary question - it has been argued that Warringah has a very distinctive natural environment and that there aren't many councils in metropolitan Sydney that have the same mix of beach fronts, water based lagoons and so forth, bushland, a substantial amount of bushland, some not quite escarpment but plateaux and that mix, by its very nature, limits the amount of development that can occur there without causing substantial challenge at least or possibly destruction of the distinctive natural environmental features. Would you comment on that?

MS SAMIOS: I think that many areas in Sydney have a number of, if not all of those features and it's been a challenge for local councils and State Government to ensure that if we are having compact growth - a compact Sydney - philosophy that we are able to accommodate the growth and at the same time protect those environmental factors that we

Public Hearings Transcript – April 8 2003 (cont.)

MS SAMIOS:---

think are very important. In many cases having redevelopment of certain areas means that we can actually get in new sewerage pipes and new infrastructure because you have got development to in fact help pay for that.

Whereas there are a number of areas of Sydney that have very poor infrastructure that was laid out 30 or 50, 60 years ago, but with redevelopment in fact they are able to be - moneys are able to be collected to allow that improvement to occur. To use the argument to say that if you're having redevelopment you're destroying natural environments I don't agree with and I don't think the Department agrees with it in that you should be able to in fact preserve those areas and work with those areas and make sure that the new development that occurs addresses it and is sympathetic to it and doesn't impact on it and I think in a lot of the work that has been done in sustainability there's probably a whole range of work yet to be seen to see that improvement.

7.1.4.5 The proposed postponement of the urban village concept in the residential development strategy has meant that much greater concentration on such areas as the Dee Why centre is inevitable. Mr. Kerr (Public Hearings March 21 2003) explained the linkage.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER:

. . . A number of the submissions talk about "Dee Why". In your view, is there any particular reason why we hear so much about the "Dee Why Strategy"?

MR KERR: We hear about "Dee Why" because the buildings are three storeys higher than any other buildings in Warringah and they . . .

Public Hearings Transcript – March 21 2003 (cont.)

represent - - -

THE COMMISSIONER: Excuse me, what is the height limit there?

MR KERR: Generally, the LEP sets down a height limit along Pittwater Road of six storeys and it basically decreases as you move further away from the main road. We hear a lot about Dee Why because it is on Pittwater Road, a major traffic road, people see the big buildings going up and as Norm Fletcher said, people don't like to see change. Dee Why was a preferred option by the Council at the time in response to the concerns that were being received from residents about dual occupancy development being rife in Warringah and there is plenty of people who objected to dual occupancy developments who were very happy when they were no longer permissible, but in return to provide the housing it had to come in the form of increased density in Dee Why.

THE COMMISSIONER: Yes, it was a kind of antidote to a broad feeling that dual occupancy would ruin the residential status of certain parts of the area?

MR KERR That is right, because the Sec 53 [SEPP53] provisions for dual occupancy allowed detached dwellings in a rear yard of two storeys in height, which from a planner's perspective, creates significant concerns regarding privacy, overshadowing, overlooking and residential amenity for the surrounding residents, and in all to create one additional housing opportunity, whereas, a concentrated growth in Dee Why, could provide for a more vibrant town centre, access to public transport, access to the facilities, such as Dee Why Beach and the local recreational clubs and the like.

THE COMMISSIONER: So you are saying that denser Dee Why, balances less dense other parts of the area?

MR KERR: That is Council's adopted position with the Residential Development Strategy.

THE COMMISSIONER: Is that a strategy that Planning New South Wales has backed in a sense, have you got support from them on that approach?

MR KERR: Planning New South Wales agreed to Council's original strategy in 1998. Council put a revised strategy back in November 2000, which sought to delete the, "Urban Village" concept which I talked about before. Planning New South Wales did not support that revised strategy, due to concerns about the provision of a range of

Public Hearings Transcript – March 21 2003 (cont.)

housing opportunities. So Council demonstrated that by looking at other developments and revising the yields on the particular areas that the medium growth scenario could be maintained, yet Planning New South Wales had this additional requirement of a range of housing choice, which they felt wasn't accommodated for by the deletion of urban villages.

THE COMMISSIONER: Yes, can I go back one step. The urban village concept was one that was created by Warringah.

MR KERR: That is correct.

THE COMMISSIONER: And put into the Residential Development Strategy, then, because of - perhaps because of public discontent that maybe the area was being over-developed in one way or another, it was withdrawn, is that - - -

MR KERR: The urban village ..... - - -

THE COMMISSIONER: Have I got the reasons right?

MR KERR: Yes.

THE COMMISSIONER: Why it was pulled out, or attempted to be pulled out?

MR KERR: That is correct, the urban village concept wasn't pulled out and deleted, it was put on the long term agenda.

THE COMMISSIONER: Okay, and Planning New South Wales said: no, we would like you to keep it, because it is a bit black and white in the sense of dense developments around a few nodes, and then standard type housing in the rest of the area, they wanted something in between those extremes, if that is the word?

MR KERR: Yes, that is right, generally the Urban Village concept was a mix of townhouse-style and big family flats, or larger units around neighbourhood shopping centres, so it did fill the gap between a single dwelling house and a two or three storey walk-up block of units.

7.1.4.6 A direct consequence is that the level of development in the Dee Why centre has been one of the broadest areas of complaint within the Submissions related to property and development. The inevitable consequence of dropping or postponing the urban village concept is to focus more growth in Dee Why. This has served to aggravate what is already a heated issue with residents of Dee Why and some other areas (particularly Collaroy). This indicates some failure of communication or connection with those communities. Mr. Barr spoke of the alienation of the community in this context. His

comments appear to sum up much of the feelings of frustration that have peppered many of the complaints about development issues.

Public Hearings Transcript – April 4 2003

THE COMMISSIONER: - - - as I understand it, there have been a number of deputations that have gone from Warringah Council, senior councillors and the mayors and local members to the State Government in the days when Planning, New South Wales did exist, when Dr Refshauge was the Minister but they appear to have borne no fruit. I think there's at least two that I know of, high level delegations - - -

MR BARR: Yes.

THE COMMISSIONER: - - - that - - -

MR BARR: That is right. There was a delegation probably 3 or 4 months before the State election. I think that sort of thing has got to be put back on track and I'm quite happy to facilitate that sort of thing and, in fact, I did arrange with some community representatives to meet with senior Planning, New South Wales staff on this matter and I will be pushing that further but there's go - the point is that the Council and the councillors have got to learn to get on with the community a lot better than it has been doing, and I think there's got to be - the community has got to be brought in much more on this thing because it is fundamental to the whole issue about the alienation that people have from the Council, apart from the conduct of councillors is the perceived crass kinds of developments which are taking place which people are seeing as despoiling their suburbs.

7.1.5 Transport Issues and the Residential Development Strategy

7.1.5.1 The basis of the State Government's policy on promoting residential development on a scale, and of a type, that will match future demand is the location of denser development around transport and service nodes. It should be noted that viewing places like Dee Why as transport nodes is not in line with reality. One major road, Pittwater Road, forms a transport spine in Warringah from north of Brookvale to Narrabeen. The major bus routes (buses being the only form of public transport in Warringah) pass along this spine. Passengers are picked up at all the suburbs along the spine, Dee Why being one of them. There is no way that Dee Why could be regarded as a transport node. There is no bus interchange there, and certainly no links with other forms of public transport (there is none). Ms. Samios at the Public Hearings gave the impression that Planning NSW considers places like Dee Why as transport nodes. This notion

then translates into a zone of medium density housing being encouraged within 500 metres of the 'node'.

Public Hearings Transcript – April 8 2003

MR BROAD: Right. There's another question which reads: further to the question of the Commissioner, you will recall the deputation approximately 12 months ago to the Minister where the Minister said quite categorically that notwithstanding his offer to consider a change of one area for another and thus not decreasing the yield, the Minister would not entertain the reduction in density along the transport nodes. The question reads: one could understand along the transport nodes in the first instance as the actual main road, just as far back as the main road frontage. The question goes: would it be fair to say that a half kilometre either side of the transport node would fall into that character, I think is the intent of the question.

MS SAMIOS: 500 metres is normally a reasonable radius used to say of a catchment of a transport node, 500 metres, and that depends on topography, is quite a comfortable radius that is often used by many agencies including the Department of Transport as a reasonable radius. In some circumstances it can actually be higher if it is flat terrain and others it can be smaller. That is a general, you know, general rule of thumb.

MR BROAD: Right, another question. What does section 117 direction 52 mean for the development in Warringah? It goes on: this specifically aims to limit further development in Warringah until the traffic and transport problems are resolved or further employment opportunities are created.

MS SAMIOS: From memory - I mean you have caught me on the hop for this one - it is quite an old direction that was set up probably over 20 years ago I would say when the Act first came into being, the EPA Act, and it was sort of a time where - and I think I mentioned it earlier that high growth wasn't being encouraged in these areas but in the mean time there has been more work done, the work that has been done by the STA in terms of increasing its public transport, the extra work that is being done in the roads that do lead from the peninsula, as well as encouraging councils to increase the areas of employment. There's been a review that has been done of the 117 directions and although that review has not been concluded, that was one of the directions that was being seriously looked at as being either discarded or rewritten.

MR BROAD: So it is an historic direction?

MS SAMIOS: It is an historic direction.

7.1.5.2 The broad concentration of medium density zones around transport 'nodes' has become a major issue for many people in the community. One aspect, that appears to be basic to many in the community, is the fact that the road structure within the area has not changed as increased development has taken place. This necessarily pushes more traffic on to already crowded roads. Mr. Astley (Public Hearings April 4 2003) argued the connection between transport and development within the area.

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MR ASTLEY: I do drive on those main transport routes every day.

THE COMMISSIONER: Right. So what is your opinion on the outcome?

MR ASTLEY: Well, simply - see basically I would drive from Wheeler Heights of a morning, usually head towards the eastern suburbs, like Rose Bay, Bellevue Hill, maybe Vaucluse. That sort of thing. It has really - the traffic is always fairly bad but really in the last 12 months I've added half an hour on to my journey. I might leave at approximately 5 past 7 in the morning. 12 months ago I might get to the job at 5 past 8, 10 past 8.

Currently in the last - even just in the last month or so, I'm not getting to a job until after half past 8, nearly quarter to 9 on some occasions. All it takes is one hiccup in the traffic in particular or even one police transit lane scrutiny in one particular area and the traffic just bogs right down.

THE COMMISSIONER: So is the essential problem that the lack of arteries out of Warringah into other parts of the city?

MR ASTLEY: Yes. I do think about this a lot and Pittwater Road, all the way into city up through Mosman, it's three lanes all the way. Now, I think three lanes is enough. However, the problem is you'll get into Dee Why and within 1 kilometre, you've got seven sets of traffic lights approximately and you've just got all these stoppages all the way to the city and then you're got another stoppage where you pay the toll on the bridge and the tunnel. Now, if there were, say for example unrealistically there were no traffic lights or no toll collection, I'm sure the traffic would speed through there quite promptly.

THE COMMISSIONER: Right.

MR ASTLEY: That's my opinion. The other way, up through Forest way, through French's Forest and Forestville, up through Cammeray and Northbridge, same thing. Literally three lanes all the way and I'm sure uninterrupted traffic can move quite freely. I don't think there's really an issue. I don't think we need to build - put extra lanes on Spit Bridge, for example, or something like that. It's not going to get us through those

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stoppages any quicker. It's just going to create a bigger parking lot.

THE COMMISSIONER: Right. So you are saying part of the problem lies within Warringah itself? You instance Dee Why with seven - I think
you said seven sets of lights.

MR ASTLEY: Yes.

THE COMMISSIONER: You would be aware that those lights are

primarily put in by the RTA?

MR ASTLEY: Exactly but - yes. But that is quite correct but I'm sure
that it should be the Council representing the people of the community
saying these roads are just not big enough to take this much development.

THE COMMISSIONER: Right. So you would argue that over development is a major factor in this infrastructure problem of roads and so
forth?

MR ASTLEY: Absolutely.

THE COMMISSIONER: Yes. Okay. What would you expect Council to do? Not develop as much. Is that what you are saying?

MR ASTLEY: Yes. Slow down the development. Perhaps if someone comes in with an approval for 40 units, maybe knock it back to say 30
units. One less level, maybe two levels instead of three levels but I know
after speaking - listening to the previous speaker, he would just say: well,
it's just not economically viable for us to do it if that's the case and I do -
my opinion on the development in Warringah is that they have a - they call
it the shoe horn effect. They will put as many units as they can, literally
shoehorn them into a site. Get as many in there as they can.

MR BROAD: Does not that go back to the egg, the egg being what the
planning scheme allows?

MR ASTLEY: Look, absolutely. I agree with you and the plans do allow
that at this stage but I'm sure there must be a point where we all must be
realistic and say: I know the plans say you can build 50 units there but we
just can't handle the traffic, we can't handle the stormwater. There's got
to be a realistic stoppage to it. I'm not against development in any way. I
think it's great. It needs to be done. Particularly in Collaroy. It's a very
old area and a lot of the premises can be, if not renovated.

They can be demolished and rebuilt maybe into smaller blocks of apartments or units but not like we're seeing on many occasions now,
particularly going back to Dee Why along the main road. They're just
sheer fronted blocks of units with tiny little balconies and they're really just
shoehorning them in.

7.1.5.3 Other evidence suggests that the link between levels of development and transport is not just one of congestion within the area. The fact that there are only three major arterial roads connecting Warringah to other parts of Sydney is also cited as a major problem. Mr. Barr outlined this issue at the Public Hearings April 4 2003.

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THE COMMISSIONER: Okay. Still broadly on the same issue, there have been submissions put to this inquiry that say that the real problem about over development is not just that the State has an urban consolidation policy but that urban consolidation policy is tied to a relationship with transport nodes, and that the denser parts of the various Council areas are meant to be built around transport nodes so that you - the outcome is not a disastrous one for transport. In Warringah, there are a very limited number of arteries, both within the Council area and linking the Council area to other parts of Sydney.

MR BARR: Yes.

THE COMMISSIONER: Do you think that is a particular problem and if so, why hasn't it been taken into account?

MR BARR: I don't know if you are aware of the local election in my electorate in the past few weeks, but one of the big issues, the big issue which I identified and so did my Liberal Party opponent, was the issue of transport. It is a huge issue. There are only three entry/exit points onto the Northern Beaches peninsula, Mona Vale Road, Warringah Road and Military Road and Spit Road. The only forms of public transport are buses and even though the Military Road corridor carries between 8 and 9000 passengers per hour in the morning peak hour which makes it one of the heaviest bus lanes in the country, there are still very few people using public transport.

One reason is there's a lot of cross country travel for which public transport does not provide an answer to, and any planning obviously has to take into account the infrastructure and future infrastructure. Basically, nothing has changed on the Northern Beaches since about 1950, since the Spit Bridge in 1955, I think it went up. Since it was put up, nothing has changed basically. It is the same road system. The Government did announce, and there's a DA before Manly Council and Mosman Council, to widen the Spit Bridge and that was something that I took to them as a project. That is the first time since 1955 that there's been anything of significance done.

So if you are talking about increasing urban densities, you can only do that if you have got the infrastructure to do it. There's a fine balance in

these things as well because there has been talk over the years about heavy rail between Dee Why and Chatswood. Well, if you were to put heavy rail between Dee Why and Chatswood and if you go on to Parramatta or to the city or whatever, you would change the urban densities dramatically and that is an issue that on the northern beaches we have to face, to what extent you want really big transport infrastructure.

Whether it is a proposal for a tunnel under the harbour or heavy rail is that the implications with that are much higher urban densities to justify the kind of funding that goes into it. So what I say to people is we've got to be careful. We've got to find the balance in this but what we don't want happening is a lot more development and this rickety system that we have, this rickety-road system that we've got now.

THE COMMISSIONER: The other point that is also raised in a number of the submissions and which you have in a sense just touched on in a way, is that the implementation of urban consolidation policy in a place like Warringah is much more complex than in other parts of metropolitan Sydney because of the characteristics of the natural environment of Warringah. It has got many different natural features. Many of those features are environmentally very delicate and it is an area that does not lend itself in a sense.

MR BARR: I would agree with that. It is a water-based electorate, the Manly electorate for example, and up and going further north and we have these wonderful lagoons which have been degraded over the years. We've got Manly Dam and of course we have on the Manly side we've got the harbour and then the ocean beaches. So water is very much a key element and the despoliation of water assets over the years is a feature and that is what people now are trying to recover. That is why you get the Friends of Curl Curl Lagoon and you get people working on Dee Why Lagoon and Manly Lagoon and there's a flood plane and estuary - lagoon committee involved in both Manly and Warringah Councils and State Government input and really we try to undo the damage that has been done.

Of course then the problem is that if you are bringing in evermore developments, evermore hard surfacing, evermore run-offs into the waterways then you are never going to get anywhere and these lagoons are quite unique and state governments have not recognised their fragility over the years and we are paying the price and neither of course are councils over the years and what we have a legacy of are polluted lagoons due to inconsiderate developments that have taken place in the past . . .

7.1.5.4 The transport issues, and particularly the problems of access from Warringah to other parts of Sydney, were raised with Ms. Samios (Public Hearings April 8 2003). From her evidence, it is clear that Planning NSW has relied on improved public transport to alleviate access problems in the short term, but that it has no long-term strategy to address the transport problems. The complaints about development levels in Warringah being ill-advised, given the very restricted access links, appear to have substance. Planning NSW has allowed this to happen without any long-term plan to improve the transport base.

The general access problem is not one that Warringah Council can solve by itself. The broad reaction to, what many Submissions have called over-development, places much of the blame on pro-development Councillors. It is clear that the Councillors can do little to solve the regional access problems.

These issues were put to Mr. Samios during the Public Hearings.

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THE COMMISSIONER: To pursue the theme a little further, as I understand it, the policy of accommodating a larger number of people within the metropolitan area was combined with a policy of linking part of that growth to transport systems and transport nodes. So that you might get more clustered development around major transport nodes. Is that correct?

MS SAMIOS: Yes, it is.

THE COMMISSIONER: Now, the argument that I have found in some of the submissions and part of the hearings was that Warringah is particularly poor in terms of its transport infrastructure. There are basically only three routes that link Warringah to the rest of the metropolitan area and each of those links has problems beyond the boundaries of Warringah. That there is a very poor public transport system. There is only one form of public transport, that is buses, which inevitably operate on the road system. So the argument that I have heard is that the policy that might work well in other parts of the metropolitan area where there are train lines and ferries perhaps, other forms of transport, is not terribly logical in relation to Warringah because of this problem with the transport infrastructure base. Would you comment on that?

MS SAMIOS: Yes. The issue of transport and the peninsula has been one that has been considered by the Department for a number of years and in fact for many years high growth wasn't encouraged on the peninsula because of the transport issues. However, since there was a section 22 committee set up, I think in the early '90s, where a number - - -

THE COMMISSIONER: Just before you go, can you explain what a section 22 committee is?

MS SAMIOS: A section 22 committee is set up under a section of the Environmental Planning and Assessment Act. It is set up by the Minister to provide him with advice about a particular issue and in this case it was the Warringah peninsula transport issues and that committee in fact came up with a list of long, medium and short term recommendations that went to both, I think, the Planning Minister and the Minister for Transport at the time. From that date there has been a lot of work done, in fact, in improving the bus - public transport system for the peninsula and there is information from the STA about the number of buses that have increased, the new bus only routes and a

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whole sort of swag of different initiatives that have taken place to improve public transport.

To say that an area that doesn't have a railway line shouldn't undergo change or have growth would wipe out half of the eastern suburbs. Look at the locality of Randwick. That has no rail and has a high growth happening and is well serviced by bus public transport. The issue also becomes that in terms of housing variety you are trying to provide variety of housing choice for the people who are living in the area and even if we had no population growth in that area, just the fall in occupancy rates and the different way we live would require us to have more housing types.

Anyway without having any population increase there's this - because the occupation rates are falling you still need more housing and by providing housing that people locally can move into, it frees up other housing to allow for families that want to want to get into family homes. Concentrating those around centres like Dee Why which means that people were able to access public transport by going into the City. It also means that it should be, unless Council initially into their residential development strategy, concentrating them around smaller neighbourhood centres also made sense. It meant that people who are older could live closer to smaller centres and not have to travel around Warringah as well.

So the argument to say there is no railway line there, we have poor buses, they're having improvement in buses - there's quite a dramatic amount of work that's been done with the buses in the peninsula - I don't think is an argument that is supported by the Government. When councils are considering growth they should also be considering increases in employment areas to provide employment within their local government area and that's one of the things that the peninsula councils have been encouraged to do. You will find, I think, there is a very high percentage of people for work - for employment in those areas are in fact taken up by people who live in the area. So they are not people who are actually living out to come to work.

THE COMMISSIONER: Just a very quick reference to something you said there. That section 22 committee came up with recommendations for both short term and long term solutions to the transport problem. I would imagine that the increased bus services is a short term solution because quite obviously there is a finite limit to how many more buses you could put on the road. What's the long term outcome from the section 22?

Public Hearings Transcript – April 8 2003 (cont.)

MS SAMIOS: I think in the long term they were talking about heavy infrastructure but that recommendation wasn't agreed to. The short term ones were implemented.

THE COMMISSIONER: So does that mean there is no long term strategy around?

MS SAMIOS: Not that I'm aware of.

7.1.5.5 Alongside the issue of over-development (and its relationship to supporting infrastructure), many Submissions have focused on the environmental outcomes of development. Mr. Barr made a connection between the environmental outcomes and the issue of transport, but Ms. Samios, in her evidence (Public Hearings April 8 2003), discounted the relative environmental impacts.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: Okay. I will move on to another point which is related to some of the things you have already said but I will put it because it has been discussed specifically. That is the view that Warringah somehow is unfairly targeted, that more is expected of Warringah in terms of accommodating this population growth in the metropolitan area than other parts of the metropolitan area. What are your comments on that?

MS SAMIOS: I think I have heard that story from every council in Sydney. They have all said that they have been unfairly targeted. Their areas are special and unique. With the role that I have had when I was Director of Sydney Region East I visited nearly every council to talk about their residential strategies. We targeted every council - not targeted - we worked with every council in developing their residential strategies from councils as small as Hunters Hill to the large councils such as Warringah and Sutherland.

Every council was expected to provide for housing choice and an increase in housing and it was left to them to determine how they would accommodate that within their area.

THE COMMISSIONER: Related to that - this is a supplementary question - it has been argued that Warringah has a very distinctive natural environment and that there aren't many councils in metropolitan Sydney that have the same mix of beach fronts, water based lagoons and so forth, bushland, a substantial amount of bushland, some not quite escarpment but plateaux and that mix, by its very nature, limits the amount of development that can occur there without causing substantial challenge at least or possibly destruction of the distinctive natural environmental features. Would you comment on that?

MS SAMIOS: I think that many areas in Sydney have a number of, if not all of those features and it's been a challenge for local councils and State Government to ensure that if we are having compact growth - a compact Sydney - philosophy that we are able to accommodate the growth and at the same time protect those environmental factors that we

Public Hearings Transcript – April 8 2003 (cont.)

think are very important. In many cases having redevelopment of certain areas means that we can actually get in new sewerage pipes and new infrastructure because you have got development to in fact help pay for that.

Whereas there are a number of areas of Sydney that have very poor infrastructure that was laid out 30 or 50, 60 years ago, but with redevelopment in fact they are able to be - moneys are able to be collected to allow that improvement to occur. To use the argument to say that if you're having redevelopment you're destroying natural environments I don't agree with and I don't think the Department agrees with it in that you should be able to in fact preserve those areas and work with those areas and make sure that the new development that occurs addresses it and is sympathetic to it and doesn't impact on it and I think in a lot of the work that has been done in sustainability there's probably a whole range of work yet to be seen to see that improvement.

7.1.5.6 It is not the task of the Inquiry to make judgements on whether the levels of development in Warringah are too high or not. What the Inquiry has to do is to inquire into the many complaints about levels of development, and decide what bearing it has on the community's confidence and support for the elected representatives. Many Submissions blame what they perceive as the pro-development stance of the "Majority" Councillors. The evidence on transport and environmental matters, however, shows that the State Planning authorities have taken what might be regarded as a simplistic view of the transport and environmental problems.

7.1.6 Revision of the Residential Development Strategy

7.1.6.1 In his written Submission (No. 288) the General Manager mentioned that the Council was in the process of revising its residential development strategy. This inevitably entails addressing the problems that now surround development policies in Warringah.

The elected representatives have taken the lead in this process. Mayor Sutton referred to this as an important step forward for the Council (Public Hearings April 10 2003). It is noteworthy that Councillor Forrest, one of the "Minority" Councillors, is Chair of the committee responsible for the revision.

Since the process of revision began in 2000, there has clearly been no great urgency displayed in getting the revision completed. The new committee, and its membership, suggest that the revision process will now be more inclusive of the broader community views about development.

Public Hearings Transcript – April 10 2003

MS SUTTON:
Now, one of the things that we have done in reference to Council behaviour is - I can sincerely say that since I've been there I really have made an effort to get things a bit better and one of the things we have done is our residential development strategy committee which has been a tremendous success. I started off a little cynically, I must say, about - well, maybe not cynically, a bit sceptical, about 5 weeks ago when we decided to have this committee. We had two of the minority councillors, Councillor Peter Forrest and Councillor Kevin Smith and then two of the majority councillors, Council Peter Moxham and myself on this committee in the spirit of trying to get together - this is before the Commission started, by the way, long before.

We asked Councillor Forrest to be the chairman and the purpose of this residential committee had - they were two-fold. First of all to try and get the councillors to talk to each other and secondly to try to sort out a residential strategy that would be more acceptable to the people of Warringah.

7.1.6.2 Mr. Kerr (Public Hearings March 21 2003) explained the process of revising the residential development strategy.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: I believe I think in Mr Blackadder's submission he talked about some revision currently of the regional development strategy. Where does that lie now?

MR KERR: The position at the moment is a working party has been formed by resolution of Council where the councillors are being provided with a great deal of information from myself and the Director of Strategy and the General Manager about types of development that could be considered to form a residential development strategy. The position at the moment is that we have presented all those options to the committee and working through with them to look at a new strategy that may be more acceptable to the concerns of the Warringah residents as well as the concerns that the State Government will have about urban consolidation and a range of housing choice.

THE COMMISSIONER: When you mention committee, is that the Residential Strategy Advisory Committee? What is the committee that you referred to there?

MR KERR: No, it's a working group consisting of the mayor and three of the other councillors, Councillor Smith, Councillor Forrest and Councillor Peter Moxham and we meet with them on a regular basis to provide them information and population statistics and types of housing, examples of how other Councils do things and to try and prepare a new strategy.

7.1.6.3 The Inquiry received only one detailed Submission (No. 184) related to the residential development strategy. This probably indicates that most people in the community are not very aware of the residential development strategy and its import. There are many references to the LEP but almost no mention of the residential development strategy. There appears to be a vague idea that the levels of development may relate to a need to make plans that accord with State Government policies, but there is very little evidence of an association of this with the specifics of the residential development strategy across the broad community.

Where Submissions do make mention of the residential development strategy, they argue that the level of development consents in Warringah is well above that of the State Government "targets". Submission 184 goes into great detail about the level of over-development caused by the growth in the annual rate of development consents.

WARRINGAH RESIDENTIAL STRATEGY APPROVALS MONITOR – **STRATEGY COMPARISONS WITH LEP OBJECTIVES.**

Year of 30 Year Strategy Period	Year of Approval Period	Low Target Strategy Option	Median Target Strategy Option	High Target Strategy Option.	Warringah Council Actual Approvals	Averaged Annual Rate of Approvals.	Commentary
1	1991-1992	230	340	435	265est	265est	Warringah and Pittwater Council split. Residential development allocation proportioned between Council reas.
2	1992-1993	230	340	435	477	371	
3	1993-1994	230	340	435	576	439	
4	1994-1995	230	340	435	950	567	
5	1995-1996	230	340	435	509	555	
6	1996-1997	230	340	435	569	558	
7	1997-1998	230	340	435	695	577	
8	1998-1999	230	340	435	596	580	
9	1999-2000	230	340	435	878	612	Council August 2002 reporting says 706 (not 878)?
10	2000-2001	230	340	435	323	584	Council August 2002 reporting says 408 (not 323)?
	Total Approvals for Strategy Period as at 30 June 2001	2300	3400	4350	5624	584	
11th year	2001-2002						
	1ST Quarter	57.5	85	108.75	311		-
	2ST Quarter	57.5	85	108.75	485		**485 is a record for a quarterly reporting period.**
	3RD Quarter	57.5	85	108.75	119		-
	4th Quarter	57.5	85	108.75	191		-
	Sub total	230	340	435	**1106**		**1106 is a record for an annual reporting period.** Council August 2002 reporting period says 640 (not 1106)? Approvals rate comparisons for this financial year reporting period approvals, to the Annual Residential Strategy options rates: - **480%** of the Low Strategy annual option rate. - **325%** of the Medium Strategy annual option rate. - **254%** of the High Strategy Option rate.
	Total Approvals for Strategy Period as of 30 June 2002	2530	3740	4785	**6944**	**631**	**631 is a record** for the averaged annual rate of approvals. Approval rate comparisons for all years to date, to the Residential Strategy option totals: - **274%** of the Low Strategy option rate. - **185%** of the Medium Strategy option rate. - **145%** of the high strategy option rate.

For the original residential development strategy of 1998 Warringah Council had the option of selecting a low, medium or high strategy in terms of its future development. It opted for a low strategy. If the calculations of Submission 184 are correct, Warringah Council has greatly exceeded the number of approvals that would have been generated had it adopted a high strategy in 1998.

Submission 184 argues that the 1998 residential development strategy had under-counted Warringah's population because it used the population recorded on Census night (1996) rather than the resident population (the number that included residents of Warringah who were not at home on the night of the Census). This error was then translated into the residential development strategy. The Council used a population figure that was lower than the true population figure. The base population for calculating future opportunities for expansion was lower than the real population. In the residential development strategy the Council actually argued that the published Census data for Warringah were wrong.

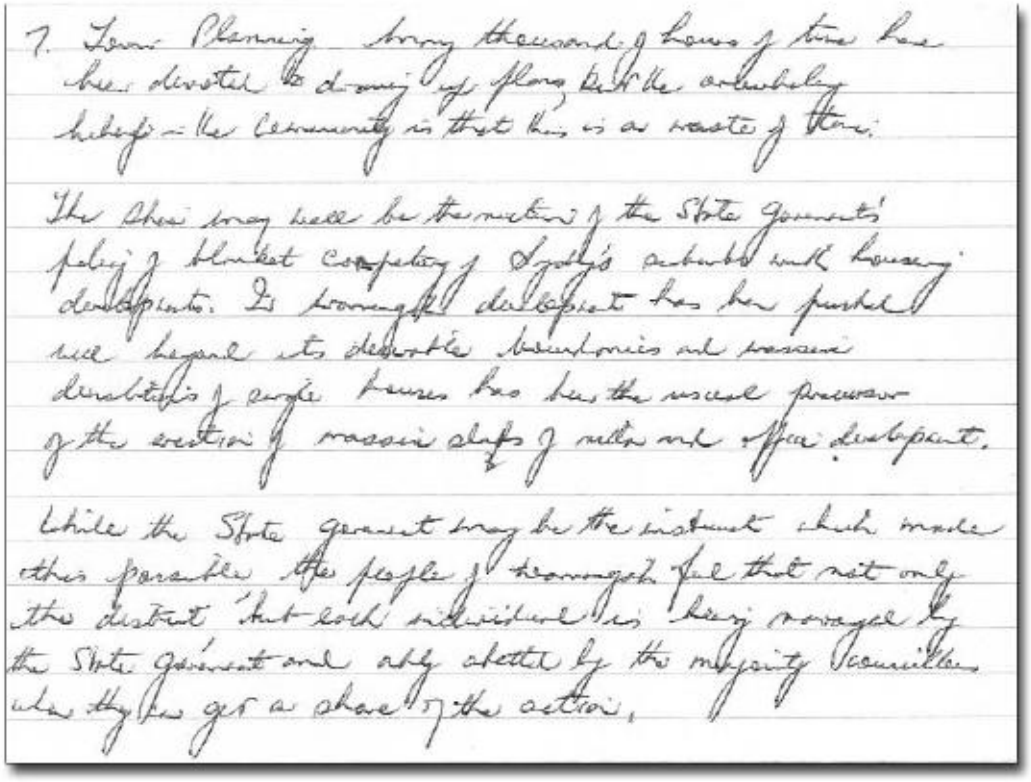
In the revision of the residential development strategy there is likely to be much greater attention paid to its detail because issues of development and over-development are now so prominent in the community's assessment of the performance of the elected representatives and the Council.

7.2 The Warringah Local Environment Plan 2000

7.2.1 Community Interest in the Local Environment Plan (LEP)

7.2.1.1 The Warringah LEP was gazetted in 2000, replacing the 1985 LEP. Even before it became the legal document governing development across the Council area, the LEP 2000 appears to have been used in conjunction with the 1985 LEP. Throughout the life of this Council it has been the primary planning document. There was a large number of community Submissions that made specific reference to the LEP. The extracts below from Submissions 311, 179, 312, and 150 illustrate the kinds of broad comments made in reference to the LEP. The views expressed suggest that the LEP is, or ought to be, a kind of blueprint that shows what can, and what cannot, happen in terms of development in an area.

Submission 311



Submission 179

The conduct of tne 5 "majority" elected Councillors has given us cause for serious concern since the last Council Elections. The 3 elected Councillors for C Ward, which covers our Association's area, have consistently rejected our representations regarding compliance with LEP 2000, and have voted with Cr. J Caputo and Cr. D Jones to bring about development in the non-urban area in breach of the LEP 2000. In the course of discussions prior to Council meetings, they have contemptuously dismissed our objections and at Council meetings have stated that we are a small unrepresentative group and, as such, have no "right" of objection.

Submission 312

Other residents' submissions to Council provide comprehensive details on many instances where the proposal doesn't even seem to comply with Warringah Councils LEP 2000.

Submission 150

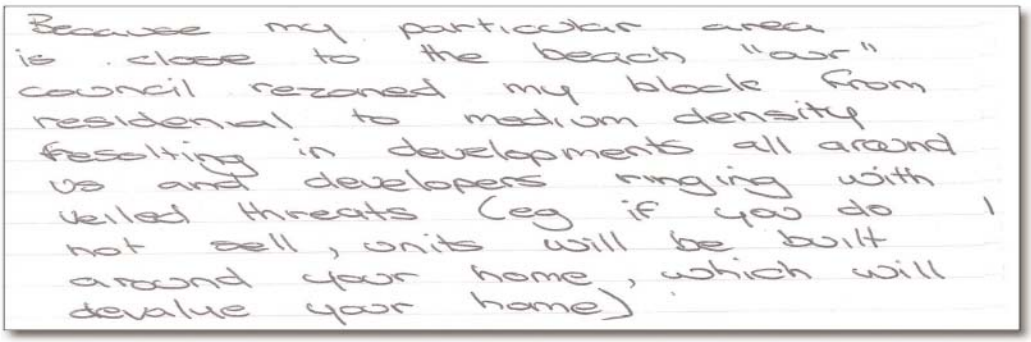
We would like you to note that we are not anti development for our area. We requested from Council that if the development was to proceed it should be on a smaller scale in line with the character of our suburb (as per the LEP) and that Council take into consideration an already exhausted infrastructure in our area. As part of your assessment of public comment certain bias from residents we assume will be taken into consideration, and as such we would like to put our comments in context and note we are providing you with an objective residents view in our dealings with Warringah Council. We understand developments that affect our standard of living and lifestyle are an emotional thing, so our comments are restricted to the specific dealings we had with Council and Councillors.

7.2.1.2 Some of the Submissions equated the LEP 2000 with a zoning document, which it is not (see examples below).

Submission 146

One of the first meetings we attended was to find out why one side of our street (The Avenue, Collaroy) had been rezoned "medium density". One of the councillors stood up and said that the Council had "stuffed up"(in her own words) on this re-zoning and nothing could be done. This attitude does not engender confidence in the Council.

Submission 165


Because my particular area is close to the beach "our" council rezoned my block from residenal to medium density resulting in developments all around us and developers ringing with veiled threats (eg if you do not sell, units will be built around your home, which will devalue your home)

7.2.1.3 Other Submissions have provided evidence of what they allege to be technical failures in the application of the LEP. Examples are given below.

7.2.1.4 Many Submissions have pointed out what they believe to be technical faults in the application of the LEP. Submissions 322, 155, 115, 072, 076, 363 provide examples of this.

Submission 322

It appears that the occupiable or built-up area of the house + driveway is well in excess of the LEP requirements, as explained under:

- 53B (Lot 409) Golden Grove, Beacon Hill has a land area = 734 sq.mts.
- Allowable permissible built-up area = 35% x 734 + 50 = 306.9 sq.mts. (as per Council requirements)
- However, permission seems to have been granted for impervious area = 357.4 sq. mts., plus underground garage.
- In effect a 3-storey house plus swimming pool on a block this size!

Submission 155

Proper notice is not taken of expert advice regarding conservation and environmental planning. Whilst it is the right and indeed the duty of the Council to make final decisions on planning issues, it is also its moral and ethical obligation to take cognisance of expert opinions. Council was not elected to make decisions regardless of professional input. Residents expect Councillors to act responsibly on matters outside their areas of expertise and heed proper advice.

Inadequate funds have been allocated for tree preservation. In an area where we have an aging gum population, there is a zero budget for replanting. Other councils which face this problem, such as Kuringai Shire Council, have made provision in their budget for replacing trees in decline. With thousands of trees being felled in Warringah Shire, and no money for replanting, the outlook for our formerly "leafy suburbs" is bleak.

Submission 115

Building Line and Setbacks

At the Alexander Street frontage, where the building is set back 3.5 metres and adjoins the residentially zoned and occupied property, there has been no compliance with providing a stepped profile, because it is argued, it would not be consist with the architectural design of the YHA.

Additionally, the 3 metre western side boundary setback does not appear to comply with the requirement that this be a minimum of one-third of its wall when adjoining residentially zoned land.

The supposed reduction of visual bulk of the YHA when viewed from the adjoining dwelling house, assisted by the separation between the two building of approximately nine metres is really, not very relevant. The impression of visual is maintained from wherever on the property the YHA is viewed.

It was considered that the development would not severely impact on the residential amenity of the adjoining dwelling house and that it is acceptable under the Council's Building Lines and Setbacks Policy. It has indeed, severely impacted upon the residential amenity of the adjoining dwelling house with respect to amenity loss.

Character and Streetscape

It is argued that the development would, in Alexander Street, improve the streetscape by the removal of the existing building (the church) on a nil setback. The church, in its latter years, apparently served as some sort of book repository and was allowed to rundown to a state of disrepair. I had few issues with this single level, low visual impact, dilapidated building. It is now another piece of lost local history.

Height, Bulk and Scale

It is stated that the development complies with the 11 metre height limit under Development Control Plan Number 11 – Height of Buildings. The height of the retained old building is 9.8 metres to the flat rooftop and of the proposed, three storey extension to Alexander Street, is approximately 11 metres to the roof ridge.

However, upon perusal of the plan there is no apparent correlation between the stated figures and the planning figures, with the latter showing western elevation roof levels of 14.6, 19.9 and 13.7 metres, where they adjoin the adjacent residential property, with the highest of these aligned to the middle of the property.
Therefore, there is no reduction in visual impression of building bulk associated with the development. In the context of nearby residential development, the YHA is of excessive bulk and scale.

Submission 072

7. How? Can a street in Collaroy have its zoning changed from residential to medium density, have the height restriction raised and be in a slip area and no one in council know how it changed on the LEP.

Submission 076

My contention is that Council should be responsible for any damage caused to land and buildings bordering the development as by accepting the development application they went against the guideline set down by the LEP 2000 which clearly state that no building should be made on land that is slip as indicated in the map that is at the Council Office. (see LEP - Page 52 1c) All the land where the development is to take place including the land of the adjoining properties is marked as slip on the map.

Submission 363

Approx. Mar 2001	I was advised by adjoining neighbours The Avenue, Collaroy had been rezoned medium density.
Mar 2001	Council confirmed The Avenue had been zoned Medium Density except for two corner blocks, 2 and 2b The Avenue and 39 Collaroy St. Warringah Council's LEP states no medium density developments on Landslip or Escarpment (Appendix 1- relevant Character Location statement from the LEP) and as the Western side of The Avenue is both Landslip and bordering the Escarpment, as per Councils plans, (note: a Development application had been rejected on these grounds after a landslide in the 1980's), residents in the area where not unduly alarmed, as there are several Medium Density developments within a 1000m radius of The Avenue.

. . . I deal with TV Networks, raising finance, International Service Contracts and structuring mutually beneficial business models within this industry. I operate on open lines of respectful communication and have always observed such with all Warringah Councilors. That said, being used to negotiating and compromising on many levels, I can honestly say, I have never experienced such frustration in the face of illogical reasoning, as I have over the past 2 years with Warringah Council.

7.2.1.5 Other Submissions expressed total dissatisfaction with the LEP.

Submission 163

I believe Councils Planning Document WLEP 2000, is so badly designed, written and implemented by the elected council and staff that the Warringah Community have every right to be enraged, distressed and alarmed for the future of Warringah area. Now conforming development seems unstoppable with numerous breaches allowed by elected Council and staff.

Public Hearings Transcript – April 4 2003

THE COMMISSIONER: You say that a lot of local people are not terribly much enamoured of the LEP. At the same time, I've heard very senior people in what was Planning, New South Wales laud the Warringah LEP as something of a model, perhaps, for future LEPs. It seems to be a checkered kind of image.

MR BARR: I think, as I said earlier, that some regarded it as a trail blazer but I think there's serious problems. The community's problems with the LEPs is basically it is quite simple. They don't like the looks of what they see happening around them and, obviously, any statutory instrument that allows that has to be part of the problem.

7.2.1.6 A general opinion was expressed by some Councillors and by some of the professional staff that the complaints raised by the community in relation to the LEP occur simply that they don't understand it.

Public Hearings Transcript – March 27 2003

THE COMMISSIONER: Do you believe that the development application process followed by the Council is recognised within the community as being open, fair and impartial?

MR JONES: I would believe so. In saying that, there is a concern that is recognised by people when they see primarily blocks of home unites opposed in their street. Now, there is a number of procedures that have taken place prior to the lodgement of any development application. We have heard spoken about in this Chamber, the LEP 2000. That started - what are we - 7 - that started 8 years ago - 8 years ago.

That was in the last year of the Council before the last one. It was a contentious issue. There was a fellow called Brian Brook that was elected to the Council in that - whether it was '85 - '95 to '99 - primarily on the LEP. He failed to - to when he seek back the election in 1999. The point that I make in saying that is, there has been ample publicity given to the lead-up to the final adoption of the LEP.

Whether it is apathy on behalf of people who live in a street where - and we are talking in general terms - where development application 123 is being put forward - because either their solicitors haven't done the work

Public Hearings Transcript – March 27 2003 (cont.)

MR JONES: . . .

when they did the search if they have bought into the area in recent times - to inform them of such. That is not a responsibility of the Council.

Or secondly, they were too apathetic to find out what was going on and I would suggest in my time at Warringah Council, there has been nothing that has had more publicity than the lead-up to the LEP. Now, I take it to the step where you refer to people complaining about the process. The area then, is categorised for that as a permissible use. That is where one of the problems arises, that the people just don't want it.

Jo Blo the applicant, comes down to the Council, finds out what the rules are, and goes away and prepares a set of drawings to be submitted with his application. The application then is notified. All of a sudden, there is a little focus group that sets up and they are agitating because - and primarily, people against home units, live in home units themselves.

They enjoy the - whatever there is to offer, living in a home unit, whether it is - they don't want lawns to mow, the just want security living in that sort of environment or because they can best afford it if they want to stay in the northern beaches. Anyway, there is a number of reasons why people do that. The protest group, or the focus group agitate.

They speak to me, and they speak, no doubt, to the eight other councillors to voice their concerns. A lot of the issues are immeasurable. In other words, they are emotive issues: we don't want units here; we don't want slums living in here; the people are going to rent them out - it becomes a very polarising thing. People become very self conscious about their own righteousness.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: Right. So hanging off the statement are a series of things that you would have prepared in a development control plan?

MR FLETCHER: Yes, the basic controls envelopes height, set-backs, those issues.

THE COMMISSIONER: Right, okay, thank you for that. This is acknowledged as something of a path breaking approach to the control and planning and approvals of what goes on within areas. Do you think that in general people have understood the nature of this as being something new and something very different, to what has been in the past?

MR FLETCHER: Generally, I feel the majority of residents, until they get involved in the planning process, are not aware of what the planning controls are. People that are consultants, or applicants who are continually involved in the planning process are aware of the document, but it is quite different. I mean, the document was developed probably from models in South Australia. John Mant was the main driving force behind it. It was pre my - when I was in this role. My general feeling is a lot of people see things in black and white, where this planning document has a bit of flexibility and that is probably a big issue for them.

7.2.2 The Character of the LEP

7.2.2.1 The LEP 2000 was developed over a long period of time, at least five years. For a variety of reasons, it gained a good deal of publicity during those five years. An essential part of the process in developing the LEP was community consultation, so that by itself made people aware of the process.

It was also an innovatory document, and that led to some delay in its acceptance by Planning NSW. Its initial acceptance was only for two years, and that has now been extended for another two years. Ms. Samios (Public Hearings April 8 2003) commented very favourably on the LEP.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: I will move on to another topic. The Local Environment Plan 2000 in Warringah.

MS SAMIOS: Yes.

THE COMMISSIONER: It is certainly something that I've heard a lot about as we go through. The Local Environment Plan 2000, there's certainly a great deal of mention of it in written submissions and in the hearings. It's almost a constant topic in a sense whenever development comes up. There are a few things I would like to ask you about that. The first is that it took some time before that LEP was gazetted. I wonder if you have got any background to that or comments on that.

MS SAMIOS: I was the Director of Sydney Region East, the planning team that looked after Warringah Council area when the LEP was started by Council. It was a very innovative, a very new type of LEP that Council was developing and Council was, I suppose in a way, pushing the boundaries to what we had previously done in local planning. Because of that there was, I think, in fact - I think I had one staff member working practically full time on the Warringah LEP which, given the fact that we had 26 other local government areas and only 4 staff and all the other work that we do, was a big piece of resource taken out of my team.

It was very different. The Council wanted it to be a one-stop shop. They wanted it to have all the steps and the reps in it. We needed to go through it in detail. I needed to take it back to my executive. It had a lot of work happening. Also Council - my memory was - they were

Public Hearings Transcript – April 8 2003 (cont.)

MS SAMIOS: . . .

going through a lot of consultation processes, backwards and forwards with their community, and even in the final document that we got, the section 69 there were changes occurring all the time. Even as we would have a document for assessment under section 65 there would be changes happening, changes happening.

So it was probably longer than most LEPs to go through but normally a complicated or a comprehensive LEP does take a fair bit of time to be assessed properly, especially when you're including all of the State policies and regional plans because that is the area of focus that we make sure that we're implementing those things that the State Government thinks are important.

THE COMMISSIONER: I have read pretty high praise from people who comment on planning matters in general, not particularly Warringah. I have read a fair amount of praise for the innovative way in which this LEP was structured. Is it the view of the State that Warringah has made significant advances in terms of doing this?

MS SAMIOS: Yes. At the same time the Department was developing its Plan First idea and the Warringah LEP and the discussions we had on the Warringah LEP helped to formulate in the Department's mind where local planning would go to in the future, the idea of having locality plans, having a one-stop shop, the ability to home in on one particular site and then have all of the controls coming up and in fact the work that the Department is undertaking now with the electronic delivery of local plans is seeing this LEP taken 5 or 6 steps further.

At the time when it was made it was very new. It was untested. It had a lot of things in it that were untested, things like desired future character statements, the different categories of development and the Director General at the time was unsure how it was actually going to be implemented once it was made as an LEP. So in a way, although we were happy to allow it to be developed and work with it, we were still unsure whether this model was the right model, even though principally or fundamentally it was heading in the right direction and that is why the sunset clause was actually included into the LEP.

THE COMMISSIONER: Was that the reason why it was more or less put on a trial basis, agreed for 2 years and then subsequently I think agreed for another 2 years.

MS SAMIOS: Another 2 years, yes.

THE COMMISSIONER: How long is that going to go on for?

MS SAMIOS: I hope after this 2 years not any more that we will be able to negotiate with Council those changes that we think that the LEP needs to undergo.

7.2.2.2 One of the people involved in the preparation of the LEP, or at least in formulating the ideas upon which it was based, wrote an article in New Planner March 2001 pointing out the distinctive features of the LEP (Volume 3, Appendix 3). Three key features stand out:

- the inclusion in one document of all the development controls that apply to land in the Council's area
- integrating the controls for a parcel of land in a place rather than a land use zone format
- establishing Desired Future Character statements for each place.

7.2.2.3 Mr. Fletcher (Public Hearings April 8 2003) placed the LEP 2000 innovations in the Warringah context.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: Thank you for coming back. The previous time that we spoke with you, it was in the context of a number of people from the staff, basically telling us how the system worked, which unit did what, etcetera. You would probably be well aware that in many of the written submissions and, indeed, in many people speaking at the hearings, there are references to different aspects of the Development Approval process, so I thought it would be useful to just get your views on some of the issues that have arisen and to help clarify for me some aspects of the process. So the first thing is the Local Environment Plan 2000, and I just want to see whether I'm understanding this correctly.

The Local Environment Plan brings in a different way of planning from the old system, where fairly large areas would be zoned as having a particular land use, or small variations around it so you would get large areas of residential, say, 2A unit, and another area might be residential, 2B, etcetera, etcetera, to a place management approach and I think, if I understand this rightly, there is - outside of the whole of the Council area, there are some 67 localities related to that place management?

MR FLETCHER: Around that figure, I can't recall the exact ..... - - -

THE COMMISSIONER: That is okay. Now, for each of those places, those localities, there is made a statement about the desired future characteristics of that locality, is that right?

MR FLETCHER: Yes, that is correct, yes.

THE COMMISSIONER: That largely sets the tone for what can happen within that locality, is that right?

MR FLETCHER: The locality statement has basically what is called, desired future character, that relates to the general thrust of that locality. Then it has - it is broken up into categories of developments which are permitted, there is Category 1, which is usually housing in most of them. Some in the industrial areas it is not. Then you have got Category 2, then a Category 3. A Category 3 process requires a public

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hearing of those applications. Prior to consent, Council can refuse it but it still requires a Category 3 process hearing before consent can be granted. There is also prohibited development.

THE COMMISSIONER: Okay.

MR FLETCHER: Now, can I just expand a bit further?

THE COMMISSIONER: Sure.

MR FLETCHER: Okay, besides the desired future character you have density requirements. It is usually related to housing density, some housing density is 450 in some localities, some 600 and in the rural areas it is one hectare up to 20 hectares, and then you have built form controls. So really the LEP is a combination of DCPs into one document.

7.2.2.4 The Warringah Local Environment Plan was gazetted on December 5 2000. Since then there have been some modifications made to the document, but in this part references will be confined to the original December 5 document.

Clause 18 Part 2 determines how the built form of development will be controlled. There are three determining features. First, there are general principles of development control, which are common to each of the localities. The other two features (desired future character and development standards) are individually determined for each locality.

Warringah Local Environment Plan 2000

18 How will the built form of development be controlled?

(1) Built form will be controlled in accordance with the general principles of development control, the desired future character of the locality and the development standards set out in the Locality Statement.

7.2.2.5 The General principles of development control (Part 4 Division 4 LEP 2000) contain a number of control features. Amongst the most important are:

- Clause 55 site control in medium density areas
- Clause 56 retaining unique environmental features on sites
- Clause 57 development on sloping ground
- Clause 58 protection of existing flora
- Clause 60 watercourses and aquatic habitat
- Clause 61 views

- Clause 62 access to sunlight
- Clause 63 landscaped open space
- Clause 64 private open space
- Clause 66 building bulk
- Clause 68 conservation of energy and water
- Clause 72 traffic access and safety
- Clause 74 provision of car parking
- Clause 76 management of stormwater
- Clause 77 landfill
- Clause 78 erosion
- Clause 79 heritage control

Schedule 7 (page 80) lists matters for consideration in a subdivision of land. These include environmentally sensitive/constrained land, drainage, restrictions (easements, rights-of-way etc), and access.

Details of the Clauses and the matters for consideration are given in Volume 3, Appendix 3.

7.2.2.6 In the numerous and detailed Submissions concerning LEP issues, there are examples of where each of the 17 Clauses defining general principles of development control are claimed to have been broken. There are also examples where matters for consideration in Schedule 7 are claimed not to have been considered appropriately.

The Inquiry is in no position to judge whether or not the accusations of non-compliance with the various clauses, and with Schedule 7 matters, are valid. The large list of complaints shows two things, however:

- There is widespread discontent with the way in which the LEP is being applied. This has been evidenced in a significant number of Submissions. This discontent is a significant factor in the level of confidence that people have in the Council.
- The other thing that the examples demonstrate is the very high level of understanding of details of the LEP held by the writers, contrary to the assertions of both Councillors and staff that the public do not understand the planning system. Some of the examples are used in Section 7.3.

7.2.2.7 For each locality development standards are set out in the LEP, as well as the types of buildings or activities that are permitted in the locality.

Land uses are allocated to one of four categories. Volume 3, Appendix 3 lists the Categories for one example: Manly Lagoon Suburbs (Locality G3). Category 1 allows housing, and certain activities within local retail centres. Category 2 is primarily made up of community facilities (hospitals, schools, and churches), aged/disability housing, childcare centres, and veterinary hospitals. Category 3 has a range of larger-type buildings (bulky goods shops, hotels, industries, warehouses, registered clubs and the like). The fourth group lists prohibited developments (eg. brothels, heliports).

In the Submissions there have been relatively few examples of non-compliance with the land use categories. There have been complaints, however, about Category 3 processes, which require a Public Meeting prior to consent; the complaints are about the conduct of such meetings.

The locality development standards are set out in fairly precise detail. Some examples illustrate the kinds of standards used for Locality G3:

- Housing density: 600 square metres
- Building height: buildings must not exceed 2 storeys nor 8.5 metres
- Front building set-back: development is to maintain a minimum front building setback
- Rear building setback: the minimum rear building setback is 6 metres
- Side boundary envelope and side setback buildings: they must be sited within an envelope determined by projecting planes at 45 degrees from a height of 4 metres above natural ground at the side boundaries. The minimum setback from a building to a side boundary is 0.9 metres except within the medium density areas where the minimum setback from a building to a side boundary is 4.5 metres.
- Landscaped open space: the minimum area is 40% of the site area….

Many of the Submissions that are critical of the LEP refer specifically to the locality development standards, and cite various examples of what they see as non-complying structures.

7.2.2.8 The issue of apparently non-complying uses was raised with Mr. Mitchell, an architect with broad experience in the Warringah area (Public Hearings April 5 2003).

Public Hearings Transcript – April 5 2003

THE COMMISSIONER:...

briefly fill us in on the - your familiarity with the Warringah area in terms of your professional work.

MR MITCHELL: My work as an architect of late is predominantly involved with residential construction or development in the area of Warringah. It is more to do with small scale residential work but part of my professional involvement is acting for residents who have some concerns about development. So I guess I'm working both sides of the fence, if you'd like to term it that way. I used to live in the Manly municipality. Over nearly 30 years of professional experience I've done a lot of work in the area. I've done some commercial developments.

Further up the peninsula, I've been directly involved in medium density developments. So my familiar - my feeling about Warringah is that it's not a great deal different in the way it's administered from a local government point of view than anywhere else. The structure is there. Council goes about things in a similar way from a - you know, from the aspect that I see as an architect.

THE COMMISSIONER: Thank you for that. It just helps to situate some of the things that we might talk about. In the material which you have supplied, you have given a fair amount of material on non-compliance issues associated with development applications. I don't really want to go into great detail on particular sites or buildings or whatever but what I'm searching for is if you could possibly help draw any general conclusions about the types of non-compliance that you find in the work you do because you said you represent resident groups and people related to DAs.

I guess what I'm wondering about are the primary issues, things like bulk, height, setback, those sorts of issues or perhaps less concrete factors, perhaps the desired future character of an area, the - what is sometimes called amenity and might include things like views, glare and reflection, safety, security, access to sunlight and privacy. I'm just trying to get a handle on what the generality of concerns are. It is a big question, I know, but I wonder if you can help.

MR MITCHELL: Well, I feel in my recent - in recent - the developments that I have come across recently or am aware of, the concerns I have are over Council's regard or lack of regard for both prescriptive controls and the qualitative controls. So in terms of prescriptive controls, then whatever the controls may be into developments I can absolutely say in my own mind I'm convinced that Council has allowed the envelope, the prescriptive envelope, to be pushed in all directions to the point where it's non compliant.

Now, there's always a dimension, I think, that needs to be allowed in the planning process that you could argue the merits of a case and you know,

Public Hearings Transcript – April 5 2003 (cont.)

periodically someone may impress Council or someone who has, you know, the responsibility of development control. I think it's always a good idea to - it's always a good principle to allow an applicant to win approval if a development has merit. There's a particularly good design outcome or if there's some recognition of, you know, the local amenity or one or other points that you can, you know, you can sing the praises of a development.

In what I've seen recently, there is not that dimension. There is not that particular merit about an application that warrants leniency about prescriptive controls. So looking at those prescriptive controls, building height, it's a black and white issue. It does or it doesn't comply. What I've seen is that in an assessment, the approval group or the assessment group of Council has said something complies and it doesn't comply, in my view and in my calculations. So we have height, we have side boundary setbacks, we have the provision of landscaped open space.

Certain specific things that should not be placed inside boundary setbacks are there, have allowed to be there and more particular things like the internal workings of a building. The question of compliance of fire stairs, for example. Building code says you can't have a rising and descending flight. Well, Council have approved the development saying this has to be fixed but they haven't insisted on it being corrected before giving approval. Ramp gradience in a basement parking area. They've said they're in compliance with the Australian code and they're not.

Car parking spaces are under sized and, you know, reports say that they're compliant. They're not.

MR BROAD: Can I ask you a question that flows from that? Have you formed any view as to whether this is in the nature of an over sight or whether it may be a deliberate misrepresentation?

MR MITCHELL: Well, can I give you - well, yes I do have a point of view.

MR BROAD: Are you willing to provide that?

MR MITCHELL: Pardon?

MR BROAD: Are you willing to provide that?

MR MITCHELL: Yes, but can I illustrate first something that might be
relevant? In terms of the one particular aspect, an issue of the compliance
of landscaped open space, I raised concern that this particular development
had a short fall in landscape area, a significant short fall. At the time, I
thought it was about 80 square metres but it's about double that. So where
landscape area of 50 per cent, for example, should be provided in a

Public Hearings Transcript – April 5 2003 (cont.)

MR MITCHELL:
development, it was down to 36 per cent. In another development, it was down to 27 per cent and staff are saying it's 50.

I don't believe that's an over sight. In one - in this development I'm thinking about, I raised my concern in a letter on behalf of residents and that was - that was actually - that letter of objection was seen by both the Councillors and staff. Before it was determined by Councillors, I met with the manager of the local Approval and Services Unit and raised that particular concern to him. The upshot of that was that there was a denial and on file there is an account of - well, say a defence staff of the concerns I raised specifically - well, one of those concerns was the landscape open space.

Staff have stuck to their original position that it does comply. But it seems to me that if staff have genuinely set about checking after someone has raised a question and staff have seen my question about that twice, for them to have on file a note, and I can give you a copy of that now, them saying that it is in compliance to me is a denial of the facts. I think it's been - you know, I need to maintain my objectivity about this but if someone - if I've - as a professional, if I have submitted an opinion or an assessment about something and like anyone else I make mistakes, if someone raises a question about that, well, in my own case, I would jump back in to my assessment and check it.

MR BROAD: But aren't we talking about a matter of mathematical calculation, not a matter of professional assessment? One can have a differing professional view but if it relates to a hard fact, and I think you were talking about whether a percentage of a site was available for landscaping, that must be a mathematical calculation.

MR MITCHELL: Well, where the professionalism comes into it, you could say was there a check done, did whoever was assessing the application in the first place actually take a scale rule and a calculator out and spend half an hour working over the drawing? Or did they accept the applicant's calculation that said it complies?

MR BROAD: But ultimately what is happening is that Council is being presented with a fact which is not an opinion. In other words, Council is presented with a fact that says landscaping complies. That is not an opinion. It is not saying: in our view, the provision made for landscaping
is sufficient to meet our objectives. What is being presented is something
which is absolute and in that sense, what I'm suggesting to you that
professional opinion is irrelevant. We are not at odds. You will agree
with that?

MR MITCHELL: Yes. Okay. So in answering your question, then my belief is there's a misrepresentation of the facts.

Public Hearings Transcript – April 5 2003 (cont.)

MR BROAD: Thank you.

THE COMMISSIONER: Can I just pursue this a little further? All the examples which you have given are of that nature. Height, setback, landscape areas. In a number of the submissions which we've received, I sense that the problems that a number of people feel with the development process and its outcomes lies a bit more on the qualitative side of it, that they feel that they have lost a number of things which are more difficult to provide measures of and those things range from privacy through to security through to views.

Things that are qualitative in nature. Sunlight. In your experience, do you think those qualitative features are well enough dealt with in the development approval process?

MR MITCHELL: No, not by a long - not by a long way. I place as much importance on the qualitative aspect of a development as I would the prescriptive. It's often easy to argue if you're up against, you know, what I feel I've, you know, on behalf on residents been up against, what I believe is a development friendly section of Council. It's just an easier task to argue that something doesn't comply in a prescriptive way but, you know, I've spent a lot of time in what I felt was a pretty thorough submission to Council, arguing the issues about inappropriate development and how an applicant can just push - push the envelope and push beyond the envelope and overlook, ignore essential issues, like view loss, you know, landscape viability.

I can see - I've been a landscape consultant as well. I can see that the viability of landscape - of planting is not there. For example, with a building that has quite a - quite an immense facade to the south, you can't expect a 2 metre wide planting strip around the perimeter of the building. A strip that is always going to be in the shade, surviving, yet in the assessment report of Council, this is regarded as viable and in keeping with, you know, the local landscape quality and adequate to screen the building. Well, it's just not the case.

THE COMMISSIONER: Let me try and broaden that a bit. If - let us take landscaping because you have raised it. If this happened in a large number of cases, then the result would be not just a deterioration in the landscaping and the features associated with that in a case, but it would then have a collective impact on the environment of that area.

MR MITCHELL: Absolutely.

THE COMMISSIONER: Is there any way or any attempt within the development approval process to weigh up the collective impacts of either bad decisions or no decisions in relation to such matters?

The Inquiry has no way of testing the veracity of Mr. Mitchell's claims, nor is it part of its duty to do so. What Mr. Mitchell's evidence illustrates is the perception held by many others, that Warringah Council's LEP 2000 does not produce outcomes that might be expected by a reading of the development standards set out in the Locality Statement, or even the general principles of development control. Mr. Mitchell's evidence provides a professional view.

Community Submissions complaining about the LEP repeat many of the themes he enunciates in other terms.

7.2.2.9 The issue of non-compliance was raised with Mr. Fletcher, Manager of the Local Approvals Service Unit (Public Hearings April 8 2003). Mr. Fletcher denied that such errors occurred.

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THE COMMISSIONER: . . .
There are some items which are not merit-based decisions, for example the amount of landscaping that might be given in the DA approvals say. What we've had from certain submissions is that if say the amount of landscaping should be 50 per cent of the site, that the outcomes are often not 50 per cent of the site, that in some instances we've had suggestions that the outcome is considerably less. So what is your comment on those sorts of observations?

MR FLETCHER: I would say in all the applications which we consider, approximately 2000 odd a year, the clause 20 variation which I understand the Commission has got a copy of has identified the variations for landscaping and it is only minuscule. A lot of the reasons relate to landscape variation would be because the sites are very small or

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there's an existing development on the site that probably already exceeds the landscape envelope issue and sometimes you get in a bigger development access to a site, the nature of the site, sloping.

So there are issues and a variation in regards landscape, I consider is a merit issue. It is not a prescriptive. I know it says in the LEP but it is a merit issue and you have got to base a merit argument why it should be varied.

MR BROAD: Could I ask you this? The concern which has been expressed to the inquiry is not a concern that there has been a variation of the standard but the concern which was expressed was that when appropriate calculations were done, the standard was not and this was not picked up.

MR FLETCHER: If that is the case, it is a mistake. I'm not aware of that. If you identify the case I could probably try and explain it but it as a broad-brush approach it would be very difficult to answer that I would say.

MR BROAD: Could I come back to the broad brush and that is this. What steps are taken to ensure that mathematical compliance such as landscaping is in fact met? Is there a calculation done?

MR FLETCHER: Yes. Well, if you have got a DA it is often an applicant will say he has got this landscape but when you do a calculation, actually scale it off and measure it, they are wrong. I mean that - - -

MR BROAD: So Council staff go through that process to ensure correctness?

MR FLETCHER: Yes, yes.

The fact that there are variations with development standards does not mean that the LEP 2000 is highly flawed. What it does mean, in terms of the Inquiry, is that the communication of how the LEP does or should work has not been conveyed well enough to the community. As a result there has been an apparent rise in the level of discontent, and a corresponding fall in the level of confidence with the Council's management. This has a direct link to the elected representatives. The most contentious issues concerning development have appeared at Council meetings where the decision, to allow or to refuse a development application to proceed, is made by the elected representatives. Their decisions are inevitably based on their interpretation and understanding of the LEP.

7.2.2.10 One of the most innovative aspects of the LEP 2000 is the statement of the Desired Future Character of a locality. This is meant to provide a qualitative statement of the features of the area that should be maintained, and the amenity that is envisaged. Three examples of Desired Future Character statements are given in Volume 3, Appendix 3. The three localities used are Pittwater Road North, Brookvale Valley, and Manly Lagoon Suburbs.

7.2.2.11 The three examples in the Attachment are fairly characteristic of the kind of statements describing the Desired Future Character made for each of the Localities. They appear to be couched in terms that are general and at times vague. They would appear to open the door to various interpretations. If the built form controls are very specific and still produce controversial interpretations, the Desired Future Character Statements add greatly to the chance that they will be interpreted differently across the community. Since they are meant to count as half of the evidence to be considered when making a decision on a development application (Mr. Fletcher Public Hearing April 8 2003), it can be seen why much confusion might be generated within the community.

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MR FLETCHER: Well, there is two issues. The people that do the assessments, if it generally complies with the built form controls and the density requirements, say for dwellings, or additions to houses, they are usually done under delegation. If there is departures, like the residential flat developments and it does not fit in with some built form controls, it goes through the development unit which is reviewed and in some instance it goes to the Full Council for determination.

The officer has got to look at - well, the staff have got to look at two issues, one, the built form controls and desired future character, and in reality they both carry similar weight, but probably the desired future character is looked at as a higher priority, but in reality they carry similar weight.

THE COMMISSIONER: But it is not so explicit?

MR FLETCHER: The built form controls are very explicit and density - - -

THE COMMISSIONER: Yes, but the desired future character - - -

7.2.2.12 Mr. Mitchell (Public Hearings April 5 2003) was questioned about this issue.

Public Hearings Transcript – April 5 2003 (cont.)

THE COMMISSIONER: Okay. What I would like to do now. In part of the material that came in with your submission, there were a number of particular references to particular sites. Now, as I said before, I'm not going to talk about those sites but I would like to bring up some of the issues that you point out in relation to those sites. So I'm not talking about the site per se but the issue and I will just run through a few of those and get you to comment if you would. In one instance, for example, you say that a - you talk about a particular development where the desired future character suggests that units should be allowed on the ground floor of the buildings there.

You also cite a development where units were allowed on the ground floor. Now, in terms of that particular example which brings the desired future character thing down to a more tangible point than some of the descriptions that go with desired future character, do you find that - you have already made the comment that desired future character does not lead to compliance with the often fine and perhaps visionary even sometimes ideas within it.
Why I brought this one up is because you did refer to desired future character.

You related it to a tangible thing. Units on a ground floor or not and they were let through. The more general question is is the material or are the sections where the LEP talks about desired future character really considered? Is it - I mean, is it just a back drop that has a lot of nice words of it but no particular application to a real on site development?

MR MITCHELL: Well, I think - my answer to that is no, it's not considered. There is a responsibility to address that in assessments or at least that, you know, to give it due consideration. So I find it, you know, fairly - I find it fairly difficult to talk about it because in the beginning, you know, if we're only - if we're only looking at local environment plans and the way Council deals or where the Council responds and discusses it or properly assesses it or not, the LEP is deficient and not detailed enough.

But that's not to say that it should be overlooked. There's a wealth of - there's a wealth of, you know, reference by just inspecting the locality and I'm not - - -

THE COMMISSIONER: Can I just - I don't want to spend too much time on this but I sense in some of the submissions which we have received
people complaining about the character of their area changing and they
don't like it. Now, character is a fairly broad descriptor, but I sense that
the desired future character of an area is really what they are talking about,

Public Hearings Transcript – April 5 2003 (cont.)

THE COMMISSIONER:
the things that go into those words. What you are saying is that it is there in the LEP but not strongly enough to translate into being a protective element for what people call the character of their local area. Is that a summary of your - - -

MR MITCHELL: Yes, it's not in the LEP but it's not in the - it's not recognised as being a profile of any importance in the assessment process.

THE COMMISSIONER: Yes.

MR MITCHELL: So there's not a - you know, there's not a working attitude in Council's departments where it's held in any - held in any - what's the word? It's downgraded. I don't think it's considered really seriously or held as a serious issue when a development is being considered. You can look at any assessment. I've looked at a variety of assessments, looked at files. The desired future character issues about an assessment occupy maybe one or two paragraphs and there's no - there's no discussion in the assessment group's view of an application.

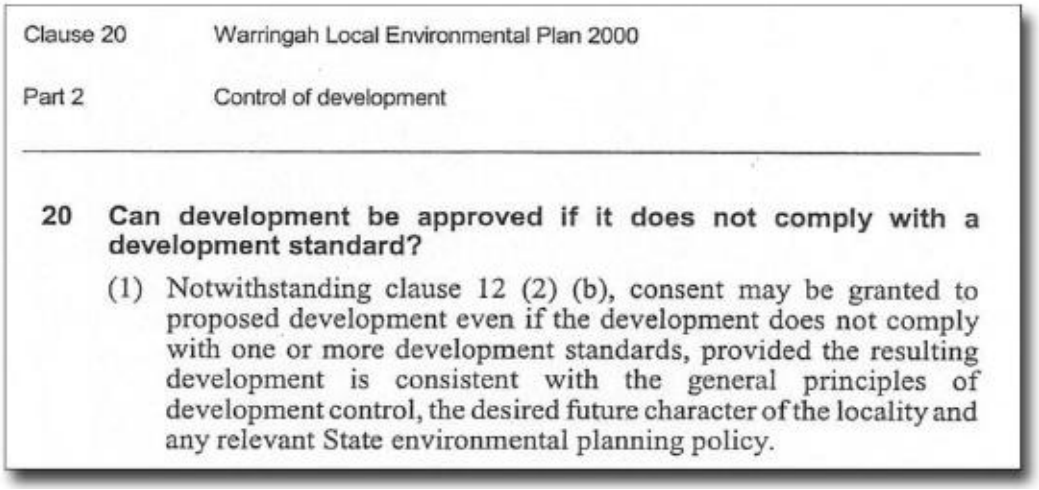
You know, I feel an assessment should explore - an assessment should inform the public and Councillors and anyone else interested in processes. I think an assessment should justify in a variety of ways its decision but what I see in the assessment documents is our opinion is that the development is in compliance with desired future character. That's it.
You could even say it's a pro forma approach, occupying very minimal space in the assessment. So there's no argument, there's no discussion about features that are important or otherwise.

This reference that you brought up that I'd made happened to be something specific in a desired future character statement in a particular area what was to happen on the ground floor was to be commercial, a commercial component and so that was something that I picked up because it was a specific reference to what was to happen on the ground floor, which is typically not the case in a desired future character.

It is clear from his evidence that the interpretation of the Desired Future Character of a Locality can be confusing, even to a professional. The evidence of other Submissions demonstrates that some within the general community have struggled to understand how the concept should be interpreted.

7.2.2.13 What many people do not seem to realise is that the LEP 2000 is not a rigid planning document in the way that the previous zoned–based planning documents were. The LEP has in-built flexibility intended to create a dynamic growth pattern in line with community expectations (expressed in the Desired Future Character statements). This is made plain in Clause 20 (1) Part B of the LEP 2000.

Warringah Local Environment Plan 2000



Clause 20 Warringah Local Environmental Plan 2000

Part 2 Control of development

20 Can development be approved if it does not comply with a development standard?

(1) Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.

Two conclusions might be drawn from this. One is the fact that the LEP is a flexible document has not been fully explained to the community. The other is that even where people might understand the possibility of flexibility, they do not understand the terms under which such flexibility is applied.

7.2.2.14 When questioned about this, Ms. Samios of Planning NSW suggested that other Councils have not followed the Warringah path because people liked to have more certainty in the planning outcomes.

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THE COMMISSIONER: You mentioned just then that one of the more innovatory parts of the program was that the introduction of desired future characters of areas and during the hearings we have also heard mention of the fact that this was a place management type of approach rather than the old zonation approach. Does that bring into the process a lot more flexibility in terms about possible outcomes?

MS SAMIOS: It was supposed to in the initial discussions we had about the whole concept of desired future character statement. Even the word "desired" gave a very strong indication about objectives and possibilities and the category 3 development was sold to the Department in that this would reduce the number of spot rezonings because you would be able to test it against the objectives of this LEP. So we saw this Warringah LEP as being the first steps of a local plan that had a lot more flexibility in it than some of the older style ones.

The issues that we have, why the 2 year period, the sunset clause got extended for another 2 year period is that we are not sure whether that is working in the way that it was in fact put to us, whether it is actually a flexible document and whether the desired future character statements are now taken as being prohibitions rather than objectives and also the relationship with the three categories and also with the state policies that that LEP absorbed.

THE COMMISSIONER: Does this process that you have just been talking about also increase the level of discretionary decision making and perhaps more merit-based decision making within the approval process?

MS SAMIOS: It should have, yes, and in fact with the category 3 development there is a merit-based ability by Council to consider those developments in that category 3. The problem for the Department has been is to understand how category 3 does not have to be consistent with the desired future character statements, where the other ones do, and therefore how can you approve them if one can't - anyway it is a complicated discussion the Department is actually having internally now because there have been a number of other LEPs that are basing their LEPs on the Warringah structure and so the Department is now trying to ensure we have a consistent answer for those Councils and a direction for those LEPs to move in.

When I look at the work that was done by Warringah, it has offered us a

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very solid foundation for that further discussion because it was the first one to start.

THE COMMISSIONER: Would you think that given its very innovatory development and now you say other councils within the metropolitan area are following the lead of Warringah and you in fact are looking at what has happened in Warringah to form broader views of what should happen and what might happen, do you think that the general public may struggle to understand such an innovatory development?

MS SAMIOS: A difficult question. With all the contact that I have with the general public, many of them want certainty. In many other areas in Sydney they have tried to include far more detailed controls to provide for that certainty. In other Local Government areas such as South Sydney they have a very flexible LEP process and their community is able to understand the merit-based approach of that LEP. So to give you a black and white answer, I don't know if I can but if you think of the amount of consultation that LEP went through, how many people it contacted, the committees that it had, one would have expected the community to understand the flexibility that that LEP allowed it.

7.2.3 Discretionary Judgements and Merit Factors

7.2.3.1 In the introduction to the Warringah Local Environment Plan 2000, the purposes of the Plan are spelt out.

Warringah Local Environment Plan 2000

> **3 What are the purposes of this plan?**
>
> The purposes of this plan are:
>
> (a) as far as possible, to integrate into one document all environmental planning instruments affecting the development of land in Warringah and ensure that this plan is the sole environmental planning instrument applying to the land to which it relates, and
>
> (b) to describe the desired characters of the localities that make up Warringah and relate the controls on development to the achievement of the desired characters of those places, and
>
> (c) to establish limits to the exercise of discretion with regard to the control of development, and
>
> (d) to provide decision-making processes appropriate to the nature and extent of discretion to be exercised.
>
> **Note.** The term ***development*** is defined broadly by the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and includes the erection of buildings, the carrying out of works, the use of land or of a building or work on that land, and the subdivision of land.

It specifically states that the plan is to establish limits to the exercise of discretion with regard to the control of development, and to provide decision-making processes appropriate to the nature and extent of discretion to be exercised.

There is a large quantity of evidence provided in the Submissions suggesting that neither of these discretionary objectives is working effectively.

7.2.3.2 Mr. Fletcher, Manager of the Local Approvals Service Unit, was questioned about the application of discretionary powers (Public Hearings April 8 2003). The questions were based on the former Department of Urban Affairs and Planning Practice Notes designed to guide planners around potential pitfalls related to discretionary decision-making. In response to every issue raised, Mr. Fletcher claimed that his unit had not acted in any way other than being in accord with the Practice Notes.

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THE COMMISSIONER: In terms of discretion I'm going to make some reference to what used to be the Department of Urban Affairs and Planning. Some of their practice notes from 1999 onwards. I would just like to run through a few things that they raise in relation to discretion and development approvals. As background I will quote from one of the practice notes, it says:

In proper[sic.improper]exercise of discretion affects us all, it weakens the integrity of the system. It involves the loss of public trust and faith. Improper use of discretion arises when the extent of discretion available in reaching a decision is not know, or where conflicts of interest affect the decision-maker's judgment.

Now, following that in the practice notes, it lists some of the outcomes that might occur if discretion is not properly used. What I would like to

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THE COMMISSIONER:

do is just run through those things that the practice note lists and, basically, in a "yes/no" sort of way, ask you to say whether or not you think any of these outcomes have affected Warringah.

The reason I'm doing this is because in that quote that I just said, if discretion - improper exercise of discretion weakens the integrity of the system and involves the loss of public trust and faith. So it is whether or not the community has confidence in this more discretionary system? Okay, some of the issues that arise out of that, the first one is corruption and unethical behaviour. In your experience, has there been any such in the Warringah case?

MR FLETCHER: In regards to my service unit and my staff I'm not aware of it. Anything outside that I have no knowledge.

THE COMMISSIONER: Okay, thank you. The next possible outcome in the [DUAP] notes suggests poor - one of the outcomes if discretion is not used properly is more [poor] administrative practice. They list a number of things under that. So let me just go through the things that they list and again just give you [could you give] a comment whether or not this has happened at all in Warringah. The first of those is acting beyond the [their] powers or exercising powers unreasonable. Essentially, is everything done by the book?

MR FLETCHER: I would say sometimes there are mistakes and they may relate to minor issues. No one is perfect but in the majority of cases we generally follow our procedures and our procedures manual.

THE COMMISSIONER: Okay, the second one is basing decisions on irrelevant grounds.

MR FLETCHER: The staff in the service unit I work in, in my view, is we look at things professionally as professional town planners, building surveyors. Often people will make submissions that the staff consider do not relate to the planning process. They are more related to possibly neighbour disputes or issues in that regard and I would say they are irrelevant.

THE COMMISSIONER: Okay.

MR BROAD: So what you are saying is where someone makes a submission which in your view is irrelevant - - -

MR FLETCHER: Yes.

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MR BROAD: - - - it is discarded.

MR FLETCHER: No, it is not discarded. In the report we identify - if they make a submission - if you refer possibly to some of the Council reports a person will make a submission about an issue and we will provide a comment as to whether it is weight [sic.weighty] enough to refuse an application but in reality sometimes if you look at some of the issues the submission may be related to a view loss but when you dig deeper you find that both parties, so the objector or the applicant, have got issues that have been ongoing for years and may be related to the dog bit their child or something like that and they try and drag that into the planning process as the reason why we shouldn't approve a proposal.

MR BROAD: But if there is a view loss that would be a relevant consideration.

MR FLETCHER: It is a relevant consideration but it comes back to the LEP. View sharing.

MR BROAD: To the extent that it is a relevant consideration whether it relates to a dog bite some years before it must be considered.

MR FLETCHER: Yes, that's considered, yes.

MR BROAD: Yes, thank you.

THE COMMISSIONER: The third element that is placed under poor administrative practice is failing to consider relevant matters, for example, putting economics over environmental impacts. Has that ever happened in Warringah?

MR FLETCHER: Not that I am aware of.

THE COMMISSIONER: Okay. The next one which is listed is bias, actual or apprehended. It may include connections with relevant people [sic.in] and Council or political interests of an applicant. Have such matters ever affected the development process?

MR FLETCHER: I am not aware of that. Sometimes it is difficult to fight off.

MR BROAD: What do you mean by that?

MR FLETCHER: You get pressures from all sides. Applicants, residents, some councillors will say, you know: support this person.

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MR FLETCHER:
Don't support them. My general thrust is we assess the application as it stands and we make the decision and it is reported to Council and it goes to Council. If it does not go to Council it is done under delegation.

MR BROAD: You are, of course, required to put your blinkers on and assess the application according to its merits, aren't you?

MR FLETCHER: That is correct.

MR BROAD: In your view has that occurred.

MR FLETCHER: I don't know about the blinkers on. Sometimes things have come in from all angles in my role and you find that you are trying to juggle things to get an outcome that is desirable as regards the planning document.

MR BROAD: You said that sometimes you get councillors suggesting that you should support an application. In what form does that come?

MR FLETCHER: It is not so much support it is them trying to impress the views of residents or applicants to say: what is happening with this application? Is that a major issue? I had a chairperson at the service unit when this Council first got elected. It was a very difficult time for myself. That person tried to impose her views on the service unit and I continually had to fight that back.

MR BROAD: Is that recently?

MR FLETCHER: No, it was about three years ago.

MR BROAD: That person is still a councillor?

MR FLETCHER: Yes.

MR BROAD: Is a councillor now. Yes, thank you.

THE COMMISSIONER: The final issue that is raised under poor administrative practice in this ....[the DUAP] practice notes is acting under a direction or inflexible [inflexibly] applying a policy. For example, refusing or approving developments of a specific type because the Council likes or dislikes them.

MR FLETCHER: I am not aware of that from my service unit. It may happen in the Council meeting but I am not aware of it.

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THE COMMISSIONER: Okay. So all of those things which I just mentioned in the practice notes related to poor administrative practice. Another danger in an environment where a lot of discretion has to be used they suggest is inconsistent decision-making. The suggestion is that that might arise where there is the exercise of discretion by a range of people that may lead to inconsistencies in the pattern of decision making. Have you got any comment on that?

MR FLETCHER: To address that we in the local service unit we have what is called a development unit and any variations or major issues are discussed in that section which comprises of [sic] a manager. It is not myself it is a manager of development assessment and a number of team leaders. They review issues, discuss it with the assessment officer and provide guidance on those matter [sic]. I generally feel its [sic] approach in our development unit is quite a good way to try and manage issues. One office [sic] - the offices [sic] only have delegation to approve stuff that complies with Council's codes, policies and the LEP. Now, in reality most of those ones would relate to, as I said earlier, dwellings, carports, garages. Residential flats, big factories, major landfills, environmental issues they nearly all go through the development unit.

THE COMMISSIONER: Okay.

MR BROAD: In turn - sorry to interrupt.

THE COMMISSIONER: Yes.

MR BROAD: In turn does the development unit apply a set of policies in the manner that it deals with those applications that come to it?

MR FLETCHER: Yes, I think it does. We have got a procedures manual. It is presently being reviewed and that has documented what the developmental unit has to do.

MR BROAD: Yes. Rather than - is that a procedural manual in the sense that this is the path a particular application will take or does it address the manner in which and the times that it is appropriate to exercise discretion?

MR FLETCHER: As regards to the delegations that is probably more related to - the only people who can refuse applications are myself, the manager and the three team leaders and they are the only ones that can give any departures to the clause 20 variations. So it works in a team environment with three as regards to say if there is a tick the box process, the assessment sheet has a number of issues that have got to be

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MR FLETCHER:
identified. It goes through that process and how they are addressed and that is discussed in the development manual.

MR BROAD: But the question I am putting to you is this, that you said that matters which do not comply cannot be approved by staff under delegation. It has to - - -

MR FLETCHER: Sorry, that is - can I just interrupt for a second?

MR BROAD: Sorry.

MR FLETCHER: The delegation - that relates to development assessment officers but officers, team leaders, managers and myself do have delegations to approve that.

THE COMMISSIONER: Okay. The final element in this practice note regarding exercising discretion focuses on the possible outcome of piecemeal variations to standards and a cumulative effect of that and they talk about standard creep or de facto change in standards and they talk about effectively [developing] policy on the run. Does that sort of thing happen in the introduction of a brand new LEP?

MR FLETCHER: My experience with that type of process, it goes back to when you had DCPs and it didn't have real good controls and that is what is called creep of change of land use. The LEP has the category 3 process. It addresses that and it comes back to it [that it] must fit in with the desired future character or whether [where] it has to and that is the big

issue. The desired future character relates to what is desired for that locality and one of the issues you have, the locality of some [some of the localities] are quite large and some applicants only look at adjoining properties and say: that's the desired future.

But in reality you have got to look at the whole locality and Council has been successful in a couple of court cases defending that issue.

7.2.3.3 In response to a question from Mr. Broad (Public Hearings April 8 2003), Mr. Fletcher stated that a lot of the departures from the LEP are based on merit decisions made by his officers.

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MR BROAD: What I'm getting to is this, that where there are departures, where it goes away from an individual officer, when it is dealt with by the unit is there a prevailing policy which gives guidance as to the circumstances when departures will be considered?

MR FLETCHER: No, a lot of them relates to merit and it relates to the LEP it has, whether it is desired future character but it does - - -

MR BROAD: So it falls back to those merits?

MR FLETCHER: That is true, yes.

7.2.3.4 In 1998 Section 79C of the Environmental Planning and Assessment Act 1979 was introduced to replace the previous assessment criteria in Section 90 of that Act. The aim was to reform the way that development assessment was carried out so that development proposals were determined on their merits as opposed to how well they complied with a checklist.

Questions were put to Mr. Fletcher (Public Hearings April 8 2003) as to how the Local Approvals Service Unit applied Section 79C. The questions were put because the evidence of some Submissions suggested that at least some processes at Warringah were still dominated by a checklist approach.

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THE COMMISSIONER: . . . I will move on to a matter which in a sense we've partly touched on but it flows out of the broader

discretionary systems and that is merit assessment and again I'm just reading off some of the DEWUP [DUAP] practice notes and the suggestions that they make around that.[them]. I would like to just read a short extract that provides a little background to this:

Merit assessment of development is a skill that requires the assessment officer to possess a clear understanding of the nature of the development, the environment, physical, social and economic, that the development is located within and the impacts of the proposed development on the environment. Section 79C with its broad assessment criteria gives legal force to the merit assessment process.

That is the background. What has been put forward is that [with] at some of the reports that go up to Council as background to consent or refusal of a development application [they] don't actually contain arguments about the pros and cons of a certain development but rather tend to be check lists of whether or not that development has fulfilled certain control requirements. Given what you said about the desired future character of an area as being the weightier part of the application and is at least half the value of a decision, should the reports be more discursive in terms of expressing the rights and roles [wrongs] as perceived by the assessment officer of certain features to do with the outcome?

MR FLETCHER: Well, possibly there's two issues. One, merit assessment, is very subjective and it is a skill that is developed over the years. It is not something you would expect a young planner out of university to understand. Retention of good skilled people in local government is very difficult and that is an issue that the service unit has been trying to address by encouraging people to duly qualify as a building surveyor and a planner to develop their skills and merit assessments and also through the Land Environment Court process which merit is subjected to a lot of things.

Now, with regards to the report, my view is that I've always encouraged a report to go to Council when all the issues have been subjectively [reviewed] and addressed. I mean we could put an application up the first month we've got them and you could provide answers to what some people would require but in many instances the major development applications, they may take many months to get to Council at that stage and it is generally the view that most of the issues have been subjectively [reviewed] and merit looked at.

So by all means if the Council make a direction that we put every application to Council within 40 days, I'm quite sure it would have a lot

Public Hearings Transcript – April 8 2003 (cont.)

MR FLETCHER:
of other subjective issues raised in it.

MR BROAD: Can I interrupt there?

MR FLETCHER: Yes.

MR BROAD: The issue that is being put to you is not the speed at which reports are given to councillors but rather their content. That is whether they address either side of an argument or a concern over a particular merit issue and what is being suggested is that the question that is being asked is whether or not the reports address both sides of the argument, then prefer a conclusion.

MR FLETCHER: Well, my understanding is the report identifies issues raised by persons who made submissions and it puts a comment in that regard but to put a report to Council to argue the case for people to make submissions and then put a report in the same report to argue the case for the applicant, I would find that very difficult to do.

THE COMMISSIONER: That is not what - - -

MR FLETCHER: Is that what you are getting at?

THE COMMISSIONER: That is not what is implied.

MR FLETCHER: All right.

THE COMMISSIONER: What is implied is that if on your own admission these merit decisions are subjective, then the person who is making that subjective decision ought to be able to explain why that decision is made and in that process show that counter conclusions wouldn't stand up. There has to be some - - -

MR FLETCHER: Well, the reports that go to Council and also in the officer's report if it was done under delegation, I mean if an objector raised an issue about noise there's always a comment whether it is given any determining weight and I don't know what else you - what the objectors would like to say whatever. They make a submission and we identify the issues and I would say that the majority of the reports - as I said we are not always perfect but a majority of reports would identify those issues. Maybe a one-liner or a two-liner but it does make a comment in that respect.

THE COMMISSIONER: But that is not presenting an argument, a one-liner.

MR FLETCHER: No, but as I said, I have difficulty presenting an argument for an objector if the staff professionally feel the application is a good application.

MR BROAD: But it is not simply a matter of putting an argument on behalf of an objector. If an application comes before Council and for example say it is in respect of an industrial site and Council may be concerned for instance that there is noise. I would have thought that the report would explore both sides, that is that Council staff have had concerns, irrespective of whether they may have been raised by an objector, that to the contrary the applicant has provided evidence which opposes staff's concerns and comments on the nature of both the staff concerns and also the applicant's evidence in support of the application. Would that be the normal way in which a report to Council is drawn?

MR FLETCHER: Yes, yes. We would identify say traffic is an issue. It is a common issue identified by police and people making submissions and we request the applicant to make a traffic submission. We would refer to our traffic engineers to make a comment and that is identified in a report. Now, if you raise issues about noise and air pollution, whatever, they can be addressed as a condition of the consent and the full report identifies the condition that addresses those concerns. Now, often I've experienced where people make submissions and they say Council has not taken any notice of their submissions but if you look at the report recommendation, often it will have a condition that covers that concern. I don't know whether I'm going round in circles.

7.2.3.5 The introduction of private certification for building works has raised another possibility. This is that the non-compliance issues, that are raised in some Submissions, may be the outcome of poor certification by the private certifiers, and not the fault of the Council staff. Mr. Fletcher was asked about this possibility.

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THE COMMISSIONER: The next one I would like to raise is the role of certified creditors [accredited certifiers]which I think began in 1999. It effectively introduces a group of people who are not part of the Council having the role of accrediting the building and the old role that building inspectors would have performed. In your experience has this worked well in Warringah?

MR FLETCHER: A lot depends on the certifier. Some certifiers it has worked very well. Some it has been pretty atrocious in my view, particularly in the areas of management of the development, the environmental issues, changes that aren't addressed and also construction certificates issued that don't comply with the development consent. We've got one court case presently going on in that regard.

THE COMMISSIONER: Okay. Does that happen often?

MR FLETCHER: No. I think one of the big issues are that a lot of the community don't understand the process as you mentioned about the days when they had the building inspector. If they had a problem with the development they would ring up Council and say: look something is going on. Now they ring us up and say: it's private certifier Joe Bloggs, you should get on to him. And they say: well, hang on, that bloke's being paid by the developer, why would he want to listen to me? I want you do to something.

And often the way the staff get involved is in the compliance area, working out of hours, water pollution offences and that is an ongoing problem.

7.2.3.6 Some Submissions complained that modifications are made to developments after an original design or plan has been approved. In some cases Council has allowed these modifications. This is done through Section 96 of the Environmental Planning and Assessment Act of 1979. Plans that are different to the approved plans because they show compliance with consent conditions, or include additional details to show compliance with the Building Code of Australia, do not require an application to modify the consent.

Section 96 changes may account for some of the problems encountered where a person has seen an approved plan, and then found that the built structure deviated from that plan. Sometimes people assert that the Council has broken its rules in allowing this to happen.

Section 96 issues were explored with Mr. Fletcher (Public Hearings April 8 2003).

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THE COMMISSIONER: Okay. An item that is a little bit related to that. There have been submissions that say: we saw a development application go through. With that development application there's been certain requirements and certain standards in terms of setbacks and all sorts of other things and then when we see the outcome, the building say, they don't seem to match what we saw on the development application. What I want to bring up is section 96(1) of the Act where - and I will just read something about that:

If the application is to correct a minor error, misdescription or miscalculation, the Council does not need to advertise, assess the

Public Hearings Transcript – April 8 2003 (cont.)

THE COMMISSIONER: . . .

environmental impacts or determine whether the development will remain substantially the same.

So under section 96(1) the Council for minor changes does not have to go through the process of reviewing the DA etcetera. Would you think that where changes are noted by people that the outcome of a building is different to what they expected from the DA that most of these come through the application of section 96(1)?

MR FLETCHER: The Council notifies most section 96 modifications on bigger ones. On smaller projects or if it is internal or it relates to in fact lessening the impact of the original proposal we may make a decision not to notify but in the majority of cases we do notify them. The issue that I think some people have difficulty with, some people don't - and I'm not being derogatory to them - don't understand the plans initially and they get a perception of what the building is going to look like and then when it is built they don't really understand it.

Now, obviously there's some people out there with professional skills who will pick that issue, that do understand and they may raise it but in my experience the majority don't have those skills.

MR BROAD: Could I ask you some further questions on section 96? Section 96(1) is an extremely limited power. The powers to permit modification or variation consents under subsequent sections are wider and of course they do bring with them a discretion and it relies on Council's notification policy as to whether adjoining owners or others would be notified. In other Council matters that I've looked at, and these do not relate to Warringah, there has been evidence that some developers use successive section 96 applications to obtain successive modifications to the development, ultimately resulting in a substantial change to that originally anticipated and originally approved. My question is, at Warringah Council, is this process taking place?

MR FLETCHER: I can recall a couple of applications where there had been a number of modifications. But in the majority of cases, she is the only one mod. We have had one major Court case where there is extensive land filling and the Council took action in the Court because in our view was, they needed a new development application. The Court held there was a modification and they granted consent.

MR BROAD: In dealing with successive modifications, does Council have regard to the original approval or does Council have regard to the last modified approval when assessing whether the modification being sought is minor or whether it should be approved?

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MR FLETCHER: Well, we consider both issues, I mean you have got to - you have to consider the original approval and the modification depends on the extent of the modification. If the modification proposed on the second time round is quite extensive, we will say, you need a new development application.

MR BROAD: But how do you measure whether it is extensive? Do you measure it being extensive having regard to the last form approved? Or in regard to the original form approved?

MR FLETCHER: Oh yes, as I said, you have to look at both, what the original - it depends what the modification is. If the modification relates to increasing car-parking sub-floor area in a residential flat development, the impact is probably negligible with regards view loss, but there could be issues about traffic generation, so that issue would be looked at. If it is creating a higher parapet around the whole building, raising two metres or a metre, in our view that is a whole new DA.

If it is relating to changing a wing wall or windows related to the original assessment and what the modification is, because often you might find the mod - well, not often, but the mod, the successive mod may relate to - they can't build the building as proposed because it does not apply to the building code or does not comply with driveway gradients, or there is issues where impact to address conditions of consent.

MR BROAD: Yes, okay.

7.2.3.7 One further issue, raised in some Submissions, was put to Mr. Fletcher. That issue was that some works that have been started without the consent of Council have apparently later been given approval. Mr. Fletcher explained that there is a process for handling such problems.

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THE COMMISSIONER: - - - but I'm trying to pick out all the issues that have come up one way or another in the - in the various submissions we have had. This one concerns not so much changing the development as it goes on as we were just talking about but rather that a development takes place and the approval is given afterwards, and we have had examples of that. Under what circumstances and using what principles are such post development approvals given?

MR FLETCHER: Well, that may be what people feel what has happened. Often you will find works have started without consent, it may relate to a dwelling or carport or balcony or something like that. Compliance officers come across, they will serve an order on them to

Public Hearings Transcript – April 8 2003 (cont.)

MR FLETCHER: . . .

stop. The person will submit a development application then that includes further work. If it does not include further work, they have to apply for a building certificate and Council can assess in that regards. But you can't give post consent to work that has already been carried out.

MR BROAD: So the question then arises as to the issue of a building certificate rather than a consent. In those circumstances, can you please indicate the principles and circumstances where such certificates are given?

MR FLETCHER: Such certificates may relate to fence structures - - -

MR BROAD: No, no, no, no - - -

MR FLETCHER: Sorry.

MR BROAD: - - - let us not deal with the actual instances.

MR FLETCHER: Okay, right.

MR BROAD: Let us deal with the principles and the circumstances?

MR FLETCHER: Well, there is a couple of issues, one is firstly, would Council have approved it before anyway? That is a basic assessment, does it fit in with Council's planning controls? The other assessment, if Council proceeds with the order through the Court, it is a skill assessment whether you would be successful in the Court, whether you are going to get an acceptable outcome. And the other issue is, if it is subject also to a development application to increase what is already there, you have to look at both sides, whether the development application will be approved and if it is not approved, you have to serve an order to remove the structure. Am I clear there?

MR BROAD: Yes.

MR FLETCHER: Okay.

MR BROAD: Does Council in those circumstances find itself to a degree in a cleft stick?

MR FLETCHER: Yes.

7.2.4 Community Understanding of the LEP 2000

7.2.4.1 The novelty of the LEP 2000, and the understanding of various matters arising out of changes to the Environmental Planning and Assessment Act of 1979, presents a challenge to members of the community who may not have any professional training in relation to such issues. In particular, the system and its application at Warringah Council, makes it difficult for objectors or applicants to find the pathway through what might appear to them as a maze.

7.2.4.2 As mentioned earlier in this part there have been suggestions that community discontent with the LEP 2000 stems in general from their incapacity to understand the document and its workings.

This cannot be taken as the general rule, however. Throughout the written Submissions and in the Hearings many members of the community were able to offer incisive views on the LEP. Two brief examples are included to show that members of the community are confident in their understanding of the LEP.

It was not a lack of understanding that frustrated them. Rather, it was their apparent incapacity to test the assessment processes that produced what they saw as negative outcomes.

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MR BARWELL: Well, firstly, I have read the LEP backwards - well, not backwards - I read it at the time. It has been, what, a year ago now. I read it very carefully. I have looked at the report that came out. I looked at the interpretation of it and the way it is written and, you know, the reason why we have granted them this is because of this and this, in a way that if you like, if there is a spectrum of interpretation it was on the one edge of that spectrum.

THE COMMISSIONER: Okay. I would just like to pick up on your reference to the LEP. The Local Environment Plan 2000 was in fact developed over a number of years - I think about 5 years in its development. Did you have inputs into that process?

MS ARMSTRONG: We did have inputs. One of our members was a member of the Community Advisory Committee throughout the whole process of development of the LEP 2000. He reported regularly to our meetings and when the LEP 2000 was completed we felt, I think you could say that we knew fairly well how it applied to our area. We were aware that there would be changes further down the track for various reasons and we were comfortable with it as it stood and we have supported the LEP 2000 as the legal planning instrument. There may, there will be, I would say, changes but perhaps our mantra is the best way of putting it, is that we are not opposed to development which is appropriate and sympathetic and which is part of a coherent, orderly, planned process, not on an ad hoc basis of breaches of the LEP.

Now, one of our committee members, or two of our committee members, are on the existing committee to review the LEP 2000. We have had therefore a continuous connection with the process.

THE COMMISSIONER: So if I can just summarise, and correct me if I'm wrong in the summary, you had close contact with the process of building the LEP.

MS ARMSTRONG: Yes.

THE COMMISSIONER: You have had continuing close contact with any reviews of the LEP.

MS ARMSTRONG: Yes.

THE COMMISSIONER: You were satisfied when the LEP was

Public Hearings Transcript – April 4 2003 (cont.)

THE COMMISSIONER: . . .

gazetted that given that there is all sorts of different forces that affect areas, that you thought the LEP was fairly satisfactory. Your concerns now are about the application of the LEP to particular situations.

MS ARMSTRONG: Yes.

THE COMMISSIONER: Okay.

MS ARMSTRONG: I'm referring to the LEP 2000 of course as far as it relates to our two localities.

THE COMMISSIONER: Sure.

7.3 Development Approval Processes

7.3.1 Evidence of Problems

7.3.1.1 The application of the LEP is exercised through the Local Approvals Service Unit in the process of assessing development applications.

There have been numerous Submissions critical of both the processes and outcomes of the development assessment system. The weight of such evidence is too great not to believe that, in the eyes of the community, there are serious problems with the development assessment processes.

These perceived problems constitute a substantial factor creating a lack of confidence in the Council. That lack of confidence is manifestly broad, and is concerned with both the decision-making of the elected representatives, and the processes followed by the staff. The issues to do with the elected representatives are considered in Section 7.4. The focus of Section 7.3 is on the processes themselves.

7.3.1.2 The introduction of Desired Future Character statements into the Warringah LEP 2000 revived a concept much valued in the past by planners and architects: that of creating a vision for a place. The idea of creating a vision around which a locality should develop did not sit easily within the zonation approach to planning.

The point about the Desired Future Character statements for Warringah is that they represent a shared vision, a vision created by consultation with the community. The statement is meant to count for half the weight of evidence considered by the Local Approvals Service Unit when considering a development application. The problem is that applicants, whose development application might be refused, might have a different vision to the assessor. Mr. Fletcher has stated that there is a quantity of subjectivity in the decision-making. The critical point is to adjudge which subjective interpretation of the Desired Future Character statement is right, the applicant's, or the Assessment Officer's.

The same challenge relates to objectors to developments. They clearly have a vision of the future character of a place. If their objections are not accepted as being valid, the assessor is saying that his or her interpretation of the vision is better than the objector's vision.

Mr. Fletcher admitted that making discretionary decisions is difficult, and good decisions only come with experience. He also stated that an assessor would make a better judgement concerning Desired Future Character than an objector, because objectors consider only a portion of a locality whilst the assessor appraises the whole of the locality.

There is an obvious difficulty with this interpretation. The Desired Future Character statements were crafted through a process of consultation with the community. They are a joint product of the community and the Council. In the consideration of that product, however, the decision about a development's suitability in relation to the Desired Future Character of a locality is made solely by the Council's Assessment Officer.

Localities are dynamic places. Implicit in the creation of Desired Future Character statements is the need to have a process of reviewing the statement.

Planning, in this sense, is a continuous exercise of adjustment to outcomes. The planning instrument is flexible. Flexibility in the Warringah case appears to concern itself solely with adjustments made in terms of an individual development application. There is no means of revisiting the Desired Future Character statement (worth 50% of the evaluation), and no real community input into deciding what is, or is not, in accord with that statement. This appears to be a major source of the discontent with the development appraisal system expressed in the Submissions.

When discussing discretionary and merit-based decision-making by assessment officers, Mr. Fletcher claimed that there had been only very minor breaches of the guidelines issued by the Department of Urban Affairs and Planning concerning such decision-making, if indeed there had been any breaches at all. This is a big claim in the face of counter-evidence in the Submissions. Mr. Fletcher's confidence appears to be based on the use of the procedures manual by the Assessment Officers. In relation to something as subjective as the interpretation of a Desired Future Character statement, it is difficult to see how a procedures manual would be of great assistance.

7.3.1.3 The procedures manual would be much more directly concerned with flexibility applied to decisions concerning the development standards set out in the Locality statements, rather than the Desired Future Character statements. The development standards deal with specific, quantity-based, issues such as the height of a building, the set-back dimensions, and the area of landscaping.

Where changes are made to the development standards they ought to be explained, so that the community understands why decisions are made in certain ways. Samples of reports on particular decisions, taken from Minutes of Council meetings, were examined by the Inquiry. Rather than providing explanations of why certain things were allowed or not allowed for a development, the reports appeared to be more of a tick-the-box type, with odd variations noted but not well explained.

Mr. Fletcher was queried about this at the Public Hearings (see 7.2). He did not seem to see the need for Assessment Officers to argue their case for changes. Revealing their decision seemed to be sufficient. As Mr. Fletcher remarked during the questioning on this point, his explanation seemed to go round in circles.

What has also puzzled some within the community, according to the evidence of the Submissions, is cases where the evidence of the Assessment Officers is disregarded by the Councillors when some development applications come before them.

The fact that the assessment decisions of the officers are not always explained to the satisfaction of members of the community is one thing. The further occurrence of decision-making contrary to the advice of the officers, but without sufficiently strong arguments to support such decisions, has produced a negative reaction by some in the community to the approval processes. All of this had led to a great deal of confusion about the appraisal processes connected to development applications, and a corresponding lack of confidence in those processes.

7.3.1.4 The sense of incomprehension and frustration with the development consent process, evident in many of the Submissions, is illustrated by the following examples.

Submission 363

My 2 years of experience in dealing with Warringah Council, I have observed that little attention is paid to due diligence or due process regarding Development applications. From countless discussions with Councilors and Council staff regarding the above development and I have now been exposed to several others, there is one enormous question which goes unresolved

Is the LEP flexible? If so, how flexible and for whom?

I my opinion, until the Council answers why the LEP is in fact a flexible document to them, but only sometimes, then provides guidelines for staff to categorically follow in those 'flexible' times and for residents to have a concrete set of perimeters, survival of the loudest and best connected Councilors and staff will prevail in Warringah Council.

Approx. Mar 2001	I was advised by adjoining neighbours The Avenue, Collaroy had been rezoned medium density.
Mar 2001	Council confirmed The Avenue had been zoned Medium Density except for two corner blocks, 2 and 2b The Avenue and 39 Collaroy St. Warringah Council's LEP states no medium density developments on Landslip or Escarpment (Appendix 1- relevant Character Location statement from the LEP) and as the Western side of The Avenue is both Landslip and bordering the Escarpment, as per Councils plans, (note: a Development application had been rejected on these grounds after a landslide in the 1980's), residents in the area where not unduly alarmed, as there are several Medium Density developments within a 1000m radius of The Avenue.
Nov 2001	Developers began approaching residents on the Western Side of the Avenue.

Submission 363 (cont.)

Nov 2001	Council was approached for an official position and comment on potential Medium Density development applications in a designated Landslip Zone and designated Escarpment which would contravene their LEP. To this day and we have asked many times, we still do not have a definitive answer. Residents set up meeting and met with first Developer John Sherwood (Shercorp Pty Ltd.). Mr Sherwood advised us the development would be able to proceed, as there are engineering techniques for unstable sites. **This site is not unstable, it is Council designated Landslip.** This meeting was to establish a repore with the Developer prior to the developer spending any money on Architectural drawings for the site and to avail the Developer that the site was currently contravening the LEP in several areas. The question arising from this meeting ended up being, **Is the LEP flexible, how flexible and for whom?**
Jan 2002	A meeting at Warringah Council Chambers was arranged, between the then current Mayor Peter Moxham, several Councilors, the developer and Community representatives to discuss this development proposal in the Avenue. No plans had been submitted. The Mayor and Councilors agreed landslip may be a problem. **Was the LEP flexible, how flexible and for whom?** Yes, the LEP was flexible and each case would be dealt with according to its own merits. What did this mean?

From this point on, as two developers came and went, I realized with an **LEP that was flexible but by how much and for whom,** and was decided at the discretion of Councilors and staff, how did we as residents prepare the facts? For months, information circulated around with no conclusions being able to be drawn.

Submission 076

My contention is that Council should be responsible for any damage caused to land and buildings bordering the development as by accepting the development appllcation they went against the guideline set down by the LEP 2000 which

clearly state that no building should be made on land that is slip as indicated in the map that is at the Council Office. (see LEP - Page 52 1c) All the land where the development is to take place including the land of the adjoining properties is marked as slip on the map.

How can we trust a developer whose geotechnical engineer (Crozier Geotechnical Consultant) describe the land as being on a rocky slope?

How can we trust a Council and council staff when their own geothecnical engineers (Sherley Consulting Engineers) point out in various correspondence with the Council that in fact where major excavations are taking place the land is:

- sand and clay overlaying weak rock and that competent rock is not found until a depth of 8m. This is on the south east side where excavations will reach 6.5m well above " reasonable competent rock "
- highly fractured sandstone. This on the south western side where excavations will go to a depth of 9.5m.
- clay overlaying weak rock on the centre of the southern part of the land.

In addition Shirley also state that a building of such bulk

- will disturb the flow of ground water
- will have an impact on the stability of the area.
- will probably destroy the vegetation of the adjoining properties.

Submission 076 (cont)

Regarding sharing of views.

On page 36 and 37 of the Development Application Determination the consultant employed by the Council, Nexus Environmental Panning Pty. Ltd., clearly states that unit 30 of the proposed development completely obscures the view to the north of No. 39a Collaroy St. and concludes (page 37)

- quote: "The amendment of design of the pergola, whilst going some way to achieving reasonable view sharing, is insufficient to promote the requirement of clause 61 that reasonable view sharing be provided for.

The Council staff completely disregards this and page 31 of the same document they ignore the consultant recomendations and state:

- The amendment is so that reasonable view sharing is achieved by the development.

The amendment in question refers to a reduction of an awning on the east side of unit 30. This will restore approx. 10% of the view to the north east. Can this be considered a reasonable sharing? However the view to the north remains 100% blocked out.

Submission 351

2. I live on the south side of a new development being prepared for construction in Kingsway and I am incensed that the developers got away with poisoning two protected trees in order to build a four storey block of units. These will totally obstruct the northerly views and sun from residents on the other side of 18 Kingsway. Not only were there considerable protests about the building application, but apparently the developers originally had a three-storey building approved, but now have four storeys, and managed to get away with poisoning the protected trees on the property. How did this come about? Who rubbed whose back? It's a total disregard of community feelings.

Public Hearings Transcript – April 1 2003

MR CONDON: From the time the first truck load of material arrived on the second occasion, I spoke to the property owner and asked him what he was doing and he sort of waived his hand about and said: I'm just going to do something here. I see: well, according to the development approval that I understand you have, there is no fill to go in there. He said: I'm just going to put a little bit, and I said: well, if it's according to Hoyle, don't do it.

Now, more trucks started to arrive so I immediately contacted the development - the approvals people in Council. I then contacted the Mayor's office and every time trucks would arrive, I would ring the Mayor. Now, it stopped for about 2 days. I spoke to the bloke whose trucks were putting material in and he said it will be okay to work, to resume in a couple of days time in putting it in and that is exactly what happened.

Submission 341

The Pittwater road development I am complaining about now appears to have gone over the restricted height (11 metres to the eaves??) and can be seen **above** blocks of units I already look directly at to the north and west of me at 1 and 3 Fielding Street (see photo), believed to be standard heights. Further, whilst I suspected this new building would obstruct the outlook that I had to the ocean, the pine trees and to the headlands to the north, I was led to believe that the "rooftop deck" would be enclosed by glass fencing and the odd planter box. Please note that the Southern wall of 1145-1149 Pittwater Road is far from this – it **is solid brick/besser block of about 5 foot taller than the roof in some places, with no glass balustrades or structures that could be recognised as "the odd planter box"**. It should be noted that the eastern and northern ends of the construction do **not** have a solid brick wall at roof level.

Currently, there is no longer even a glimpse of headland or water, and in fact I lose sight of the beautiful pine trees, much blue sky and breeze, and feel this construction closes my space in even further. I beg that something be done about this abomination and if nothing can be done to rectify the fact that the developers/builders may not have adhered to the rules or have created an unsightly rooftop, at least **please please consider replacing the solid brick wall with glass through which some feeling of distance or space may be gained.**

Further to this shocking construction which limits my view to total surrounding brickwork, is the criminal approval of No. 3 Fielding street. This building is so close to me that I can hand a cup of sugar to residents in that building from the western corner of my balcony, and necessitates sprinklers on all windows (windows which were never on the original plans). Further it is **one hands** length between my balcony balustrade and the eaves of this building. A breeze corridor which was originally on the plans plus a gradual stepping of the building down from Fielding street to meet the northern end of my Collaroy apartment, was never achieved. This monstrosity at 3 Fielding Street, **one hand to the left of my balcony**, plus looking at the rear of buildings 1139 Pittwater Road Collaroy and 1 Fielding Street, and the echoing of peoples voices, urinating drunks and movements through an arcade which meets Collaroy Bakery (below me) contributes to making me feel I am in a ghetto. However, the addition of the high brick wall on the roof of the new development on the corner of Fielding Street and 1145 Pittwater Road, is the burning issue as mentioned above, and is just too much to bear, locking me in entirely and taking away any sense of acceptable amenity.

7.3.1.5 Issues concerning drainage and how it has been treated within development application assessments were raised numerous times in the Submissions. The treatment of such issues appears to be an on-going concern of some members of the community. An associated problem of easements, and how and where they are permitted, is also prominent in community concerns. Examples are found in Submissions 45, 239 and 320, and in Mr. Boyle's oral evidence at the Public Hearings on April 5.

One example supplies details of the kinds of things that concern members of the community about the handling of drainage issues in the approval processes.

Submission 163

The elected Council is not ensuring that Council staff is properly over sighting approved development after approval is given and many breaches of the WLEP 2000 occur including non conforming structures and environmental damage to nearby areas.

Councils records are so incomplete as to the location of natural watercourses that many are not even considered when development approvals occur. Example, a block of 24 Units is being built about 600mm below my land level, which regularly floods up to a depth of 1 meter. My lower land receives low level flooding about 3-6 times a year. A more serious event occurs about every 5 years when more serious higher rainfall causes higher water levels to cause SEWER mains to overflow into the natural overland flood path (onto the new units site) and then downhill south and southeast until finally flooding into Queenscliff Lagoon and beach.

All this flooding (now and in the future) occurs with Councils knowledge. They have no intention of upsizing their own storm water pipes and continue to approve medium density development with underground parking required, and thereby, their obvious intention to continue polluting the Natural Water Environment. Many residents, some of our community group and I have informed Council but development is still charging ahead without adequate storm water control infrastructure. There are numerous witnesses and Council Audio tapes to prove the abuse and insults to me by majority block Councilors when I raised these matters lawfully before Council.

7.3.1.6 The author of Submission 163, Mr. Williams, also appeared at the Public Hearings on April 7 2003. His written Submission raised serious matters concerning safety, so he was questioned about them at the Hearings. The Inquiry can form no judgement about whether Mr. Williams' arguments about drainage requirements of certain development approvals are correct. Nor can the Inquiry assess whether the consequences of these decisions might be as dire as Mr. Williams has argued. The Inquiry, however, has a duty to consider whether the assessment processes sufficiently provide the community with confidence that these safety issues are appropriately handled in the assessment processes.

Mr. Williams' evidence is particularly apposite, as he is a member of the Community Advisory Committee with the Warringah LEP 2000 Committee. Mr. Williams was not the only person to raise issues related to drainage policies in development approvals, but he provided the most detailed material on the topic. His evidence suggests that the concerns about drainage issues are very real to the community and certainly affect the way in which the community appraises the development consent process.

Public Hearings Transcript – April 7 2003

MR WILLIAMS:
I have a water engineer's report in December 1993 from Water Plant Proprietary Limited supplied by - to me by Mrs Weaver of 25 Brookvale Avenue, Brookvale and heading is: definition of flood levels. That from a highly respected water management expert identified the five blocks between 28 and 36 Brookvale Avenue is on the major - those five blocks are on the major flow path of all flooding expected in the area...

THE COMMISSIONER: . . . So given that you got high level advice about the possibility of flooding, you presumably then objected to the - - -

MR WILLIAMS: We fought it like mad for about 7 to 9 months.

THE COMMISSIONER: Right. Can you tell me the steps you took, who did you contact, what was the response?

MR WILLIAMS: Initially we went down to the Council to find out what we could do and I was given a little booklet of local Ward Councillors. I immediately contacted Jones and Caputo. I won't say anything bad against them and it was clearly pointed out to me that the LEP had zoned this area medium density and that there was nothing I could do about it. The development was a fait accompli. I pointed out to the two gentlemen that it's in a flood zone and it's not safe to build below ground level there.

They said: there's nothing we can do. The Land and Environment Court overrules us all the time. So that led me to the conclusion that they don't want to fight and that - and led me to the conclusion that if everybody gets this type of response, then the developers can walk over Warringah and there's no way of hiding them. I found out the hard way that there is things that you can do and we went out and solicited people and I knocked

Public Hearings Transcript – April 7 2003 (cont.)

MR WILLIAMS: . . .

out a couple of pro forma forms and got the people to fill in their objections and their suggestions and to hand write their own responses but on a form that made it easy for them.

I put in more than 100 of these forms in two lumps, more than 50 on each development but they had to be - because they were two separate DAs and a huge percentage of suggestion forms so that the Council could see that we knew that it was legal and we couldn't really fight the legality of development but it wasn't wise to build, especially underground, in a flood zone. If they had proposed town houses or properties with space between so the flood water - it's only low level fast flowing water but when you go underground there, you're asking for trouble.

MR BROAD: Can I interrupt you?

MR WILLIAMS: Sure.

MR BROAD: You were of the view that it was relevant for Council to consider whether land was flood liable and no doubt the extent to which that liability existed?

MR WILLIAMS: Well, we know that Council knows that it was flood prone because they accepted this - they expected this '93 report from a lady across the road and for her to get permission to build a dual occupancy house there, she had to build an overland stormwater canal down the side of her house with raised sides, down alongside number 25 Brookvale Avenue and there was so much more expected. She wasn't allowed to fence the end of her yard to let the water run through.

MR BROAD: Right. Can I stop you there - - -

MR WILLIAMS: Okay. Sure.

MR BROAD: - - - and drive you forward, as it were, as to what - back onto the line of the circumstances and your communications with Council. So if you can continue. You basically - - -

MR WILLIAMS: We put in many submissions.

MR BROAD: - - - a number of people put in submissions.

MR WILLIAMS: 150 pages of it.

MR BROAD: Okay. What happened then?

MR WILLIAMS: We got little letters back saying it's going to be considered and one of the building - one of the buildings truly is a very

Public Hearings Transcript – April 7 2003 (cont.)

MR WILLIAMS: . . .
well designed conforming structure and it couldn't object to the builders. They've done everything they could to conform but they were built in a flood zone and they didn't know it. I had to tell them. The day I found out who they were, I told them they were in a flood zone and they actually wanted to buy my land so they could alleviate the problems.

Subsequently, the Council said - and I went to - I don't want to say it - the Mayor and put forward the proposition that the flood problems could be solved by simply tearing up my land and putting in much bigger pipes. He thought what a wonderful idea. He seemed to support it and I thought thank goodness, there's a bit of light here. I contacted the architect on the second site and he told me he was a very good friend of another senior Councillor and he too would be very interested in buying, not only my land but my neighbour's land, if we could get Council to approve it for medium density.

They would also fix the flood problems because they didn't want their properties to flood. Trying to jump months at a time, subsequent to that I went down to Warringah Council and spoke to a group of people at the office, including the Development Assessment Officer and said: these builders would like to buy our land and fix all this flood problem and then you can build what you like. Whilst I was still at the Council, the Development Assessment Officer left our company, went to another part of the building, phoned up the architect of my adjoining property and told him: you don't have to buy Bill's land, we're going to approve the development.

It hadn't even been to Council. I just - I sort of thought this is fait accompli. By this level of negotiations, I had been to Council meetings almost non stop from then until now and I'd watched the development process and I'd seen the 5-4 in action and I'd seen the terrible dog fights and just disgraceful behaviour of the Councillors and the disgraceful non conforming decisions that they were making. It sort of became really helpless. I contacted the office of the Minister for Local Government. I subsequently was interviewed by Mr Jim Mitchell.

I toured the Brookvale Avenue with Mr Jim Mitchell. He came to my land and I think he was stunned to see that I was telling the truth about everything. He said to me: Bill, I can't stop this. What can I do for you? I say the same to him as I was saying to you: now this is about good governance and good management and whether the people have the confidence - the Council has the confidence of the people and when I showed him all the things that had happened, I said: how can the people be confident that this Council is doing the right thing when they're actually putting life and property at risk and know it and are covering up and ignoring this terrible situation.

Public Hearings Transcript – April 7 2003 (cont.)

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Public Hearings Transcript – April 7 2003 (cont.)

MR WILLIAMS: . . .
men, two more - three men, a big machine, a trench full of blue metal and metres and metres of agi-line worth $20 a metre and it still can't work and they know it.

MR BROAD: Can I ask you the next question, please?

MR WILLIAMS: Yes.

MR BROAD: I'm sorry to cut you short but we will keep you on the path. Do you know who designed that stormwater system?

MR WILLIAMS: After months of wrangling, the stormwater engineer from Warringah Council called, I think, Grant - - -

MR BROAD: I won't ask his name.

MR WILLIAMS: Okay. He doesn't work there any more anyway. He left.

MR BROAD: My question was whether it was Council who designed it or whether it was a private engineer or someone outside Council.

MR WILLIAMS: Council told them they had to update it. Somebody designed it and Council approved it.

MR BROAD: Right.

MR WILLIAMS: The problem with the system that's there is that the water cannot get into it without flooding for ever across my land and if it does get into it, it can't get out the other end because there's a pipe at the end of it that runs across it at the T intersection that is already carrying water for two other creeks 50 metres up the road and that's running at capacity and to prove that the Council know the system can't work, the developers have had to put a surcharge grate in Brookvale Avenue at the end of the upgraded pipe so that the water, when it does fill up the new one, is filled.

If it can't go down where it's supposed to, it flies up the road and it floods Brookvale Avenue to a depth of at least 400 millimetres. We know that as a fact because Council has required that the footpath levels be raised another 200 millimetres to hold the water they expect not to fit in the pipe.

MR BROAD: Can I - having heard that, does that really - without going to chapter and verse about all the problems that flow on, I take it that underlying your concern is this, that someone has failed to take the proper steps.

7.3.1.7 The drainage issues were raised with Mr. Fletcher at the Public Hearings (April 8 2003). Mr. Fletcher recognised the problems. He stated that the Council sought expert help in dealing with the problems. He raised the issue of human interference in natural processes, such as adding to non-porous surfaces and the planting of trees and shrubs in watercourses and other areas.

The costs of solving the drainage problems, and the complexity of the human-nature interactions are so great, that it appeared from Mr. Fletcher's evidence that there are no simple solutions in sight. This remains, and perhaps will remain, an area of contention with development consents.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: You will be pleased to note that this will be the last of the series of things we are raising. But it concerns flooding and drainage issues which have come up in a number of submissions. In 1999, there was a fundamental shift concerning conditions of development consent made by DEWUP. [DUAP] Matters previously addressed at the application stage had to be brought forward to the development consent and some of the issues that now have to be in the consent include some of the issues on excavation, back-filling, retaining walls, drainage and so forth.

The issues that have come up concern the knowledge base upon which some of those decisions, particularly drainage and related issues are made. And the background to that, I think is that the hydrological and geomorphological work that would give any assurance about the flood prone lands for example, across the metropolitan area, not just Warringah, is not all that great. There have been advances with the new storm water management developments and there have been advances

THE COMMISSIONER:
with the new catchment authority system.

But the argument is that generally the state of knowledge is a long way from being perfect and associated with that is the issue of risk, if the state of knowledge is not perfect, mistakes may be made in terms of determining the correct drainage and related areas on certain sites. I just wonder if you would comment on that?

MR FLETCHER: Well, in relation to drainage, if you are looking at a new development application, say a block of flats which seems to be the focus of most of them. We have a catchment management team - it is not under my area. We get information - the development engineers that work under my - well, under the local proof of service unit area, seek advice from there.

Often we will - well, not often, I would say in a majority of cases, we will get the applicant to do a catchment analysis in respect - if we don't have the data to address those issues. Then we often get an expert opinion to view that if I don't in-skill house people to do it, to give a comment on that catchment analysis. And that is the way we work in those situations if we don't have the data.

THE COMMISSIONER: Thank you for that. The point I was making earlier is even if they are experts they might not have done the basic work. It is simply not done and therefore there is some risk attached to the decision making in relation to it, complicated by the very imperfect knowledge of whether they are engineers or gemmologists [geomorphologists] or whatever, the imperfect knowledge of the interaction between the built environment in changing natural drainage patterns and those drainage patterns. So I guess the issue that has come up is whether or not, despite the best efforts of Council there is still a risk out there?

MR FLETCHER: Yes, I mean, flooding is a major issue. I mean, you've got flood surcharges, you have people put fences up after a development is completed. The people pave driveways, I mean the surface run-off increases, they plant in different locations in floodways. Have a dry period for 4 years, build a cubby house there. I mean, these are just part of urban life unfortunately. Council has tried to address it with their on-site detention system for major development to protect their infrastructure but it is an enormous cost to all Local Government areas to try and address those issues.

7.3.1.8 Since there are a large number of areas with conflicts of opinions between applicants and objectors, and between either of these and the Council, within many development application assessments, the question of mediated solutions is pertinent.

Mr. Blackadder (Submission 288) outlined the Council's mediation system.

Submission 288

MEDIATION

The Council's mediation program has been in operation for approximately two and a half years, with 28 development applications formally considered.

The mediation results vary from agreement to partial agreement and to no agreement.

The effectiveness of the program has not been measured at this stage, although many applications have been diverted away from court action. Whilst the introduction of the program was to address Council's burgeoning legal costs, and despite some success, the costs are still continuing at a high rate.

An extensive review of legal costs is underway arising from the Mitchell Report. We hope to clearly identify whether value for money has been obtained, and if not to introduce changes to our systems, policies and procedures.

7.3.1.9 Given the large number of development applications processed by Warringah Council, and the evidence of conflict associated with many of them, it is surprising that so few mediations have been undertaken: just 28 over two and a half years.

The evidence of the Public Hearings suggested that this might be because the community does not know about the opportunities for using mediation.

Public Hearings Transcript – April 1 2003

THE COMMISSIONER: Do you think that the atmosphere that you found and the comments that were made in relation to your submission, your objections at the Council meeting, do you think they encourage open and transparent processes with the development application, and do they encourage input from the public?

MR MEANWELL: I didn't feel it was in my particular case, no. I think maybe there should be more chance to - especially people with neighbours - to sit down and talk about developments, try to get into that stage. There should be more push for that to happen.

THE COMMISSIONER: Are you aware that the Council has a mediation process?

MR MEANWELL: No.

THE COMMISSIONER: So did anyone at the Council - did you speak to people at the Council, either councillors or staff, about the problems that you foresaw with the development application?

Public Hearings Transcript – April 1 2003 (cont.)

MR MEANWELL: I had spoken to numerous staff without any joy and I did speak to some of the minority block councillors about the development and asked them if they could raise it at the Council meeting for discussion.

THE COMMISSIONER: Did anyone, particularly the staff members that you talked to, did anyone suggest to you that there was a process of mediation that you could have followed?

MR MEANWELL: No, it was never suggested to me at all. I spoke to the head of the building approvals department and he never mentioned it. I tried speaking to the general manager but never had a call returned and the only time he did call me was after I did write a letter to the local newspaper, the Manly Daily, and then he said: he would try and address some of my concerns but at that stage everything had been approved and it was probably a little bit too late.

Public Hearings Transcript – March 25 2003

THE COMMISSIONER: Did the Council officer suggest that mediation might be a way forward for - - -

MR WILLIAMS: No, he never said anything to me about that.

THE COMMISSIONER: In the responses from Council to you about various written questions and issues that you placed before Council was there ever any mention of mediation as a solution?

MR WILLIAMS: No, I've never been spoken to about that, no.

THE COMMISSIONER: Okay.

MR WILLIAMS: I did make mention of the fact to the Council that a mediation panel should be put into place because it is just ludicrous the way that it was working when I was there.

THE COMMISSIONER: You said that generally.

MR WILLIAMS: Generally.

THE COMMISSIONER: Not so much in relation to your - - -

MR WILLIAMS: Yes, not so much in mine but for other people.

THE COMMISSIONER: So you didn't know about - yes. You were actually suggesting that mediation was a way forward.

MR WILLIAMS: Yes.

THE COMMISSIONER: And you weren't told that there were mediation processes rather than - - -

MR WILLIAMS: No, I knew nothing about that.

7.3.1.10 The evidence suggests that there are two problems with the Council's mediation system.

One concerns notifying applicants and objectors about the possibility of resolving conflicts through a mediation process. Although mention of the possibility of mediation is given in the notification letters sent out by the Council, many people do not seem to notice that it is there.

The Governance Unit of the Council carries the actual organisation of mediation. This has been done to keep the process at arms-length from the assessment group. The Council has also employed the services of the Community Justice Centres to achieve the same arms-length, independent mediation. Perhaps it is this attempt to keep the process at arms-length that accounts for the number of people who have claimed that Council officers have not informed them about the possibility of mediation. Since the assessment officers are not part of the process of organising mediation, they may not consider it their job to inform people about it (other than in the notification letter).

The other factor, explaining the limited use of mediation, is that both sides in a dispute have to agree to mediation. There are a number of instances, referred to in the Submissions, where one party has refused mediation. It also requires the parties willingness to accept a mediated outcome.

Public Hearings Transcript – March 25 2003

THE COMMISSIONER: Right. Did you get to a point where you felt that the only solution to the problem could be mediation?

MR JONES: I ruled out mediation because of previous experience with the same developer.

THE COMMISSIONER: Did the Council, in the process of informing you about the procedures, did the Council tell you that mediation was available, an arm's length mediation through the SJC?

MR JONES: They did not, they gave me no information. They just said in the letter that: mediation was available, full stop. There was no information. I assumed it would be mediation together with the developer in the room, which I didn't feel would work, but other than that there was no - no indication of exactly what kind of mediation.

THE COMMISSIONER: You didn't contact the Council and didn't inquire a little further about exactly what the form of mediation might be?

MR JONES: No, sir, I didn't.

THE COMMISSIONER: In the process of trying to work out a solution to your problem, did you have contact with the councillors, any councillors?

MR JONES: Yes, I did, sir.

THE COMMISSIONER: Without getting into any detail, did you find that that was helpful to at least put your case forward?

MR JONES: I don't believe it was helpful, no.

THE COMMISSIONER: Could you expand on that? Why wasn't it helpful?

MR JONES: Because every time I have contacted Council officers, or a Member of Parliament, which I did on one occasion, or councillors themselves, the whole thing just seems to go around in circles. The Member of Parliament referred me back to a councillor. I just feel completely frustrated in the situation.

7.3.1.11 Another area of complaint about the development assessment process concerns notification about developments. The policy concerning notification is spelt out in the Warringah Council Public Exhibition Development Control Plan No.1 27 February 2001 (Volume 3, Appendix 3). The notification requirements are either

not well known by the community, or they are not sufficiently broad in their scope to satisfy community needs. Many people feel that they have either not received notification about developments when they consider they should, or the notification has come too late.

Submission 019

In February 2002 we received a notification of application from Warringah Shire Council for development of units on this land and discovered that the land had been re-zoned by Warringah Shire Council in December 2001 after two small ads in Saturday's Manly Daily just prior to Christmas 2001 were taken out to notify of intention to re-zone. At such a busy time none of the local unit holders were aware of it. We were extremely surprised as this area is flood prone and I would have thought with a development of this size (where as it transpires 42 units have been approved), that neighbours who will lose their view and a significant amount of their sunlight would have been personally advised of potential change in zoning. I rang the Department of Urban Affairs and Planning in February when the proposal came out and they said that normally a re-zoning such as this which would have substantial impact on neighbours amenities and drainage should be notified directly to residents.

Public Hearings Transcript –April 5 2003

THE COMMISSIONER: You just said none was notified.

MR BOYLE: No, no one was notified. No one was notified. They put an ad in the paper but no one was actually notified directly.

MR BROAD: Can I interrupt?

MR BOYLE: Yes.

MR BROAD: If Council were to notify - can I go this way? I assume you did get notification of the subsequent development application.

MR BOYLE: That's the first we knew that it had been rezoned.

MR BROAD: Yes. Was that sent to the each individual unit owner?

MR BOYLE: That was then sent to each individual owner, yes. That isn't the problem. The way the actual development has been handled isn't so much the issue as to the - - -

MR BROAD: Can I - can I cut you a little bit short?

MR BOYLE: Yes.

MR BROAD: What I'm trying to work out is this. Was that notification sent to the body corporate of the units as well? You said there were six units. Apart from receiving notification directly of the development application, was the development application separately notified to the corporate body?

MR BOYLE: I'm not sure. I couldn't answer that.

MR BROAD: Right.

MR BOYLE: I mean, I think if they sent it to everybody individually, I would have thought that covers it sufficiently or from our point of view it did.

MR BROAD: Yes. When you say that none of the other unit holders or unit owners received notification, did this come up at a body corporate meeting?

MR BOYLE: Sorry, received notification of the rezoning?

Public Hearings Transcript – April 5 2003 (cont.)

MR BOYLE: This rezoning took place in - the first letter from Council I got was 11 January 2001 - 2002 and apparently the notifications of rezoning occurred in December 2001. So there's a very short space of time between the rezoning and the development application.

THE COMMISSIONER: You don't know when in December?

MR BOYLE: No, I don't know. It was just before Christmas apparently. No one actually saw the notices but the Council will surely say that they put them into the paper, into the Manly Daily.

THE COMMISSIONER: Just before Christmas?

MR BOYLE: Just before Christmas. Yes. Some time in December so that, you know, it's not a - it's a time when everyone's quite busy and not necessarily checking the paper regularly.

THE COMMISSIONER: Sure.

MR BOYLE: And you just wonder whether, you know - it just wouldn't, given as you said there's unit development there. You can send a copy to each of the strata - the body corporates and that way you could notify a large number of people quite easily.

THE COMMISSIONER: Yes. I just want to follow down on that track of when it was actually advertised in the paper.

MR BOYLE: Right.

THE COMMISSIONER: To your knowledge, none of the other unit owners knew about it?

MR BOYLE: No.

THE COMMISSIONER: They didn't see it in the paper?

MR BOYLE: No. No one saw it.

Submission 347

This is a brief enquiry concerning the enquiry and it's terms of reference.Basically I wish to draw to your attention a notification to modify consent concerning a building application.
This notification was received by us well after the aforesaid additions were approx. half finished. As a result we were denied a chance to have our say concerning the development, after all, it is not feasible to stop the work when it was half finished. Numerous attempts have been made to contact the person known ...
... who sent us this letter, with no luck in him returning any calls, or correspondence.

Submission 113

My objections to the way in which this DA was handled by Warringah Council are as follows:

1. The process of notification to residents

- Only the few residents directly adjoining the lot were notified. For a development of this size much wider community notification should be mandatory. An indication of the level of concern is that over 100 local residents attended an on-site community meeting (publicised by concerned residents).

- The timing of this DA appears to be deliberately calculated to minimise the responses from residents. Individual letters were received on 19 December 2001. Council notification was in the "Manly Daily" on 22 December 2001. Many residents would have been away or very busy over this holiday period, thus missing the notice.

- Responses were due on 18 January 2002, but the plans were only available for viewing from the 27 December 2001; the DA officer was on leave until 2 January 2002.

7.3.1.12 A major complaint about the development approval processes concerns the inability of members of the community to communicate their concerns to either the assessment officers or the Councillors. Many Submissions raised this issue (examples of which are given below). Few things could be more damaging to the confidence of a member of the public than to feel that they were blocked out of the decision-making process by not being able to reach the relevant decision-makers.

Submission 023

7. More recently (i.e. in the last couple of years), we have suffered from a problem in our back garden inasmuch that we have ben subjected to more than our fair share of 'run-off' during periods of prolonged rain. We investigated this closely and saw that this self-same neighbour had taken the trouble to divert the normal course of run-off from his property to ours.

8. We approached Council and, true to form, suffered a repeat of the previous 'sloping shoulders syndrome' which we had experienced with the dual occupancy business. There was one exception. We managed to have one Manager come visit our property and see the disaster. The outcome was, after standing in the slush whilst talking to us about it all, we were offered 2 items of advice.

Submission 023 (cont)

9.. The first was to divert the flow of water onto our 'downside' neighbours' property ... The second was to sell our property.

10. So help me God!

11. Additionally, it is a sad fact that, in all our dealings with Council over the years, we have never had anything, either verbally or in writing, from a Departmental Manager. There is obviously a great reluctance on the part of these people to compromise themselves.

12. As always, there was an exception. We finally, after (say) 7 years of frustration on our part, received a letter from the (then) Mayor saying 2 things, namely that (a) Council had wasted enough time in regard to our problems and (b) Council intended to take no further action.

13. I fully agreed with the former and had no option but to accept the latter.

CONCLUSION

14. During the above shennanigns, various letters were sent to our Councillors. They were of no assistance whatsoever and either ignored them completely or shunted them sideways.

Submission 073

Re: Warringah Traffic Committee

On the attached list I show that since August 2002 I have been trying to engage with Warringah Council in a matter of road safety. The matter happens to be the use of traffic domes, but that is incidental. However I enclose a copy of my initial letter for reference.

After two months, August to October 2002, without success I requested the opportunity to attend a meeting of the Warringah Traffic Committee. Surprisingly the chairman required that my attendance be approved by the full Council, however I note my attendance was put on the agenda of the Committee for the morning of 17.12.02 although the supposedly necessary approval was not obtained from Council until the evening of that day. As it happened I was unable to attend and sent my apology well in advance.

Now we come to the most intriguing part. The matter was not put on the agenda of the next meeting i.e. 18.2.03 because the Chairman claimed that the minutes of the Council meeting giving the approval 17.12.02 had not been conveyed to him. This was despite me telling him of the approval on the day after the Council meeting, and he then had two months to confirm the fact.

I cannot believe that Council is so dysfunctional that it cannot communicate the outcome of the Traffic Committee's business to its Chairman within a period of two months. Alternatively it could be that someone at Council regards my concerns on a road safety matter with contempt. I believe this matter warrants your attention.

Submission 301

Summary of Dealings with Warringah Shire Council

2000- Numerous phone calls during year outlining concerns with drainage problems and the resulting damage to my property -all not answered or returned

December 2000- Concerns put in writing after lack response by Council ***(letter not answered)***

January to April 2001-Further phone calls ***all of which were ignored***, our property continued to deteriorate

April 2001- Concerns once again put in writing after lack of response by Council Visit by David Page, Environmental Compliance Officer, ***no feedback or written report.***

April to September - Further phone calls, ***lack of response by Council***

September 2001- Concerns put in writing after lack response by Council ***(letter not answered)***

September 2001- Phone calls to Councillors Peter Forest and John Caputo- written replies from Peter Forest re-blockage to Council drain

October 2001- Reply to Peter Forest from WSC Services Group re blockage no mention of extensions

October 2001- Concerns once again put in writing to Manager re drainage problems from new extensions to houses above

October 2001-Letter from WSC re blockage **(the first written reply; more than 18 months since problems first brought to Council's attention)** no mention of extensions

October 2001- Second letter to WSC re concerns once again put in writing to Manager re drainage problems from new extensions to houses above ***-no reply***

December 2001-Letter to WSC Claims Department re damage to our property ***-no reply***

January 2002 –Further letter to WSC Claims Department re damage to our property

January 2002- Letter from WSC Claims Department asking for additional quotes

February 2002 - Additional quotes submitted

Submission 301 (cont)

February 2002- Letter after ***enquires ignored and no action on promised drainage*** from new extensions to houses above

March 2002- Further letter to WSC Claims Department re damage to our property

March 2002- Letter from WSC Claims Department denying claim

Easter 2002 - Drainage put in. ***We found out later we should have been compensated for the ugly pipes through the back of our land which were left exposed.***

March 2002 -Phone call to WSC Claims Department advised to resubmit claim

April 2002- Claim resubmitted

April 2002-Phone calls ignored; letter to General Manager and investigator

April to July 2002***- No reply*** to resubmitted claim all phone calls fobbed off

July 2002- Phone call from ... advising claim denied **(More than 2 years since problems brought to Council's attention and 2 years before Council drain unblocked and drainage put in for the extensions to the houses above. Property damage substantial during this time span)**

December 2002 – Matter put in hands of solicitor. Response from WSC made little sense but advised it would cost too much to take them to court even though we had a case.

Submission 322

Sequence of Events

- We have built a house at Beacon Hill and moved in on 9 July, 2001.
- Our to-be neighbours had lodged a development application No 2001/59DA sometime in January 2001.
- Apparently the Warringah Council (WC) claims that the application for raising objection/comments was sent to our old address by letter dated 30 January 2001.
- **We never received it.**
- When we moved to our new house in July 2001 we learnt through another neighbour that an application was already in motion for the property next door to us.
- We wrote to WC expressing concern on 26 June, 2001.
- No written reply came from WC except a verbal discussion where the council insisted that they had sent a letter which had not been returned and as such would assume it was received.
- A joint objection with the other adjoining neighbour was lodged on 30 July, 2001 (after reviewing plans and realising that a monster of a house was being built which could not possibly have been within the normal Land & Environment rules. Further, the new construction will block our property and cast shadow on our house, block all views and deplete the value of property immediately). We asked for a written response from WC.
- WC then replied in writing on 2 August,2001 basically saying the DA had been approved on 19 April 2001 and they cannot do anything and would not revoke the DA.
- WC asked us to seek legal advise if we were not satisfied
- We wrote again on 12 August strongly requesting consideration and open talks with the owners of the adjoining land as construction had not even started.
- Nothing happened.
- The council could have easily adopted some mediation process.
- We even appealed to Julie Sutton. We never got a reply.
- On 19 August we appealed directly to the Owners. No reply and no consideration.
- **BIG EVENT happens on 6 September (IMPORTANT).**
- We receive another letter from WC that the owner wants modifications to the original plan and new plans had been lodged.
- On 19 September we object jointly with the other neighbour on same grounds as before plus asking for shadow plans etc.
- Nothing happens all goes quiet.
- **Suddenly on 7 January 2002 the council advises that the plans for the modification have all been rejected on Environmental grounds etc.**
- We sit quiet.
- WC informs us don't worry, most likely nothing will happen as a new application may be lodged.
- WC knew the first one was wrong and also knew the depth of our concerns.
- The owner of 53B Golden Grove starts construction in October 2002.
- A battle means time and money!
- How can you help? Can you please investigate and assist?

Submission 354

A RATEPAYER'S COMPLAINT PER WARRINGAH COUNCIL

August	2002	Letter to Council - No reply
November	2002	Reply from Department - advise Mr Blackadder
January	2003	Reply from the Minister - Contact Mr Blackadder
January	2003	Letter to himself - no reply
March 7th	2003	Telephone from Bob Nellor

1. August letter to Council - not received
2. January letter was "misplaced".
3. No comment on Building Application discrepancies
4. A problem with a discrepency aboutthe windows (about 18 months ago)
5. Suspected illegal use - is it noisy? answer - No
6. The owner to be interviewed "sometime that day and you will be contacted"

Today is the 7th April with no re-contact.

7.3.2 Compliance Issues

7.3.2.1 There are numerous references in the Submissions to non-compliant uses or activities being carried out on properties in Warringah.

The focus of the Inquiry is not on who might be right in connection with these issues: the allegedly non-compliant owner, the objectors, or the Council. Rather, the focus in on the processes available to citizens to raise non-compliance problems, and the ways in which the Council have responded to them.

Many Submissions raising compliance-related issues express great disappointment at the way the Council handles them. This is significant because it shows that the dissatisfaction with Council processes is not just confined to the approval system. There is community concern about how the Council honours its duty to ensure that owners comply with the conditions of the approval. The evidence of the Submissions suggests that there are many instances where non-compliant uses or activities have been allowed to stay. The Council's procedures for receiving complaints about non-compliant uses, and then dealing with them in a transparent way, clearly needs reviewing.

Four examples from Submissions that raise the non-compliance problems suffice to illustrate these concerns. It must be repeated that the Inquiry does not seek to judge the issues per se. The focus is on the compliance processes, and the impact upon the Council's credibility when the processes break down.

7.3.2.2 The first example summarises issues that have been discussed in a number of Submissions. The general concerns relate to excavation works (sometimes allegedly illegal), and subsequent drainage problems created for neighbours. The Inquiry has no means of assessing the accuracy of various claims. The allegations, however, illustrate the kinds of complaints made in many Submissions concerning compliance issues, and the belief held by many in the community that the Council has been lax in enforcing compliance.

The complaints involve allegations that Council has not always followed due process in determining if works are legal or not. Some works most certainly begin without approval, and the complaints are that the Council has been tardy in forcing owners to get approval. Sometimes, there seems to have been a breakdown in communications between the various parties and the Council. Many people complain that the response time for the Council to investigate problems is inordinately long. Some complain that actions taken are erratic, in the sense that complainants don't always understand why certain outcomes are permitted.

7.3.2.3 The second example concerns allegedly non-complying activities at Collaroy. This example illustrates another aspect of community concern about how the Council handles such issues: the use, or non-use, made of community committees. It might be noted that this problem was also taken to the Ombudsman, suggesting that communication, between the community and the Council over such issues, is deficient. The Council appears to have a weak procedure for managing complaints about compliance issues.

Submission 233

> This proposal, by the Council to itself, was approved despite a number of recommendations by the staff for refusal, including that the development is in "the zone of wave impact" and considered a hazard. The key point was that the development did not comply with either the existing or draft LEPs that applied. Council had recently lost a case in the Land and Environment Court because its own illegal actions were seen to have created a precedent.
>
> The council chose not to advertise this development in the normal way but as a proposed lease over public land. The requirements of the lease, that the café be operated out of an adjacent building, so limited the scope of tenders that any assessment of the public interest in dubious. There are a number of cafes etc in the immediate area that could provide such a service, including existing buildings on the beachfront, so the public interest case does not, to my mind, justify establishing a non-complying precedent in a hazard zone.
>
> The Council argued that where the development did not comply with the existing LEP it was by guidelines in a plan of management and chose to interpret the guidelines as not being intended to apply to such developments. What is important here is that the Coastal Management Committee, which was responsible for the plan of management, was not consulted in regard to the interpretation.
>
> When the Committee sought explanation and further information the report prepared by a staff member was edited (by unnamed senior staff) to provide no new information and the Committee was advised that any further information would require a Freedom of Information request.
>
> At this point I referred the matter to the Ombudsman for investigation. I believe that the information provided by the Council to the Ombudsman was both incorrect and wrong in interpretation. The Ombudsman was, however, of the view that there was no action required by him.

Submission 233 (cont)

Subsequently I was not reappointed to the Coastal Management Committee. I understand, from a letter to the Manly Daily, the experience of a friend, and comments by staff that others seen to be troublemakers were also not reappointed to other committees. As far as I am aware I was the only current member of the Coastal Management Committee seeking reappointment who was not reappointed. At the first Committee meeting after the positions were announced there was a unanimous resolution by the Committee to seek my reappointment on the basis of my contributions to the work of the Committee. Needless to say this resolution was ignored. Council claims that the committee appointments (after a general spill and advertising for expressions of interest) were a Council decision but, as I understand it, the selection process was secret and the committee memberships presented to the Council meeting as a "done deal" with no opportunity to debate membership of the committees. The block-voting pattern, which usually applies within Council, limits effective debate on many issues of importance.

I can provide further documentation on this matter if required.

Other issues I am aware of:

- The Council pursued the Adlers (a local business near where I live) to the Land and Environment Court for using a garage area for trading. At the same time a business directly opposite was also using their garage as the sole business area without any apparent concern by the Council. In contrast the Adlers have a multispace hardstand area for offstreet car parking whereas the other business was effectively trading over the public footpath.
- As a (quasi-)community representative to an in house meeting concerning a major coastal development the then mayor described the community as "a pain in the ass" and sought assurance from senior staff that the development could go ahead without public advertising. I was astonished when the staff assured him that this would be possible. In that environment I spoke directly to the consulting engineer to appraise him of the issues I thought would be of concern to the community and discussed ways to achieve improved outcomes. Needless to say reality prevailed and the development was advertised as required but the attitude of the staff and councilors was in my mind at best unhelpful.
- A report to the Coastal Management Committee that I regarded as sufficiently insulting to Dr Andy Short, an expert in coastal processes who is a member of the Committee, to warrant a written complaint to the Mayor (a member of the Committee) was simply passed on to the offending staff member to make their own reply. It was incredible to me that there was no process whereby complaints were subjected to independent audit.
- I had course to ring Council rangers about Stormwater pollution in our area and received a prompt and courteous response. However, a short time later I was concerned that council construction works at the GPT at the end of our street had not been properly stabilised or treated to prevent erosion; with a major weather change forecast I rang the council rangers again to express my concerns and advise that urgent action was required to prevent a serious pollution event. I neither received a

Submission 233 (cont)

response nor did the Council take any action, and the next day heavy rain washed large amounts of soil directly into the Stormwater.

- As a pedestrian I have rung council to complain about cars blocking pedestrian access and footpaths and have been ignored; on one occasion the officer asked "whats it got to do with you?" On another occasion, when seeking some information in regard to another issue, the relevant officer was quite recalcitrant and asked, "why do you want this, don't you trust us?" I believe such attitudes can only exist where the overall political climate makes that acceptable behaviour.
- The council has recently approved an expansion at a surf club without referring the matter to the Coastal Management Committee as required by the relevant plan of management. The matter was raised internally with staff servicing the Committee but with insufficient time for members to be approached. The matter could and should have been delayed until advice had been received; this was internal development and would not have attracted any concerns about deemed refusal.
- Most recently the council proposed effectively to overturn its Tree Preservation Order by allowing automatic approval for removal of trees within 6 metres of a building, including public land. I understand many inquiries concerned the removal of street trees. This proposal was, I understand, overturned by a rescission motion but the intent is clearly there, especially since the Council abolished its TPO Advisory Committee (on the basis I understand that they didn't like the advice they got). . . .

7.3.2.4 The third example is taken from Submission 179. This Submission actually includes a number of examples of non-compliance. Extracts are given of some of these. The author of the Submission also appeared at the Public Hearings on April 4 2003. She was questioned about one of the non-compliance issues raised in her Submission.

This example illustrates two things. First, there are several well-documented cases of possible non-compliance in Warringah. The number is sufficiently large to breed a high level of concern within the community. Second, there is evidence that the community association that sought to raise the concerns about non-compliance were viewed as, and treated as, 'trouble-makers' by the pro-development Councillors.

Submission 179

The conduct of tne 5 "majority" elected Councillors has given us cause for serious concern since the last Council Elections. . .

In the course of discussions prior to Council meetings, they have contemptuously dismissed our objections and at Council meetings have stated that we are a small unrepresentative group and, as such, have no "right" of objection.

Submission 179 (cont.)

This extraordinary saga stretches over a period of 19 months. Even before the DA was lodged, . . . were operating as a business on this site, i e they have been operating without any approval for 20-21 months (almost 2 years).
The Time Frame shows a history of delay and deferral.
Refusal of this DA has been consistently recommended by Council Officers, and by the Independent Public Hearing. We quote the Report of the Council Meeting on 4 December 2001:-
"A. Recommendation of Local Approvals Service Unit Manager (Refusal).
That the application for Office, product display centre, shed for storage of equipment and vehicles, storage of reusable landscape materials, and the growing of plants at Lot 2079, DP 752038, 204 Forest Way, Belrose, be refused for the reasons following.

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the proposal does not comply with the provisions of Warringah Local Environmental Plan 2000 and more specifically, the proposal is not low impact and is inconsistent with the desired future character for the C8 locality.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the proposal does not comply with the provisions of Warringah Local Environmental Plan 2000 and more specifically, General Principles Clause 43 Noise, and Clause 76 Management of Storm water.

B Recommendation of Independent Public Hearing.
"That consent be refused for the reason that we cannot be satisfied that the proposal is consistent with the desired future character of the locality as described in the C8 Belrose North Locality Statement. We are not persuaded that the proposed development is of low intensity and low impact such that consent can be granted."

The BRCA has consistently objected to this DA as a clear breach of the LEP 2000. A copy of our most recent letter to Council of 12.11.2002 to Council is attached.. During the period of deferral from March 2002 to December 2002 we were in regular contact with Council officers, by telephone and letter, to check on progress. No amended DA was lodged until late 2002.

When we asked why the Applicant was allowed to operate as a business during this time we were told, on a number of occasions, that action would be taken shortly.

In July 2002, the owners of this property embarked on a landfill program to the side and rear of their block following the approval of a DA which we understand included provision for sufficient fill for a built up swimming pool. Neighbours were not notified that this operation was to take place.

For a period of at least 4 weeks, approximately 100 semi-trailer loads of fill were deposited daily, Monday to Friday. Neighbouring residents at Lot 267 Morgan Road and . . . reported this apparent breach of Council requirements to the Council Compliance team. The deposition of the fill continued and the residents continued to report this activity to Council, without, as far as we know, any follow up action. The filling exercise has been completed. As far as we know, there has been no legal action.

It is a matter of particular concern that the soil washed away from the filled area finishes up in Deep Creek and thus into the Narrabeen Lagoon cachment.

. . . **Belrose.** Compliance
The owners of this property cleared the Council nature strip outside the fence, removing native vegetation without Council approval. .
The owners then deposited fill on the cleared strip to create an elevated embankment, which was then turfed and continues to be nurtured by the owners.

. . . from Council's Compliance Section has advised us on a number of occasions that the owners have been directed to remove the turf and fill and to restore the nature strip. When we advised that this has not been done, . . . stated that legal action would be taken. We have not received any further advice and the turfed embankment remains

Submission 179 (cont.)

Compliance
the Uniting Church Property Trust operated this property as a non-complying use for 4 years in defiance of Council before it lodged a DA to make minor improvements to the property. It was quite clear that if this DA was approved it would have the more significant effect of validating the ongoing non-complying use. The Association and local residents made strenuous objections and submissions to an Independent Public Hearing. The IPH recommended approval subject to 31conditions, one of which required the Uniting Church Property Trust to make the improvements and comply with all conditions within 4 months of approval, and the work would be subject to Council inspection. When, after 5 months, it appeared that no effort had been made to comply with the conditions, the Association wrote to Council asking it to enforce the compliance with the conditions.

Curiously, we received no reply from Council, but after some weeks received an invitation from the CEO of Wesley Gardens to inspect No 1 Morgan Road and see how it was now complying with Council conditions. It was clear during the inspection that some work had recently been done to meet some of the conditions. But other conditions – weed control, hours of operation and parking were still not being met. When questioned about these, . . . became aggressive and denied that Wesley Gardens had ever breached any consent conditions and the inspection was terminated. We spoke further but felt intimidated by . . . attitude to our concerns.

Public Hearings Transcript – April 4 2003

THE COMMISSIONER: . . . I will move on to another matter raised in your submission and the general theme is compliance with you just said that several situations where conditions are applied to the consent of development. You instanced a number of cases where there has not been compliance with the conditions of consent.

MS ARMSTRONG: Yes.

THE COMMISSIONER: You also suggest that you have made representation to Council about that non compliance.

MS ARMSTRONG: Yes.

THE COMMISSIONER: What was the result of your putting the matters before Council and how do you put such matters before Council?

MS ARMSTRONG: Normally write a letter to the general manager, marked also for the attention of the Council officer responsible for the

Public Hearings Transcript – April 4 2003 (cont.)

MS ARMSTRONG:

DA which we point out that the conditions have not been met within the period of time that has been one of the conditions.

THE COMMISSIONER: What is the response?

MS ARMSTRONG: Well, I would have to be specific. In one case there was no response for several weeks but then we received a phone call from the applicant asking if we would like to make a site inspection to see how the work was continuing. We have never received any written response from Council. We had the site inspection and there were three people present, two people plus the applicant, and three people from our association.

There was clearly work being done, there was clearly work still to be done and when we pointed out that we were pleased that work was at least under way but that there was more that needed to be done, then the meeting became acrimonious and there was no resolution to that point. We've written further letters to Council but we haven't had a response.

THE COMMISSIONER: You in one of the examples which you give, you suggest that it was a land fill problem where you were arguing that the quantity of land fill was well beyond that which the consent had agreed upon.

MS ARMSTRONG: Yes.

THE COMMISSIONER: You say that there was 100 semi-trailers of fill over a 4 week period brought on to this site.

MS ARMSTRONG: Yes.

THE COMMISSIONER: You brought this to the attention of the Council.

MS ARMSTRONG: Yes.

THE COMMISSIONER: But you got no response?

MS ARMSTRONG: No, that was brought to the attention of Council by telephone and the two nearest neighbours did keep a tally of the trucks entering and leaving the site and no action was taken.

7.3.2.5 The fourth example concerns a development at Dee Why, which is alleged to be non-complying.

The allegations include:

- the failure of the Council to investigate the under-pinning of the building;
- the failure to follow-up allegations of pollution of the stormwater system and the lagoon;
- allowing the construction of a building that does not accord with the height limits of the LEP (Volume 3, Appendix 5)
- allowing uses of the building not in accord with the development approval.

The writer expressed fears for his safety over the issues he had raised.

There is also a suggestion that the Council is complicit, rather than just negligent, in permitting the non-compliance to take place, and that the business firm owned by one Councillor now acts as the property manager of this building.

One of the developers of the allegedly non-conforming building was questioned at the Public Hearings (April 7 2003). He admitted that he was friendly with some Councillors, and that they had not removed themselves from the voting when his development applications were approved.

Public Hearings Transcript – April 7 2003

MR BROAD: In your applications which were before Council, do you personally have any friendships or associations with any of the current Councillors of Council?

MR CHIRILLO: Yes.

MR BROAD: When it came to your matters being dealt with by Council, did Councillors declare any interest in respect of your matters?

MR CHIRILLO: I think they did. I honestly can't remember. This is going back - - -

MR BROAD: Well, do you recall whether - sorry, can I go backwards? How many applications over the period would you have had before Council?

MR CHIRILLO: At the moment?

MR BROAD: No, no, no. The times that you attended the meetings.

MR CHIRILLO: Two. Two.

MR BROAD: You had two applications and in respect of the votes which were taken in respect of your applications, did any of the Councillors say: I have an interest, I am not able to vote in this matter and left?

MR CHIRILLO: No.

7.3.2.6 Mr. Brisby, the team leader of Environment Compliance Services was questioned (Public Hearings April 8 2003) about the processes employed by the Council to investigate and act on non-complying issues. A number of things emerged from his evidence. First, the Council does have a procedure but it often takes a long time to reach conclusions, because they are under-manned. Second, he, the Team Leader, could not provide any statistics concerning the number of complaints that they handle. Third, the unit does have an understanding of the community's frustration with the time that it takes to get action on non-compliance issues, but appears to be able to do little about it.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: A couple of things we would like your help with. The issue of compliance has been raised a number of times. I guess, could you in a summarily [summary] way describe when you issue orders and what happens in that whole process?

MR BRISBY: Yes, sure. In relation to illegal works which is the primary order of the orders process we would be in receipt of complaints or requests for action. They can come in two generally main forms of written complaint from residents or other interested community members or via telephone. Those complaints are recorded in our inform request management system and would be referred to the appropriate officer. In my work groups there's - illegal works is generally dealt with by our development inspector, or often, depending on work loads our Environment Health and Building Surveyors.

Public Hearings Transcript – April 8 2003 (cont.)

MR BRISBY:

The first process, the first step in that process would be to research our records. If there's generally allegations of works done without consent or the like. We need to establish whether that's a fact or not. So that would be a matter of researching files, development consent registers, the like. Once we can establish, one, if there is consent and we would then need to inspect it to verify what has been built is in conjunction with that consent and has not been varied. If there is no consent and we can establish consent is required, inspection would be the next step. Then we would establish what has happened, what's there, what's existing and then move forward.

If we can establish that consent has not been obtained, where required we would then move to the orders process of the - using the Environmental Planning and Assessment Act. That would involve the issue of a notice of intention and proposed order to the appropriate person, be it the owner, the occupier, or the offender in whatever case. That would generally allow them 28 days to respond, provide representation and/or submission to us to say why those orders - we should not proceed with the orders.

Often at that point people may provide copies of what they believe are certain approvals, consents, etcetera, etcetera. In a lot of cases there people will move towards compliance during that period. So that leaves us on two avenues. If we do receive a submission the submissions considered - needs to be in writing, it's considered by the issuing officer and then a report is provided to my position and we make a decision on whether to issue final orders or the matter is - is concluded.

If no submissions are received we proceed. The issuing officer will proceed automatically to issuing of final orders.

THE COMMISSIONER: Thank you for that. Does this take a long time?

MR BRISBY: It generally can take a long time. The legal process - if we need to resolve these issues and, you know, for cross the T's and dot the I's", we need to follow the process as set out in the Act. Unless we are in emergency situations the notice of intention and proposed order period is generally seen to be 28 days. We have in various instances reduced that to often 7 or 14 days, where we feel a more urgent situation exists.

Public Hearings Transcript – April 8 2003 (cont.)

MR BRISBY: Yes, I do feel that perception, as generally those inquiries end up with myself and we are always at pains to try and explain to the community members the process, and I certainly understand that it is difficult for them to understand why it works and often one of the major complaints I do receive is that I've been told orders have been issued on certain people and the work is continuing, or the use is continuing, and then you know we do go out of our way, in particular, both the develop control inspector and myself to try and explain this to people and just to reassure them that action is being taken and that we need to follow these steps as set out in the Act, otherwise, we could jeopardise any future positive action through the Courts.

THE COMMISSIONER: Okay.

MR BROAD: Could I ask you whether the problem of work which is non-compliant being undertaken is common?

MR BRISBY: It would be difficult to comment. All I could say is we have a fairly strong work load, yes.

MR BROAD: In other words, you get a fairly large number of complaints?

MR BRISBY: It would be difficult to quantify it because against what kind of benchmark we would look at, but all I could really say from my experience in this role is that we have a very diligent and demanding community who require us to be on top of this.

MR BROAD: What I'm trying to do is get a handle on, roughly, how many complaints you would get per year of illegal work being undertaken, or non-compliant work being undertaken?

MR BRISBY: I couldn't give you a number here, I'm sorry.

MR BROAD: On a totally different matter, what sort of qualifications, what sort of professional qualifications do your staff have?

MR BRISBY: Our environmental health and building surveyors are building surveyors who are qualified to work, both in our area and our local approval service unit in assessing development applications. Our development control inspector has a strong background in investigations and does not have any formal qualifications.

7.3.2.7 The issue of ensuring compliance with the conditions of a DA has become much more difficult since the introduction of private certifiers by the State Government.

Previously, Councils handled building certification. Building inspectors followed the progress of construction to enforce building standards, and ensured that the conditions of a DA were met. When construction was complete the inspector would issue a certificate.

The introduction of private certifiers has removed much of the responsibility away from the council. As Mr. Gatenby pointed out (Public Hearings March 21 2003) private certifiers now handle 90% of flats and apartments built in Warringah. The great weakness in the private certifier system is that the person developing the site pays the certifier. This system has an in-built invitation for sloppy, if not corrupt, practices. Since private certifiers handle almost all the large-scale residential development in Warringah, and there are only a limited number of developers building flats and apartments, it is inevitable that the builders and the certifiers will build relationships with each other. As these relationships grow, there is a danger that certification might fall below the standard of being truly impartial. The many reports of non-compliance in the Submissions may relate to the very high usage of private certifiers in Warringah.

On April 22 2003 the *Manly Daily* (p.5) reported on a development in Dee Why where a purchaser alleged that the size of the car parking spaces in the building had been reduced from the approved plan. The complainant argued that *"these distances are not enough room to park and open the door and get out of your car"*. The changed parking plans, she claimed, allowed an extra seven spaces compared with what was originally proposed. *"These are being sold off by the developers"* she stated, *"We have actually found a report in at the council that the private certifier says the developers have complied"*.

The newspaper report included an interview with Mr. Fletcher, the LASU manager. Mr. Fletcher is reported to have said that because a private certifier was engaged, the Council was no longer the determining authority. *"The private certifier is the one that must ensure that things comply"*. A spokeswoman for the developer said it was not the fault of developers if the private certifier and the Council had consented to the development and signed off on the smaller spaces.

This example illustrates the kinds of messy situations that has arisen with private certification. Buck-passing becomes a commonplace thing, and the people who feel that they have been hurt by the non-compliance are left without an avenue of redress.

The confidence of the public in the probity of the system is inevitably diminished.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: I wonder if you could explain to me what the impact of private certification has been in relation to your process?

MR GATENBY: Well, private certification when it came in several years ago we had to change the whole process because Council was not the only body that could issue construction certificates. Previously it was, I guess you could say, timely for the Council. We had control, a monopoly, or whatever but when the Government introduced the changes several years ago it meant that the external certifier could now issue construction certificates and take the whole process after development consent and run the whole process after that.

So, for example, immediate impact as we had to change our processes, change all our conditions that applied on consent and - and the - word it as such that it could be either Council or an external body dealing with it and also we have to make sure that the certifier lodges all the plans with Council and Council has to act as an archive body of all the externally issued plans that come in and are registered correctly otherwise our Council and other Councils wouldn't know, or wouldn't have the final piece of the jigsaw when the building is being built.

MR GATENBY:
I guess that is a problem throughout other Councils is to make sure that we receive all that documentation after we've done the development consent. 99 per cent of the residents of flat blocks are all externally certified. We don't - - -

THE COMMISSIONER: 99 per cent.

MR GATENBY: Yes. We - we don't do those any more. They are all done by external certifiers, they will issue the construction certificate and make sure all the Council's conditions of consent are carried out and supervise all the construction, etcetera, issue occupation certificates.

THE COMMISSIONER: And who pays them to do it, the applicant?

MR GATENBY: Yes, it's not the Council.

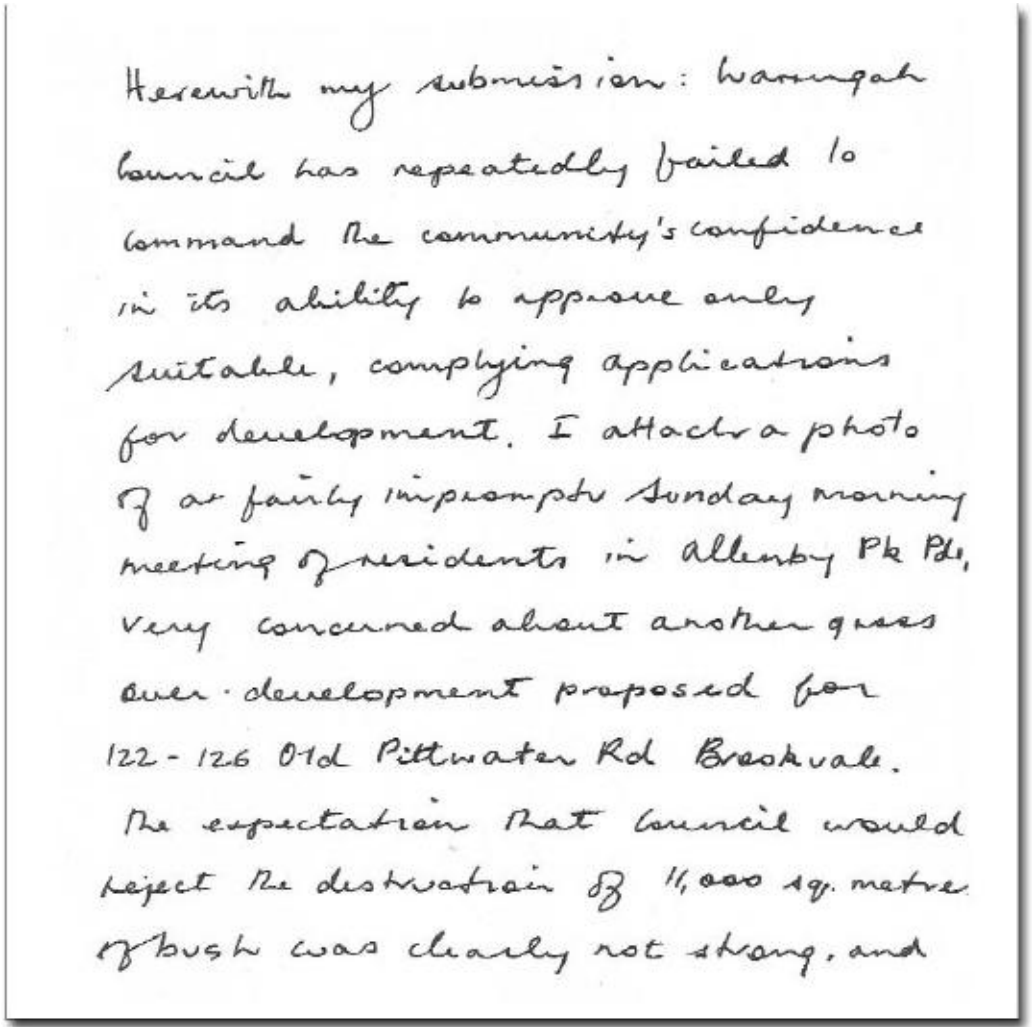
7.4 The Operations of the Local Approvals Service Unit (Lasu)

7.4.1 The Unit's Resource Base

7.4.1.1 It is clear from the evidence of Sections 7.2 and 7.3 that there is a large number of people in the community dissatisfied with the operations of the LASU. Two short examples from Submissions 189, and 144 express sentiments that are repeated in many other Submissions.

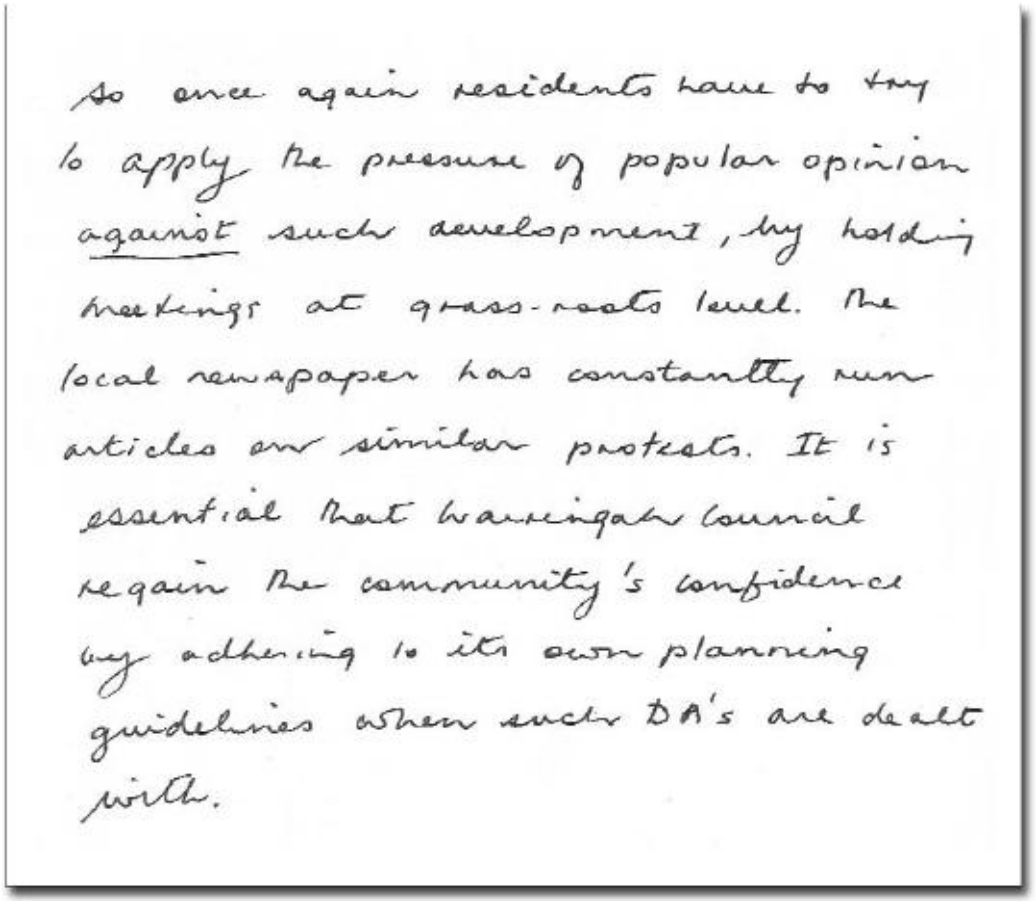
The purpose of this part is to consider why the LASU has such a reputation with some sectors of the community, and whether or not the Council is moving in a direction that will give the public more confidence in the operations of the unit.

Submission 189



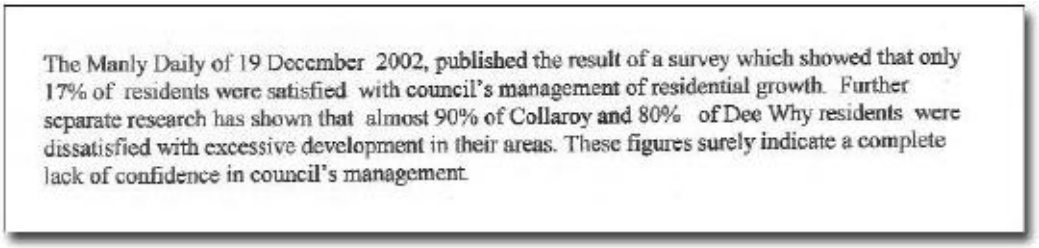
Herewith my submission: Warringah
Council has repeatedly failed to
command the community's confidence
in its ability to approve only
suitable, complying applications
for development. I attach a photo
of a fairly impromptu Sunday morning
meeting of residents in Allenby Pk Pde,
very concerned about another gross
over-development proposed for
122-126 Old Pittwater Rd Brookvale.
The expectation that Council would
reject the destruction of 11,000 sq. metres
of bush was clearly not strong, and

Submission 189 (cont)



so once again residents have to try to apply the pressure of popular opinion against such development, by holding meetings at grass-roots level. The local newspaper has constantly run articles on similar protests. It is essential that Warringah Council regain the community's confidence by adhering to its own planning guidelines when such DA's are dealt with.

Submission 144



The Manly Daily of 19 December 2002, published the result of a survey which showed that only 17% of residents were satisfied with council's management of residential growth. Further separate research has shown that almost 90% of Collaroy and 80% of Dee Why residents were dissatisfied with excessive development in their areas. These figures surely indicate a complete lack of confidence in council's management.

7.4.1.2 The General Manager, in his Submission in reply (Submission 348), considered the question of whether or not the DA process contributes to a perceived lack of community confidence. He decided that it did not. This flies in the face of the evidence given to the Inquiry through both written and oral Submissions. It would appear that the Council has not recognised the degree of dissatisfaction that the DA process had caused within the community.

Submission 348

Development Application Process
Issue – Whether the DA Process contributes to a perceived lack of community confidence.
Response – The Warringah DA Process has many positive features - the DA notification policy clearly outlines the extent of notification of DAs; the mediation process allows many controversial applications to be mediated between the applicant and objectors; the highly qualified and experienced professional staff provide expert assessment of applications; a large majority of applications are efficiently processed under delegated authority; DAs determined by the Council in a 5/4 majority are less than 24%; and illegal land use is investigated through a separate compliance team.

The DA process has been under close scrutiny, as with any Sydney Metropolitan Council, due to the building boom of the last five (5) years. Evidence given at the Public Hearings has demonstrated the Council has processed applications efficiently and effectively. It was noted a large majority of applications are determined under delegated authority. Those that proceed to a Council Meeting for determination are the major and often controversial applications. Petula Samios of the Department of Urban and Transport Planning indicated the Council had complied with the State Government directions on Urban Consolidation, had introduced a Residential Development Strategy and was appropriately dealing with development applications to meet the Government's growth expectations.

It is recognised that a part of the Warringah community has been concerned at the Council's management of growth. However, the policies and processes applied by the Council have ensured development applications are processed efficiently and effectively, despite these concerns. It is submitted that the Commissioner should not make an adverse finding in this aspect of the Council's governance.

7.4.1.3 Questions were put to senior staff at the Public Hearings to gain a better understanding of how the LASU operates.

The first step was to discover how many people worked in the unit and what kind of qualifications they had. Mr. Fletcher the Manager of LASU (Public Hearings March 21 2003) provided some detail on his own role, and on the unit as a whole.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: Thank you. Now, what is the role of the manager of the unit. What does that mean?

MR FLETCHER: Basically, the service unit comprises of development assessor officers which is the majority of the staff and they comprise of town planning professionals or building surveyors. They actually do similar functions now. There's development engineers attached to that service unit and there's a customer service administrative area that is also attached to that unit and my role is to manage that unit and work under the Director of Strategy.

THE COMMISSIONER: Right. How many people would you - - -

MR FLETCHER: Approximately 43.

THE COMMISSIONER: 43.

MR FLETCHER: It fluctuates, it depends on temporaries and that.

THE COMMISSIONER: Right. Are they all professionals or are they partly support staff?

MR FLETCHER: The engineers are all professional people, your development assessment officers are all professionals, the manager of the administrative area has got a degree in marketing and the rest of the staff are administrative WP operators, customer service people, some have technical background.

7.4.1.4 Mr. Gatenby, Development Assessment Manager, was asked to provide some details about his unit's operations. It is not clear from Mr. Gatenby's evidence just how many people are engaged full-time on assessing development applications. Mr. Gatenby's data suggests that each assessor may be handling somewhere around 185 assessments in a year. This estimate is based on the average number of development applications (DAs) received per day (10), and the average number of calendar days that it takes to process a DA at Warringah(88)[1] . On the basis of this evidence, it is apparent that the unit is quite undermanned. The size of its workforce is well below what is needed to do the job effectively.

[1]Comparative Information on New South Wales Local Government Councils 2001-2002 p. 206

Public Hearings Transcript – March 21 2003

MR GATENBY: I am the manager of three team leaders who in turn look after about seven development assessment officers. They are a multi-disciplinary team. Each of those development officers either has a qualification in say planning or building and some have multiple qualifications. We encourage officers, you know, to have several qualifications.

THE COMMISSIONER: Thank you. So you have three team leaders under you, you said?

MR GATENBY: Yes.

THE COMMISSIONER: Mr Fletcher was talking about in the process that at certain points in a development application it might be necessary to gather together the team leaders and other people - - -

MR GATENBY: Yes, I am also the chairman of what is known as the development unit at the Council. That unit comprises myself and the team leaders...

THE COMMISSIONER: Right. You mentioned there is three team leaders and then seven - - -

MR GATENBY: They - I have roughly seven development assessors.

THE COMMISSIONER: Development assessors?

MR GATENBY: Thirteen.

Public Hearings Transcript – March 21 2003 (cont.)

THE COMMISSIONER: And you said earlier that you get about 10 applications a day, is that right? You said that?

MR GATENBY: Development applications?

THE COMMISSIONER: Yes?

MR GATENBY: Yes. Some times more but we're trying to average it out, if you say you look at 2400 Das a year and divide it by the number of days you will work out exactly how many, but roughly 10.

THE COMMISSIONER: Yes.

MR GATENBY: Quite a lot.

7.4.1.5 Mr. Fletcher (Public Hearings March 21) confirmed that the unit has severe staffing problems, and that towards the end of 2002 he believed it was *"in nearly crisis mode"*. The lack of human resources in the unit must go a long way to explaining why the Submissions contain such a large number of complaints about its performance.

Public Hearings Transcript – March 21 2003

MR FLETCHER: Resources are a critical issue for Council overall and I will probably be - in my area they are really stretched.

THE COMMISSIONER: Given that the staff must be under a great deal of pressure?

MR FLETCHER: Yes, I advised the general manager in the later part of last year, I thought the section was in nearly crisis mode. We got some major issues.

7.4.1.6 The severe financial problems that Warringah Council has faced explain part of the reason why this vital unit is so badly under-staffed. When Warringah Council faced its financial crisis it was decided that the financial position of the Council could be improved by reducing staff numbers. Between 1999–2000 and 2000–2001 Warringah Council, according to the Comparative Information statistics of the Department of Local Government, reduced its equivalent full-time staff by a huge 38.7%, with a further reduction of 6.5% in the following year[2]. A briefing paper provided by Warringah Council explains that the 1999-2000 figure was bloated because it included casual staff. In terms of equivalent full-time staff (excluding casuals) the reduction in the number of staff was 7.56%.

[2]Comparative Information on New South Wales Local Government Councils 2001-2002 p. 111

For 2001–2002 the reduction was 6.37%.

The number of equivalent full-time staff (excluding casuals) of the LASU was 42.52 in 1999-2000 and fell to 2000–2001 to 40.57. In the following year it rose slightly to 42.03, a level below that of 1999–2000. Although the level decline in the LASU was less than that of the Council staff as a whole, it still declined, and this took place at a time when development applications were increasing. It should also be noted that the staff numbers in the Strategy Division, which is broadly concerned with other aspects of planning fell by 7.40% and 6.29% in the period. (Volume 3, Appendix 2).

Effectively, Warringah Council has traded the effectiveness of its service delivery system to gain a better bottom-line financial result. The stream of complaints about the LASU means that this trade-off has not worked. Many in the community have lost confidence in the Council's ability to provide a consistent and transparent development consents system.

7.4.1.7 Because the LASU has such a small staff in comparison with the demand for its services, the median time for processing DAs has grown from 50 calendar days in 1999–2000 to around 56 now. For the 16 Councils with populations greater than 100,000 in the Sydney Metropolitan Area, the median time for processing DAs is 38 days: Warringah Council's median processing time is 47.4% above the average of the large Councils. The maximum time for processing stipulated by Planning NSW is 40 days, and the service agreement of the unit with Warringah's Director of Strategy is 40 days. On all counts the LASU takes much longer than it should, and without doubt this contributes to the community's lack of confidence in the unit's operations.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: What proportion - sorry - what is the average DA time now of the Council?

MR FLETCHER: Well, we have got a service level agreement with - my director of strategy should be 40 days, but in reality it runs - our medium time, I think, it is running about 56 days at present. I mean, maybe Mr Gatenby could fill that in when he talks to you later, but I think the last was about 56 days.

THE COMMISSIONER: Has that shortened, or lengthened - - -

MR FLETCHER: It has lengthened.

Public Hearings Transcript – March 21 2003 (cont)

THE COMMISSIONER: Yes. Over how many years?

MR FLETCHER: Probably the last 2 years.

7.4.1.8 Mr. Fletcher was asked to give his explanation of why Warringah takes such a long time to process the average DA. He referred to the pressure of development growth:

Public Hearings Transcript – March 21 2003

MR FLETCHER: Everyone wants to build a block of units, or a house in Warringah, . . .

The analysis of population growth and property market dynamics in section 7.1 showed that the rate of growth of demand in Warringah in recent years is sluggish compared to many other Councils in the metropolitan area with populations
over 100, 000.

Similarly, information from the *Comparative Information 2001–2002* compendium produced by the Department of Local Government, shows that Warringah actually ranks 13th out of the 16 large Sydney Councils in terms of the number of DAs it processes in a year (Table 7.4.1 1). There is no substance to Mr. Fletcher's argument.

Table 7.4.1.1 **Number of Development Applications Processed**

Metropolitan Councils with a population above 100,000 from 1999–2000 to 2001–2002

Council	No. of DAs Processed
Bankstown	9244
Blacktown	14984
Canterbury	4145
Fairfield	7072
Ku ring gai	6332
Parramatta	6512
Randwick	3965
Sutherland	7568
Warringah	6283
Baulkham Hills	13620
Campbelltown	5924
Gosford	12888
Hornsby	8923
Liverpool	9575
Penrith	10157
Wyong	11498

7.4.2 The Operations of the LASU

7.4.2.1 Mr. Fletcher assisted the Inquiry at the Public Hearings on March 21 2003 by describing the role of the LASU within the administrative structure of the Council. He also commented on the typical path of a DA within the system.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: . . . What degree of autonomy does the unit have? I'm just trying to understand how it fits into the general system.

MR FLETCHER: Basically the role of the unit is to consider development applications and approve them; assess construction certificates, that is like the construction side of the programme; manage development through the process from approval to finish; development engineering areas look at infrastructure in relation to applications, drainage, subdivision works, issue certificates under our planning controls, that's a major issue in our administrative area; prepare reports to Council when applications are reported to Council. As regards to autonomy, there's certain delegations to myself and the manager and team leaders below myself and also the officers at delegations.

THE COMMISSIONER: Okay. Thank you for that. What would be helpful - this might be a little bit difficult given that I hadn't warned you I would ask you this but you might be able to follow up with some material. I guess what I would like to have you do is walk me through what happens after someone puts a DA into the Council through to the - what are the steps from that - - -

MR FLETCHER: To the full Council or for a delegation?

THE COMMISSIONER: Well, no, the very first step, someone puts a DA into the office somewhere, what is the flow of events then until a decision is made about it, in general?

MR FLETCHER: Well, even before they put the application in we do have a process called: pre-development lodging meeting. Applicants can pay a fee. They come to the development unit and provide a plan which the team leaders and the manager can provide comments on it and try to give them guidance of the issue that they will be up against before they put the application in. That is a first - not everyone uses it but probably the major developers use that. Then they submit the plans to our Customer Service Centre. Our Customer Service technical people have check lists, they check off the information, what is there, and if the information is not fully there they ask them to go back and provide it.

Some people say that they feel they've got sufficient information and if that is the case we will accept the application. The fee is paid, the

Public Hearings Transcript – March 21 2003 (cont)

MR FLETCHER:

application then goes through our records area, gets registered, referred back to the local approvals area. It is then allocated to an officer. The application is also noted. There's a pre review of the application at the initial stage by the Manager Development Assessment and the team leaders to try and identify whether there's going to be significant issues up front, to try and manage that process and identify what areas it should get referred to.

Then there's other areas, maybe statutory authorities or other sections of Council, ie bushfire or drainage or something like that, so they will make a notation on there. The application is notified, referred to the assessment officer and they carry out an assessment, consider submissions made by residents. . .

I think I'm up to the stage where it is referred to the assessment officer. The Council does have a mediation programme. That does not come under my area, that is run by the governance area. Residents have the opportunity to become involved in that subject to the applicant wanting to be involved. If the applicant does not want to be involved it does not proceed. Submissions come in. The officers do an assessment in respect of our planning controls and other legislation. If there's any departures to the planning controls or issues that are outstanding the officers can write to the applicant, give them time to submit further details to try and address those concerns.

Assuming the information comes back, if it complies with all our policies, largely like dwellings, garages and that type of thing, the officers have delegation to approve them. If there's any departures and they still feel the proposal should be approved or refused it then goes to the team leaders and management development assessment by a development unit and they review the proposal. Of course the management development assessment team leaders and myself are the only ones that have got authority to refuse applications, the staff don't have right of refusal.

Determination is made at that stage and the officer proceeds from there. There's another step in the process where if a councillor - it has been

Public Hearings Transcript – March 21 2003 (cont)

MR FLETCHER:
changed in the past couple of weeks but previous to that - a councillor can call an application to full Council for determination and that process they either contact myself or the assistant to the councillors and they advise me what they want to do with the application, whether it's for approval or refusal.

Sometimes they don't indicate either way so the application goes to Council. The application in that process goes through the development unit, a report is prepared, I review it and sign it and it goes to Council for consideration.

7.4.2.2 The evidence that Mr. Fletcher gave at the Public Hearings on March 21 2003 showed that the Assessment Officers made the decision on whether to approve or refuse applications for the great bulk of DAs. The remainder might be referred to the full Council for determination.

Since the Assessment Officers make the majority of approvals or refusals, it was important to gain an understanding how they interacted with the public. A number of Submissions stated that they had experienced problems of access and communications in their dealings with Assessment Officers.

The Manager of the LASU unit, however, appeared not to have very much information on just how frequently his staff would have contact with the applicant during the processing of a standard application. This would seem to be fairly basic information for a unit that has been the target of complaints because of its level of communication with applicants and objectors.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: Thank you for that. You mentioned the delegation to approve. Most of the DAs proceed through delegation, is that correct?

MR FLETCHER: I would say so. A majority of our applications, dwellings, additions to dwellings, outbuildings, carports, garages, those type of issues. In reality most of the larger ones, residential flats, land filling, environmental issue ones, major industrial areas, they always go through the development unit. It's a matter of choice by the team leaders and the managers because they like to keep a handle on what is going on.

THE COMMISSIONER: Okay. I'm interested in the way in which the public interacts with the unit. You have already suggested that the first step could be a pre-application meeting. Is there a kind of average pattern to this? I mean, in a regular residential DA application would the applicant talk to the officers half a dozen times or many times more than that or less than that? I'm just trying to get a - - -

MR FLETCHER: Well, possibly the manager of development assessment might be able to give you a bit more because he's got more hands-on than myself.

7.4.2.3 At another level, it was surprising to find that the Director of the Division in which the LASU sits, appears to have no operational contact at all with the Assessment Officers as they go about making decisions, although he is charged with overseeing the operations of the LASU.

Public Hearings Transcript – March 27 2003

THE COMMISSIONER: As the Director of the Division do you have any kind of overriding, not overriding, is not the word, any kind of overseeing role in terms of that process? Do things ever get all the way up to you?

MR RYAN: Never. I've been there 4 years last December. I don't involve myself with the Development Unit. I suppose my style of management is, it's my job to try and ensure that I - I get the best staff to provide the best job and I have that in both Mr Fletcher and Mr Gatenby and with Mr Kerr and even to the point where Mr Gatenby - he runs the Development Unit and he chairs the Development Unit, but no, I don't get involved with that.

7.4.2.4 Mr. Gatenby provided the Inquiry with a detailed description of the process of a DA from application through to consent or refusal (Public Hearings March 21 2003). When questioned about the effect of resources on the efficiency of the process, Mr. Gatenby assured the Inquiry that due process was followed for each application.

Public Hearings Transcript – March 21 2003

MR GATENBY: . . . We have, for example, a pre-lodgement meeting Monday to Thursday with an applicant who books ahead. At that meeting we would look at the plans presented by the applicant. We would discuss the built form controls of our planning scheme which is height, bulk, set backs, landscaped open space and just give them - and being the applicant - there is usually a number of them, an indication of how far out the controls are and our views on that on a without prejudice basis.

We would say, for example, that we are not happy with the set backs they have shown, the height, so after that we are involved with the applications or looking at applications that are going to the Council and making sure that reports are full and complete and to a standard that the councillors are happy with. We also look at applications that are being determined for refusal to make sure that the applications are - or the report and the reasons for refusal are of a standard that would stand up in say the Land Environment Court and scrutiny there.

We also meet to discuss officers' applications that they have issue with and they would like to discuss the way ahead with that application. We also meet every day to allocate the number of applications that have come in which would be probably ten or more applications a day have to be allocated. To look at the officers' work loads. To work out their skill and expertise, etcetera, and allocate work to them. We have to also - I don't know, do you want me to go on further on the grounds?

THE COMMISSIONER: That is very helpful, yes.

Public Hearings Transcript – March 21 2003 (cont)

MR GATENBY: We have to bear in mind officers' willingness to multi-skill and to take on different applications that are - ones that might not have done before. Some officers might be happy doing applications just involving class 1 and 10s being dwelling houses, swimming pools. Other officers are more skilled in looking at the larger applications but some officers who have been undertaking university courses to change their - they add another planning thing we might allocate them a block of units. It is not a difficult block of units. To build their skill levels up that way.

THE COMMISSIONER: Yes. That is very useful. Yes, I just had a note, I wonder if you could get a little closer to the microphone.

MR GATENBY: Is that better?

THE COMMISSIONER: Yes. Is that okay? Yes. We are recording the proceedings. Pre-lodgement meetings you mention.

MR GATENBY: Yes.

THE COMMISSIONER: In the normal course of events what proportion of people would go and have a pre-lodgement meeting?

MR GATENBY: I can't tell you the exact percentage. Say we did over 2000 applications we have a meeting Monday - you know, four days a week so times how many days that is weeks a year divided by - well over 2000 so that would give you the percentage but usually most of the time it is the large applications, blocks of flats or industrial buildings, subdivisions and occasionally it's dwelling houses on steeply sloping blocks or development in coastal situations where they have issues of zones of subsidence and they want to clarify where that line lies with them.

THE COMMISSIONER: You have mentioned also you collectively and your group look at the refusals, these are delegated refusals, I assume?

MR GATENBY: Yes, we put the refusals through the develop, yes, under our delegated system that Mr Norm Fletcher talked about earlier.

THE COMMISSIONER: So in a sense an individual officer who is on the case as it were on a DA, comes to a conclusion that it would be non complying?

MR GATENBY: Yes.

THE COMMISSIONER: And decides that it should be refused, it then goes to your group?

MR GATENBY: Yes.

THE COMMISSIONER: To check that that is right, is that what it does?

MR GATENBY: That is process, obviously before the officer starts he - he or she may sometimes come to approach us beforehand to see if they are on right track, with their thinking about, or their interpretation, but generally they have looked at it, they have assessed it, they have negotiated with the applicant and the neighbours trying to seek compliance with the control. A number of times people aren't willing to seek compliance. We have given them chances and we find ourselves in the position we must refuse the application, for a certainty of outcome for the applicant.

By that I mean the applicant will have a letter of refusal and they - they'll have a letter of - of refusal, they will know the reasons why the application is being refused. They would then be able to seek a section - I think, a section 82A review of determination. In doing that they will know the reasons for refusal. They will be able to address them like, it might be two high, a number of storeys, or set-backs. That report would then come back here for review and then proceed to the full council under our current procedure and then the full council, as a higher body, would see - or seek to decide whether to agree with the approvals, about our assessment, or make up their own assessment.

THE COMMISSIONER: Okay. So there is that part - there is that aspect of the refusals, but you also mentioned that you look at them in terms of whether or not the grounds for refusal would stand up in the Land and Environment Court?

MR GATENBY: Well, yes, they - they'd have to be written appropriately. They would have to be in a certain language, you know, pursuant to section 82A or something like that, and they have to have reasons that relate directly to our Local Environmental Plan and which built form controls that we are seeking to refuse it on. So it can't be like a general reason, doesn't comply with landscaping. It should really specify exactly what the issue is. SO we just check that to make sure.

THE COMMISSIONER: Mr Fletcher also mentioned that your resources are pretty stretched because of the growth of the area?

Public Hearings Transcript – March 21 2003 (cont.)

MR GATENBY: Yes.

THE COMMISSIONER: Has that made this whole process of vetting the fact that refusals are correct in various ways that you have mentioned, does that make that more difficult, are you happy that at the stage of refusals that due processes are still taking place despite your resources?

MR GATENBY: Yes, I'm happy with that. We - we - I'd probably spend most of my day in the development unit room, so all day, every day. So we spend a lot of time doing that - it's a question of how much extra time I can be allowed to look at other parts of my job, for example, looking at process, improving process, etcetera. I find that that part has to occur probably in overtime where it - or in my own time to - to work out ways to improve processes.

7.4.2.5 Mr. Ryan, Mr. Gatenby's Director, recognised that the LASU was under a great deal of pressure (Public Hearings March 27 2003).

When asked about what was being done about the stress, Mr. Ryan pointed to the fact that the unit does not have a high turnover of staff. This, he appeared to believe, indicated that somehow they must be absorbing the stress. This is a curious reply. If the stress is so real that Mr. Ryan and Mr. Fletcher have to discuss it frequently (as Mr. Ryan indicated they do), then there must be some impact on the way in which DAs are assessed. It is at least plausible that the level of public complaints about DA processing might be a product of the stress that the officers are under.

Mr. Ryan provided his own explanation of the cause of the stress that the officers worked under. His stance is that residents are becoming more informed and are better educated than in the past. They lodge more objections because they understand the process better.

If this is so, then surely the LASU should be better resourced to work with this better educated, more informed community. The fact that it is not better resourced must explain at least part of the explanation for so much critical comment about the DA processing system.

Mr. Ryan posed a further explanation for the stress his staff worked under. This explanation focused on the fact that the LEP 2000 is an innovative system with a good deal of flexibility within it. Mr. Ryan argues that it is very easy for *"the person in the street"* to understand prescriptive planning measures, but he implies that they cannot appreciate more flexible approaches. This assumption seems to run contrary to his observation that people are more educated, and better informed about planning matters.

Public Hearings Transcript –March 27 2003

THE COMMISSIONER: Mr Fletcher also raised the issue of the number of staff available to deal with the development applications and he actually said that it's reached crisis point, he called it?

MR RYAN: Yes, and they were stressed.

THE COMMISSIONER: Last year?

MR RYAN: Yes.

THE COMMISSIONER: Is that true, and if so, how is that being got over?

MR RYAN: This is the topic that Norm and myself constantly talk about and I suppose there's a number of ways I can address that as a response. First of all, we don't have a very high turn over in staff and the majority of our staff do live locally. When we do have vacancies we don't have any trouble filling them and I think that's to do with the life style of living on the Northern Beaches. We often talk about this and my response to that is that in recent years and I would say probably in the last 3 to 4 years, particularly withe early peak coming into place, there has been added pressure put on staff.

The reason for that is probably two-fold. First of all, it's to do with the number of objections that are received and secondly the level of detail

Public Hearings Transcript – March 27 2003 (cont)

that people go to in lodging those objections. I've been doing planning for over 22 years and one thing I have noticed is that residents are becoming more informed, they're well educated, there's been, I think, and this would be across the board and you see this every time there's local elections there's - there's been an increase in community-based groups. The LEP has - is now a merit base document. It's all about getting the right outcome, rather than being prescriptive.

Like yourself and everyone in this room we're all rate payers of a Local Government area somewhere in Sydney and we all have our views on that and I have views for the Local Government Area that I work and it's very easy to relate j- the person in the street, it's very easy for them to relate to a prescriptive, if it's 8 metres, or 2 metres, but our LEP - and that's why it was approved by the Minister for 2 years as a pilot because it is innovative.

7.4.2.6 As discussed in section 7.2, a large part of the flexibility of LEP 2000 arises out of the Desired Future Character statements, worth 50% of the evidence of the assessment process. These statements result from a joint-effort of the community and the Council to define what the future character of a locality should be. Given this, the community must be at least as capable as the staff to interpret and understand the flexible statements that they have created.

The increased number of objections must follow from the better-educated, more knowledgeable community responding to the flexibility that the LEP provides. It might be that a large part of the stress of the LASU, caused by increased objections, is the result of the failure of the system to allow the community to participate more effectively in the DA assessment process.

7.4.3 Relationship of the LASU and Councillors

7.4.3.1 In section 7.2 the discretionary powers afforded to the assessment officers by the LEP 2000 were discussed. Mayor Sutton (Public Hearings April 10 2003), in explaining why the Council at times voted against the recommendations of the LASU, suggested that the officers were *"constrained in their reports and their recommendations to the absolute"*. Councillors, she implied, were not, and so made sensible decisions that allowed variations in the development standards.

Thus, there is a second level of flexibility within the Warringah system. Whether or not the decisions of the Councillors in allowing flexibility to standards are always correct is not an issue for the Inquiry. But the introduction of a second level of flexibility in the approval process is. This added flexibility adds to the complexity of the process, and makes it more difficult for the community to believe that they have input, and that the process is fair and impartial.

The mayor points out that only a small proportion of DAs actually go before the Council for approval, and the notorious 5/4 or 4/4 voting pattern applies to only a quarter of these. The problem is that the developments that do reach the elected representatives are generally the largest, and most contentious, developments. They attract a great deal of attention and often have solid groups of protagonists and supporters. The appearance of flexible decision-making, and group decision-making in regard to some of the most contentious matters, colours the view that the community has of how the approval processes work, and how they should work. The community's lack of confidence in these processes, expressed in so many Submissions, grows because of the doubts that they have of the impartiality of the decision-making processes.

Public Hearings Transcript – April 10 2003

MS SUTTON: . . . Which developer is driving me? I'm not a developer driven person and I don't think it's a developer driven Council. We have just unfortunately had more developments than usual. Here are some facts. From 20 September 1999 to 31 December 2002 Council determined 7045 development applications. 357 or 5 per cent were reported to Council. Of those the five/four or four/four, we'll put them together, voting pattern was 23.5 per cent. So 23.5 per cent of five per cent of 7045 got the five/four so, you know, we're not talking about major figures here.

One of the problems is that sometimes we do vote against the Council officers' recommendations. Now, I frankly think the sun shines out of Mr Fletcher and his staff, they're just amazing. They're wonderful, wonderful workers - that is the local approval service unit - but sometimes I vote against them because they are constrained in their reports and their recommendations to the absolute and the councillors sometimes have the discretion to change those absolutes and say: well, okay it's not 6.5 metres from the back fence but along it's 4.5 metres here but then it splays out and it's 7.6 metres or 10 metres, so looking at it you would have to say that it's not 6.5 metres from the back fence here but then there's a pay-off here, or there's some other reason, and I will occasionally vote against the staff officer's recommendation because he or she doesn't have the discretion to fit in with our merit-based local environment plan.

Our local environment plan, I'll talk about that in a minute, has got merit, you know, you can base some of the decisions on merit and sometimes it is not as constraining as the DCPs we used to have and sometimes we have to - we don't have to, of course, but we may and do go against the recommendations. . .

7.4.3.2 Doubts about the impartiality of the decision-making of Councillors were expressed in many Submissions. The kinds of concerns felt are illustrated in the following examples (Submissions 191, 335, 10, 352, 293, 4).

Submission 191

The 'majority bloc' show contempt and high-handedness toward the 'small developer 'who often merely wishes to make minor variations to his/her property .
Whilst the resident is speaking to Council they walk around and even leave the chamber They attempt to intimidate them and exhibit their own authority by demanding minor ,but costly to the applicant, compromises to plans. This show of scrupulousness would be admirable if applied to all applicants.

However, there are many inconsistencies in D.A.approvals to the 'small' and ' large' developer,the current philosophy is clearly unfair .
We have seen approvals granted by a 5-4 vote to large developments which contravene the current L.E.P. on as many as 5 counts and where the staff recommendation has been for refusal.

Public Hearings Transcript – March 27 2003

THE COMMISSIONER: Okay. You further suggest that these councillors attempt to intimidate residents and exhibit their own authority by demanding minor but costly, to the applicant, compromises to plan - - -

MS FROST: Yes.

THE COMMISSIONER: - - - do you suggest that this is a regular sort of occurrence? Would you comment.

MS FROST: Yes, as a matter of fact it happened last week and from what I gathered, what I could pick up, a house wanted to have - I came in just halfway this - wanted to have another storey and it was suggested that he lowered the existing ceiling which would have been really horrendous extra cost, it seemed to me so - - -

THE COMMISSIONER: Had this proposal - presumably it had gone through all the steps in the DA process and it had gone through the sorts of discussions and amendments that the officer who would have been in charge of that DA would have suggested. It would have then gone to the full Council because not every DA goes to it. In fact the majority don't. They are decided on by the delegated authority of the staff. It would have then gone to Council with some sort of recommendation from the staff member.

Submission 335

As an observer this made no sense to me and certainly left me with the fe3eling that the 5 majority bloc councillors were pro-development and were not considering each case on its merits. It seemed as if the bigger the development the more likely it was to be passed despite community complaints. The blame for this was placed on the State government with councillors saying they had to allow a certain amount of development to satisfy State government requirements. I do not know how true this is.

Submission 010

The development was strongly opposed by the local residents on the following grounds, backed up with statements quoted from the Warringah Council Locality Statement and Local Enviromental Plan (LEP). The residents and ratepayers objected to the development because

- The built form of the development would be enormous, an overdevelopment of the site, pushed right up against the boundaries such that privacy issues and enjoyment of our "private" backyards would be compromised. *"That the development that adjoins residential land should not reduce the amenity enjoyed by adjoining occupants. In this regard the built form of the development in the local retail centre should provide a transition to adjacent residential development including reasonable setbacks from side and rear boundaries, particularly at the first floor level"* (Warringah LEP; Part 4, G2 Local retail centres)
- The development is much closer to the adjoining boundary than another recently completed development next door. The Developer was able to have his development located signicantly closer than is reasonable. So much so that installed screening does not affect the line of site of residents in the development, directly into our back yard. *"Development should not cause unreasonable direct overlooking of habitable rooms and principal private paces of other dwellings."(*Warringah LEP; Part 4, G28 Privacy)
- The development has three official floors and a roof top terrace. Argument was made that the roof top terrace does not consitute another storey despite the fact that BarBQ and entertaining areas are located on the terrace. In addition as the buiding gets progressively taller, the rear boundary setback is not progressively increased to improve privacy issues. *"Side and rear setbacks should be progressively increased as the wall height increases"* (Warringah LEP; Part 4, G29 Building bulk). *"Building height... in local retail centre where the maximum height is 3 storeys and 11metres"* (Warringah Locality Statement; Part 5, Building Height)
- We the residents also voiced strong concer regarding the increased traffic flow along Clliff Rd and Beach Rd by this and the other 2 develpments on either side of 1030-1034 Pittwater Rd. Traffic flow along Cliff Rd is now significantly increased.

Despite these and other objections being raised by myself at the Council Meeting, the application was approved with minimal debate, along party lines in favour of the Developers.

Submission 352

. . . As the applicant, my experience was very different and the two submissions, 038 and this one, need to be read together as the two sides (applicant and objector) to the same Council process. That way they provide the inquiry with an example of precisely the two opposing opinions that are reflected in the submissions and go the heart of your inquiry. My particular focus here is not about my neighbors nor Council staff nor with built form, but more specifically an example of how one Councilor operates in the processing of DA's for residents who he perceives to be with or without his favor.

Submission 293

What we as a community see at Warringah Council is certain Councillors often pushing through non-compliant development applications, sometimes their own, that of their family or business associates. We as a community see the provisions of the Local Environment Plan (LEP) upheld by Councillors when it comes to dealing with some residents' applications for their homes but when it comes to Development Applications for massive unit developments, regardless of non compliance with height restrictions, bulk and scale, deficient parking, set backs etc, they are mostly always approved on a 5 to 4 basis.

The consideration and manner in which certain Councillors determine development application is best indicated by a comment that was picked up on Council's sound recording on 18 September 2000. When three Councillors voted to refuse the development application of one of their factional colleagues, one senior councillor stated, "Jingoes, I wouldn't like to have mates like that". Clearly, there is a culture in Warringah council on the part of some Councillors that mates' development applications are approved regardless of non-compliance issues and this is what has been happening.

A pro-development faction has dominated Warringah Council, with strong links to developers and the primary aim of certain councillors is to facilitate the financial interests of themselves and their mates. This culture will go on unless it is properly stopped now by dismissing those that covet such culture.

Submission 004

As a long standing resident and rate payer I have been disgusted for years about the behaviour of our Councillors. They are entrusted with the oversight of the way in which, using our money, the area we live in is cared for and managed. They are doing a lousy job.

I have no proof of corruption or even specific grounds for suspicion. However, the majority power block consists of Councillors with businesses that stand to gain from constant growth and development in the area.

On many occasions they have used their numbers to approve developments that had been recommended for rejection by our own planning department, the professionals we pay to safeguard our LEP from conflicting DP's. Explanations for these actions is rarely, if ever, given.

This does leave us with a distinct uneasy feeling. We pay these councillors' expenses and they are too arrogant to tell us why they frequently make these decisions that just don't seem to be entirely cosher.

The current LEP was prepared with much publicity given to the community consultation over a long period of time. When it was almost overdue for submission to the Minister, the Council proposed changes to two area classifications that would facilitate major commercial development proposals (The Harbord Beach Hotel and The Harbord Diggers Club). Because of the "time pressures" these changes were not offered for consultation and placed on the Council agenda for a late night sitting with minimum notice.

7.4.3.3 Concerns about the effectiveness of the decision-making processes of the Councillors in respect of DAs, are not confined to the objectors.

A number of applicants have also complained about the processes. Their complaints are directed against the costly delays within the system and the difficulty of generating rational debate about the merits of particular developments. The behaviour of anti-development Councillors, and members of the public who attend Council meetings, has without doubt added to the general feeling of frustration. It destroys faith in the capacity of the elected representatives to provide a smooth, reasonable, dispassionate, and fair assessment of the merits of individual applications.

Part 7.1 illustrates that Warringah has not been especially inundated with development, and applications for development, compared to the other 15 large metropolitan Councils. Yet in the Councils with much higher levels of development nowhere near the Warringah levels of rancour and public distrust with the development approvals system has been generated.

The following example of perceived unsatisfactory behaviour by Councillors gives the opposite side of the story to the examples given in 7.4.3.2. The author's frustration was such that he wrote to the Premier, Mr. Carr, complaining about the problems, and the extract from Submission 257 is taken from that letter.

Submission 257

3. COUNCIL MEETING 4th DECEMBER 2001

Debate on the rescission motion to my item commenced at approximately 11.30pm and finished at approximately 12.15am. The Council agenda comprised two volumes and included agendas for the Local Approvals Committee, Services Committee, Governance Committee, Strategy Committee and two rescission motions from the previous meeting plus Confidential items and Questions without Notice. The agenda comprised some 750 pages.

By the time my item came on, the gallery had thinned to approximately 25 people. Prior to this the meeting had been interrupted on at least 4 occasions with Council calling a halt to proceeding to bring order to the gallery and several warnings having been issued to individuals to curb their behaviour. One person was required to leave the Chamber and eventually did so after being spoken to by the Councils Acting General Manager.

From my perspective the following issues are pertinent to an understanding of influences impacting this Council:

(i) There is an obvious and acrimonious split between Councillors. This was manifested in Cn Forrest launching a personal attack on Cn Moxham for failing to absent himself from the Chamber in discussion an my item and proceeding to warn Moxham that his failure to do so would result in complaints to the Dept of Local Government and ICAC. He proceeded to describe in detail the nature of the interest of Councillor Moxham that he claims represents a 'pecuniary interest' of this Councillor for the sole benefit of the public gallery.

(ii) Such attacks were usual during the evening with Forrest using a debate on the grant of a $2500 donation to a local community group to attack Cn Caputo's membership and patronage of the group; Cn Smith and R Sutton routinely questioning the accuracy and competence of staff in the reporting of matters in conjunction with repeated points of order and interjections from Councillors generally during the meeting. In all instances when the meeting was adjourned individual Councillors sought to make contact and discuss issues with members of the gallery and in one instance led to Cn Smith addressing the gallery as to an anticipated closing time for the meeting and giving a public explanation that if the meeting were extended there was an opportunity to defer consideration of the rescission motion on Collaroy because of what he referred to as standing orders on the cessation of Council business at a predetermined time.

Submission 257 (cont)

(iii) It is obvious the public gallery is dominated by a number of key individuals who provoke disruption of items depending upon their personal motivation and interest. In particular Mr R Parsons and Mr V De Luca are prominent. These individuals clearly have direct access to various members of the Council and it is usual to observe the exchange of notes between the gallery and Councillors, gesticulations and even on one occasion a text mobile phone message. Councillors and even individuals addressing Council are subjected to interjection and comment from the Gallery extending to defamatory attacks as to personal motivation and benefits associated with various matters.

The consequence of this behavior is disruptive and extends Council meetings, precluding matters being dealt with in a considered and timely way and inhibiting individual's opportunity to express and place their opinions before Council in a free and participative manner.

(iv) By way of example last nights meeting was highlighted (and I use the term loosely) by the spectacle of a mother of two tearfully pleading to have Council approve her house on the former Ardel site (now known as 35 Madison Way) whilst the gallery and various members of the Council argued as to the outcomes and responsibility for water quality monitoring and testing of a water quality treatment pond implemented as part of the Court approved subdivision. That such an episode is played out in this public forum with Councillors seemingly unable and unwilling to negotiate these issues to an effective solution between the parties is characteristic of a Council that is more intent on personal and political acrimony rather than solutions to issues. . .

7.4.4 Independent Hearing and Assessment Panel (IHAP)

7.4.4.1 The Council has introduced an Independent Hearing and Assessment Panel to help overcome some of the problems that have beset the approval mechanisms. The panel began operating on April 23 2003. It replaces the local approvals committee of Council. Councillor Moxham, the last chairman of that committee, welcomed the IHAP, and is reported in the *Manly Daily* (April 23 p. 7) as saying: *"It is a good thing. It will take us away from an unnecessary workload ….(and) would enable Councillors to concentrate on strategy and policy rather than wrangle over neighbourhood disputes"*. Council meetings have been reduced from three to two a month as a result. The IHAP meets once a month, at 6.00 pm on the fourth Wednesday.

7.4.4.2 Briefing Paper No. 60, supplied by the Council to the Inquiry, provides a detailed description of the IHAP, its purposes, and its structure (Volume 3, Appendix 2). The purpose of the IHAP is:

Warringah Council Briefing Paper No. 60

> The purpose of the IHAP, as shown in the Charter, is " to provide an independent forum for all stakeholders (objectors and applicants) to submit to and discuss issues of concern regarding particular development applications and enable an independent body to assess the proposal and submit a recommendation to the Council for decision."

7.4.4.3 The LASU still processes applications in the same way that it has in the past. If a DA then goes through a mediation program, but still has two or more objections unresolved, it is referred to the IHAP.

If there is no mediation, but unresolved objections, the DA is referred to the IHAP. The IHAP makes a site inspection of the property in question before meeting. At the meeting it reviews all Submissions, discusses objections with the people who made the Submissions, considers the LASU recommendations, and then reports to Council. The elected representatives still have the final say in approving or refusing the recommendation of the Panel.

Councillor Moxham (*The Manly Daily* April 23 2003 p.7) is reported to have said there was always a community perception that Councillors were looking after their 'mates', and that the Panel will certainly put this to bed. Since the Councillors still have the ultimate power of accepting or refusing the Panel's decision, there is no guarantee that the perception of favoured treatment of some people by Councillors will necessarily go away.

7.4.4.4 There is obviously a high political risk attached to the elected representatives voting against the Panel's findings, so the possibility of Councillors looking after their "mates" must be diminished.

The Panel comprises a lawyer, environmentalist, a planner or an architect, and a person representing and drawn from the community. There are alternatives selected for each position. The community representatives and the Panel representatives for each meeting are drawn from the pool on the basis that the particular development being considered is not located in the same Ward in which the community representative resides, or has business interests.

The Chair of the Panel is Mary-Lynne Taylor, a lawyer who also heads panels in Liverpool and Fairfield, the models upon which the IHAP is based.

7.4.4.5 Despite the pedigree of the Panel, it has yet to convince everyone in the community that it will solve the development approval problems that have so troubled the community.

Submission 072

> 9. The new independent panel to asses development applications will be nothing more than a farce, we have a similar committee already in operation and they appear to have been overlooked by council for sometime. Defunct I believe a voluntary committee member said.

The committees referred to in Submission 072 are most probably those formed to conduct the independent public hearings that have to be held when a Category 3 DA comes before Council. These hearings pre-date the establishment of the IHAP, and are part of the LEP 2000. There is evidence in the Submissions that the community has not had great faith in the Category 3 Public Hearings. This has now produced some scepticism about the effectiveness of the IHAP.

Public Hearings Transcript – April 4 2003

> MS ARMSTRONG: Our concerns about use changes are twofold in general. One is that any change of use should be compatible with the desired future character and low impact and low intensity so it would be appropriate to the environment, concern number one. Concern number two, that changes of use should be, as I've said, part of an orderly and planned process rather than a response to this DA, that DA and the other one.
>
> THE COMMISSIONER: You trace some particular use changes over - in some detail - over time. You mention in connection with that that there were public hearings in the process of some of these changes.
>
> MS ARMSTRONG: A category 3 change of use DA must proceed to an independent public hearing if Council is to approve it.
>
> THE COMMISSIONER: That took place in connection with the examples which you give here.
>
> MS ARMSTRONG: In each case an independent public hearing has been held.
>
> THE COMMISSIONER: Can you just explain a little about how an independent public hearing takes place? Who's invited? Who chairs it, etcetera.

Public Hearings Transcript – April 4 2003 (cont)

MS ARMSTRONG: An independent public hearing is - an independent public hearing panel consists of three or possibly four members, one of whom must have legal qualifications and other planning qualifications, environment and a member of the community. In some cases the panel consists of three and in others of four. It is customary for the panel to be chaired by the legal representative. The people who have raised objections to the DA are advised that the independent public hearing will take place and invited to attend and to participate.

Prior to the independent public hearing there is a site inspection by the panel. In one case - well I suppose in all the cases that we have felt that as a community group with a strong objection that we should have been able to be present at the site inspection. We expressed our concern and we were present at one site inspection and that was very helpful. At the last site inspection held several weeks ago we asked if we could be present and we were denied that opportunity.

When the panel meets, clearly the applicant puts forward his or her or their case with whatever supporting evidence they wish to present and then members of the public group may make individual or group submissions and may ask questions. The members of the panel clearly also ask questions and record the responses. It is fairly broad reaching because of the qualifications of the panel members and it is within an elastic time frame but obviously it does not go on beyond an hour and a half or something or some time like that but it is not limited to 5 minutes.

Then the panel considers its report and presents the report to council with a recommendation or with recommendations as to whether the DA should be refused or not on the grounds of its compliance and any other recommendations and/or conditions that they may wish to suggest.

THE COMMISSIONER: Generally does the Council accept the independent panel's recommendations?

MS ARMSTRONG: The short answer is no.

THE COMMISSIONER: In that case, why - - -

MS ARMSTRONG: I could say more.

THE COMMISSIONER: Yes, why have we got independent panels if their advice is regularly not followed?

MS ARMSTRONG: I don't know that I'm competent to answer that

Public Hearings Transcript – April 4 2003 (cont)

question. In each of the cases we have raised, the independent panel recommended against, in each case was passed and in a number of cases we realised that the category 3 DA would be passed and we did work to have conditions made as strong as possible and in one case we worked with the applicant over a matter of road construction which we felt was critical to the safety of people in our area. So there's a certain flexibility I think but I really can't answer the question as to why the Council doesn't accept those recommendations.

THE COMMISSIONER: As well as the independent panel recommendation is there independently a recommendation made by the professional officers from the staff on such DAs?

MS ARMSTRONG: That is the first recommendation that goes to Council.

THE COMMISSIONER: Right.

MS ARMSTRONG: My understanding is that if Council is satisfied with this, there can be - go on delegated authority. Otherwise it must go to Council. The recommendations of Council officers in these DAs varied in that a number were opposed in each one of the reasons given and I've given an example of that in the submission and in two cases there were recommendations for consent with in one case 31 conditions and another case I think more than 31 conditions imposed.

7.4.4.6 The doubts that hang over the IHAP stem from the power that the Councillors' hold in accepting or rejecting the Panel's decisions. In other Councils that have created Panels, this has not been a particular problem apparently. In Warringah, however, there is such a history of distrust of the impartiality of Councillors when judging DAs, that absolute trust in the panel might not be possible with the current mix of people in the elected representative body.

7.4.5 Reform of the LASU

7.4.5.1 In his second appearance at the Public Hearings (April 10 2003) the General Manager, in reviewing progress that had been made to reform aspects of Warringah Council's operations, made two references to a review of the LASU.

Public Hearings Transcript – April 10 2003

> MR BLACKADDER . . .
> As you can appreciate, my early work at Warringah has been intensive and during 2002 I have tried a personal approach to complaints management, involving myself with many of the persons dis-affected with Council's decisions and meeting procedures. I have met many complainants to sense the issues and to decide on the best solutions to the problem. Specific improvements have been made to policy systems and processes as a result of this personal approach. In particular, I've met with many applicants and objectors of DAs and in so doing, sending a strong message to staff that our systems and procedures are under close scrutiny by me. I have mentioned elsewhere that a major review of the local approval service unit was initiated in November. . .

> A briefing paper has been provided to the Commission indicating the extensive review of the Local Approvals Service Unit underway since November 2002. This review will be largely complete in May. Changes to staffing, resources, systems, policies and procedures are contemplated. I will make a further more detailed submission to the Commission within the 2-week submission period ahead. Suffice to say, my challenge is to convince you that the areas of concern will be effectively addressed. I hope to do this.

7.4.5.2 The Strategy Group supplied the Briefing Note on the LASU review to the Inquiry on May 15 2003 (Volume 3, Appendix 2). It contained the latest draft of the review, completed on May 5. A number of changes are being made, or are contemplated for the LASU. The most important of these are summarised:

- refining and updating the procedures manual
- instituting a number of changes to the notification policy, and a draft prosecution policy
- engaging two specialist officers regarding management of developments and illegal land-use operations
- making the community more aware of the Council's mediation program
- installation of an effective DA tracking mechanism
- moving the records management system for DAs from the records department to the LASU

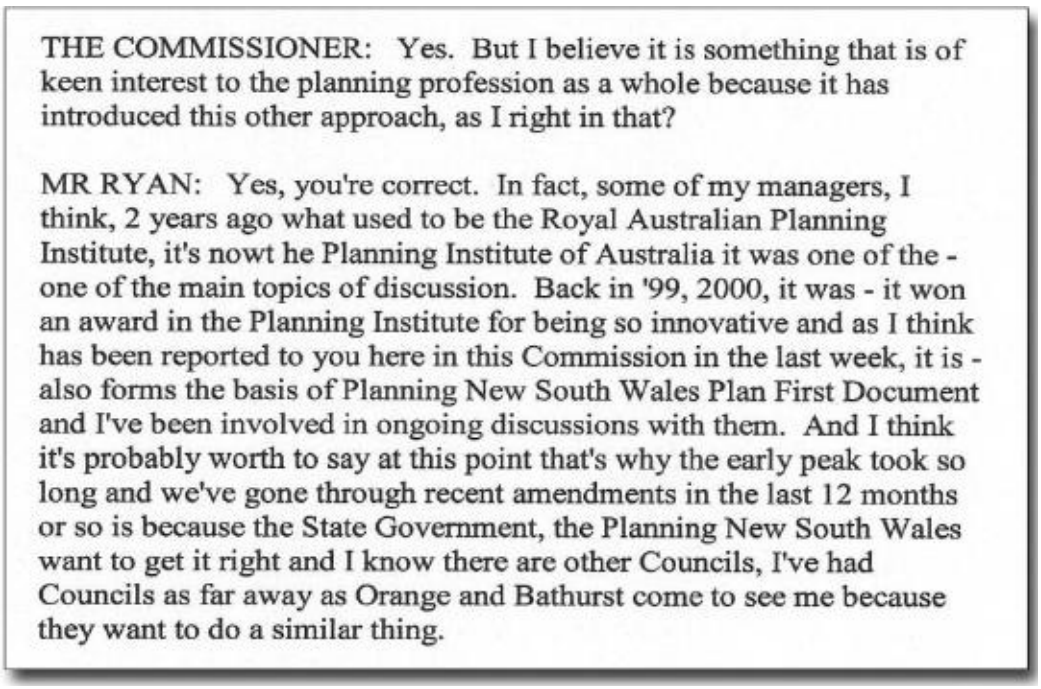
7.4.5.3 The review of the LASU appears to herald a number of changes that will strengthen the operational aspects of the unit. The evidence before the Inquiry, however, suggests that these reforms might not address the major problems that the community has with the DA approval process.

Although some Submissions have been critical of individual members of the LASU, there is no compelling evidence to suggest that the lack of confidence in the unit lies wholly, or even in part, with the attitudes or work ethos of the Assessment Officers. The evidence indicates that the members of the unit work long hours under trying conditions, and that they handle a huge workload reasonably well. The changes that will come out of the review will only improve the performance of the unit: more staff, better accommodation, and better IT support systems.

It may well be that the solution to the problems reported by members of the community may lie in a more extensive reform of the development approval process, rather than improvements to the LASU. A new structure might have to be created that includes the assessment officers in an interactive body within the Council that draws on a range of skills to assist the decision-making. To ensure that localities are developed in the most effective way, and in harmony with their Desired Future Character statements, a more holistic approach is needed.

7.4.5.4 LEP 2000 has been regarded as a path-breaking development in urban planning in New South Wales. Mr. Ryan, Strategy Director, revealed the level of interest in the LEP by professional bodies, and other Councils within NSW. Because it has such innovatory features, the Council needs to ensure that the staff is flexible, and broad in its skills base, so that the intentions of the LEP are fulfilled. It must also be inclusive of the community.

Public Hearings Transcript – March 27 2003



THE COMMISSIONER: Yes. But I believe it is something that is of keen interest to the planning profession as a whole because it has introduced this other approach, as I right in that?

MR RYAN: Yes, you're correct. In fact, some of my managers, I think, 2 years ago what used to be the Royal Australian Planning Institute, it's nowt he Planning Institute of Australia it was one of the - one of the main topics of discussion. Back in '99, 2000, it was - it won an award in the Planning Institute for being so innovative and as I think has been reported to you here in this Commission in the last week, it is - also forms the basis of Planning New South Wales Plan First Document and I've been involved in ongoing discussions with them. And I think it's probably worth to say at this point that's why the early peak took so long and we've gone through recent amendments in the last 12 months or so is because the State Government, the Planning New South Wales want to get it right and I know there are other Councils, I've had Councils as far away as Orange and Bathurst come to see me because they want to do a similar thing.

7.4.5.5 The evidence of the Submissions suggests that negative community reaction to the LEP might be more basic than the alleged maladministration by the LASU.

The alienation of some within the community has been caused by frustration with their lack of engagement with the planning process. They perceive the much-heralded flexibility of the LEP as a one-sided kind of flexibility. They record their anger at loss of local amenity, open space and a possible deterioration of the natural environment, but feel that they have no means of constructively expressing their concerns.

The Desired Future Character statement was intended to offer the community a kind of blueprint for preserving desirable features of Warringah localities, protecting areas against undesirable intrusions, and creating a path to the future through harmonious development, blending the new with the old.

The Desired Future Character statements were meant to be the primary base on which decisions were made, accounting for 50% of the weight of an assessment.

7.4.5.6 Desired Future Character statements were created through joint community and Council consultations; they represented community visions for the future. A large part of the community dissatisfaction with the development approval processes at Warringah appears to be the lock-out of the community from making judgements about the suitability of a development in terms of what it does to a locality. The community helped to create the Desired Future Character statements, but it has no voice in the interpretation of those statements within the development approval process.

Staff of the LASU have to make such judgements. Although Mr. Fletcher expressed his confidence in their ability to do that, the public reaction suggests that his confidence is misplaced. It is not a criticism of the professionalism of the staff to say that. The kind of challenge that the Desired Future Character offers is not something that planners in any other Council in Sydney have to face. The novelty of the approach suggests the possibility that there would be little in the professional training of the staff that would prepare them to make the weighty, 50% of assessment judgements.

7.4.5.6 The crucial nitty-gritty work on DAs is done totally within the development application group within the LASU. There are checks and balances within that group to try and ensure that they act fairly, consistently, and professionally in their decision-making.

The demands and opportunities presented by the Desired Future Character approach require a broader understanding of how to turn a community vision into a real future. The Assessment Officers cannot do that by themselves. There needs to be a constant referencing of interpretations of Desired Future Character statements back to the community in each locality. Without a mechanism for doing this, the Warringah development approval process makes a mockery of the locality-based planning system. Warringah Council has won great praise for its innovative approach to planning by introducing a locality-based system. At the crunch-point, however, where a development application has to be assessed against the community-based Desired Future Character statement, the community has no input. The interpretation of that statement is left to the Assessment Officers.

7.4.5.7 The Assessment Officers appear to work without a great deal of connection with other units and divisions within the Council. If the innovative planning system is to work through to an effective development approval system, there ought to be a continuous interconnection of the elements of the planning and assessment groups. Strategic planning, infrastructure development, environmental management, mediation, and compliance ought to have a close, on-going and creative relationship with each other.

A development approval process that wins the confidence of the community requires, within the Council, a full use of the expertise that lies in other areas of the staff. This is not happening in an integrated way.

Mr. Gatenby (Public Hearings March 21 2003) said he believed it wasn't needed. The evidence of the Submissions suggests that a more integrated and more broadly-based approach must be employed, if the concerns of the community are to be met.

Public Hearings Transcript – March 21 2003

THE COMMISSIONER: Do you have a system where there is some issue that is contentious in an approval process of bringing outside consultants or experts to provide advise on the contentious issue, or is it all in house?

MR GATENBY: Are you are referring to applications by a councillor, or a staff person or - - -

THE COMMISSIONER: No, I'm thinking in the normal run of applications, if you get to a point where there is a difficulty between the applicant and the Council, do you ever go and get someone who is independent of both groups to give an opinion on that issue?

MR GATENBY: No, not - not really, unless it is a Court case or something like that then we might engage experts, etcetera. Occasionally we engage - we might - if we don't have the expertise there to look at a difficult bushland issue, for example, endangered species, or a bushfire issue we will get that help, but apart from those issues we should be able to handle that in house.

7.4.5.8 The Inquiry offers no criticism of the professional quality of the Assessment Officers at Warringah Council. It would appear however, that the LEP requires them to perform tasks that go well beyond the traditional duties of town planners. As well as facing the challenges of new tasks, they have been undermanned, and have faced a heavy workload as a result.

To ensure that the creation of a development approval process that works well and gains the community's confidence, there must be an interactive link between the Council and the community within the DA assessment process.

Instead of having creative interactive links, the evidence of a large number of Submissions suggests that too often the process is marked by conflict between the Council and the community, with deep suspicion on either side. Currently, there is no way out of this. The IHAP system will address a small number of contentious cases. What it will not do is bring the community into play in interpreting Desired Future Character statements.

There are 67 localities in Warringah. The Desired Future Character of each locality reflects the particular desired characteristics that the local community wants. The discussion in section 7.2 pointed to the fact that desired future character of an area is not a one-off decision made by members of a community at one point in time. Instead it ought to be a living, working document. Each new DA will throw up a new challenge to the community to decide whether the outcome will be in accordance with their sense of what is needed for the area in the future.

The Desired Future Character statement must be in a process of continual review: each new development reworks the contours of the challenge. Natural systems, as well as the socio-economic features of the population, are in a constant process of change. The existing problem is that the Warringah community has no real voice in expressing its opinions on the acceptability of a particular DA, nor does it have a role in the on-going task of refining the desired future character of their local area.

A small number of Assessment Officers dealing with a large number of localities and many different types of development applications cannot be expected to read the community mind as to whether or not a particular development fits in with the desired future character of an area.

7.4.5.9 The IHAP system specifically excludes community representatives from sitting on DAs that relate to their own Ward. This goes against the basic concept of the Desired Future Character statement as representing a community's view of the kind of amenity that they want for their locality.

7.4.5.10 The evidence of the Submissions makes it very clear that many people in the community cherish the natural environment of Warringah, and wish to preserve it as development takes place. Mr. Corbett, the Environmental Management Service Unit Manager, was asked about the connections of his unit with the development approval process (Public Hearings April 3 2003). From his answer it is apparent that the considerable environmental expertise in the Council has not been built into the regular DA approval processes. The Assessment Officers call on the environmental professionals when they think they might need them, and the environmentalists keep some kind of watching brief on the planners.

Public Hearings Transcript – April 3 2003

THE COMMISSIONER: As I understand from what you have just been saying, you have got a very strong program which is well-funded and focuses on the actual management of the environmental systems. What is the connection between your program and the approval system of the Council? Is there a connection and if so what is its nature?

MR CORBETT: So the approval system, Commissioner, relating to development approvals largely for public land, public developments.

THE COMMISSIONER: Yes.

MR CORBETT: There is a connection. The main connection, Commissioner, is through the area of vegetation management. Now,

MR CORBETT: . . .
you would appreciate one of the particular areas of challenge for us and other councils is management of trees and vegetation on development sites. It includes now management of threatened species communities. So with the local approvals unit there is a process where there is a lot of development applications that they send to us. So Commissioner, in that regard we work as a kind of in-house consultancy providing advice to local approvals, especially on things like vegetation management, rare and threatened species and flora and fauna management.

So I guess there's a threshold the local approvals staff are aware of and part of their process is they know which development approvals to send to us. Now, it's not just on vegetation. Issues like creek and catchment management, issues like coastal management, areas along Collaroy and Narrabeen, for example. There's a whole range of issues that when the local approvals officer assesses a new DA, there's a whole lot of triggers where they will know this application needs to go amongst others to environmental management for their comments.

So we do provide that service as that in-house group and we have experts, external if we need them, especially for things like threatened species, where we can give timely advice to local approvals and then on to Council as part of assessing those DAs.

THE COMMISSIONER: But the reference comes from them. You're not automatically part of the process.

MR CORBETT: Well, I have had discussions with local approvals to make sure that it is working both ways, Commissioner. That's a very valid point. We don't just sit back and say: well, we'll accept what they give. I can say we have a very good relationship. Any time that I have gone to them and said: look, there's an area there where I think we need to perhaps modify the threshold and have a greater range of issues coming to my staff, that's always been agreed to with the local approval service unit manager.

So it is very much a two-way and it's very much a responsibility of mine to make sure that we are getting a look at the ones that we think we should be viewing, not just the ones that local approvals think. but it does work very well. The teams do work in a close harmony together to get that two-way relationship.

7.4.5.11 The limited engagement of the Environmental Management Service Unit in the development process, concentrating on such particular features of the environment as vegetation management, is surprising.

Every DA that the Assessment Officers approve contains an implicit judgement that there will be no harm done to the natural environment. It is incumbent on planners to appreciate that environmental impacts occur through the cumulative effects of change across an ecological area, made up by many individual developments. It is much more than vegetation management.

Schedule 15 of the LEP 2000 (p.108-109) lists a large number of environmental aspects that the Assessment Officers should consider when making decisions. The professional training of the planners, their operational isolation from the environmental professionals, and their huge workloads make it very difficult for Schedule 15 items to be scrutinised as they should.

Warringah Local Environment Plan 2000

Schedule 15 Statement of environmental effects

(Clause 15 (1))

(1) A summary of the statement of environmental effects.

(2) A statement indicating how the proposed development is consistent with the relevant desired future character statement and general principles of development control established by this plan.

(3) A statement of the objectives of the proposed development.

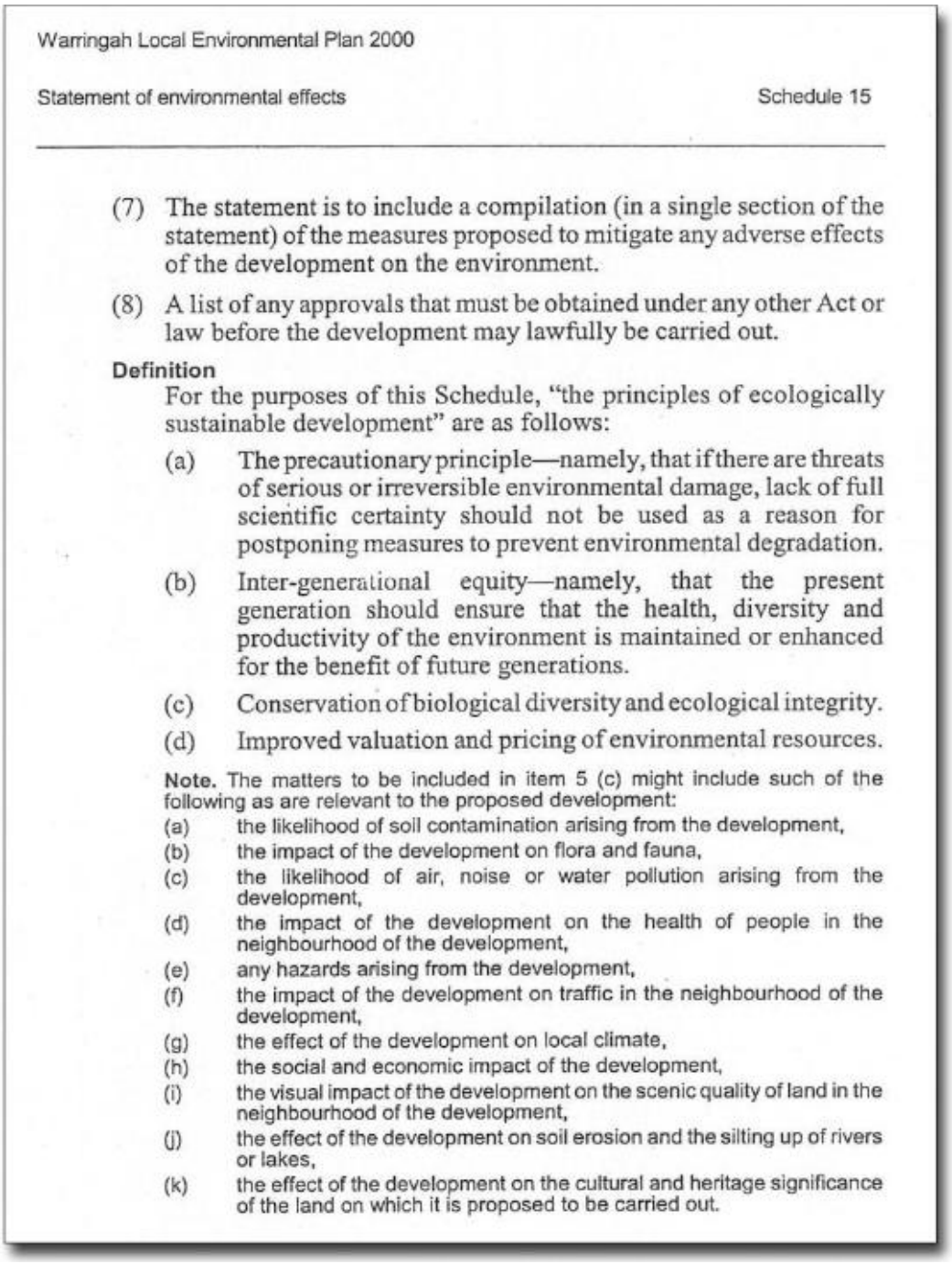
(4) An analysis of any feasible alternatives to the carrying out of the development, having regard to its objectives, including:

- (a) the consequences of not carrying out the development, and
- (b) the reasons justifying the carrying out of the development.

(5) An analysis of the development, including:

- (a) a full description of the development, and
- (b) a general description of the environment likely to be affected by the development, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and
- (c) a description of the likely impact on the environment of the development, having regard to:
  - (i) the nature and extent of the development, and
  - (ii) the nature and extent of any building or work associated with the development, and
  - (iii) the way in which any such building will be erected in connection with the development, and
  - (iv) any rehabilitation measures to be undertaken in connection with the development, and
- (d) a full description of the measures proposed to mitigate any adverse effects of the development on the environment.

(6) The reasons justifying the carrying out of the development in the manner proposed, having regard to biophysical, economic and social considerations and the principles of ecologically sustainable development.



Warringah Local Environmental Plan 2000

Statement of environmental effects Schedule 15

(7) The statement is to include a compilation (in a single section of the statement) of the measures proposed to mitigate any adverse effects of the development on the environment.

(8) A list of any approvals that must be obtained under any other Act or law before the development may lawfully be carried out.

Definition

For the purposes of this Schedule, "the principles of ecologically sustainable development" are as follows:

(a) The precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(b) Inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

(c) Conservation of biological diversity and ecological integrity.

(d) Improved valuation and pricing of environmental resources.

Note. The matters to be included in item 5 (c) might include such of the following as are relevant to the proposed development:

(a) the likelihood of soil contamination arising from the development,
(b) the impact of the development on flora and fauna,
(c) the likelihood of air, noise or water pollution arising from the development,
(d) the impact of the development on the health of people in the neighbourhood of the development,
(e) any hazards arising from the development,
(f) the impact of the development on traffic in the neighbourhood of the development,
(g) the effect of the development on local climate,
(h) the social and economic impact of the development,
(i) the visual impact of the development on the scenic quality of land in the neighbourhood of the development,
(j) the effect of the development on soil erosion and the silting up of rivers or lakes,
(k) the effect of the development on the cultural and heritage significance of the land on which it is proposed to be carried out.

7.4.5.12 A curious aspect of the arrangements at Warringah Council is that the Environmental Management Service Unit is responsible for instituting actions for illegal land use and works carried out without approval (Briefing Note Strategy Group LASU Review). Compliance, as section 7.3 illustrates is one of the main areas of complaints against the Council, and most of the complaints in the Submission focus their concerns about compliance on the LASU.

7.4.5.13 Environmental impacts are just one area that illustrates the isolation of the planning approach to DA assessments, compared to the holistic nature of many of the Desired Future Character statements. It is, however, a very significant area to use to illustrate the point.

In 1997 the Local Government Act was amended to include ecologically sustainable development (ESD) as a prime focus for councils. The Local Government Amendment (Ecologically Sustainable Development) Act led to specific references to ESD being made in Section 7, Section 8, Section 89, and Section 403 (2) of the Act. The aim was to elevate EDS from the peripheral zone of Local Government concern to centre-stage.

The inclusion of strong environmental considerations in the assessment process, therefore, should now be a fundamental part of the operations of any Council. Warringah Council has an excellent record of doing this in managing some key natural features of the area. The Council also has a strong educational program concerning the natural environment. It provides facilities and support for schools, and green workshops for the community. The evidence of the Submissions suggests that this emphasis on splendid environmental management at the large-scale has not been bedded in the routine small-scale issues presented in many DAs.

The evidence suggests that this is essential, if the current discontent with the DA approval process is to be countered.

Both the Submissions and the Desired Future Character statements show that the community is aware of the need to better merge DA processes with other considerations, such as natural environment consequences.

The environment is not the only area that needs to be considered if there is to be a match between DA processes and community expectations. Transport and traffic management and the impacts of development on the social needs of the community (especially those associated with the needs of youth and the needs of the aged), are some of the other issues that come forth in the Submissions.

Warringah Council has the chance to develop a DA assessment system that can be broad in its coverage of issues, and inclusive of the views of the community. Such an approach would bring life into the promise of the LEP 2000, and remove the besetting problems that confound the issues surrounding development.

7.4.6 Property Interests and Elected Representatives

7.4.6.1 The evidence of the Submissions suggests that members of the Warringah community perceive that, what they argue is a pro-development group within the elected representatives, has strong links to the property industry. The following extracts from Submissions provide the tenor of these allegations.

Submission 124

The way I see it, if you are elected to a council you should not be involved in a business which the council has a major influence on because humans being humans will take advantage. And there is no way other majority bloc councillors have not benefitted from the councillors who actively develop.

I believe any councillors who have acted corruptly should be dismissed, fined, and sued by residents for destroying their lifestyle.

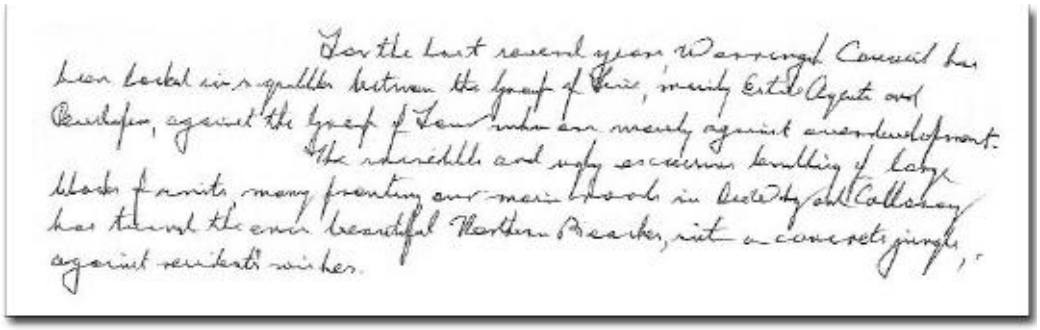
Submission 074

The Warringah Council, for the passed decade, has been controlled by people with vested interests in the area. My opinion is that "DEVELOPERS" should not be in such a position of influence. This of course has been denied by the people in question, however, one has only to observe what has been allowed in Dee Why with overdevlopment and is now taking place in Collaroy and Narrabeen.

Submission 319

... I do not believe that any local Council should be dominated by those whose interests are in real estate - development. Dee Why and Manly Vale have to be seen from the air to truly see the proliferation of huge home unit blocks which has resulted from a seemingly pro-development bloc in council decisions...

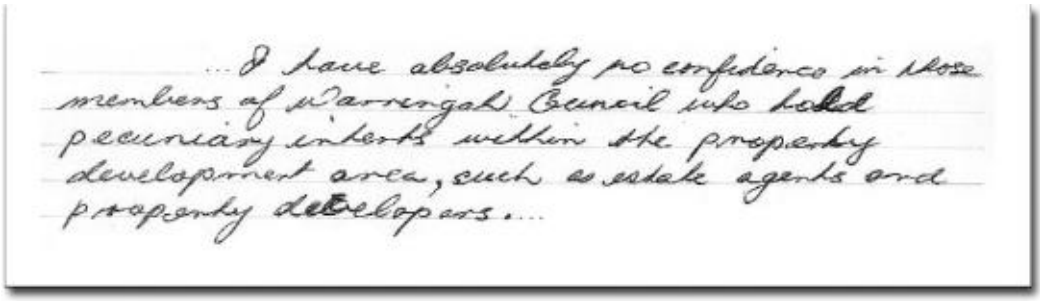
Submission 208



Submission 236

Real Estate Directors and Developers amongst our Councillors producing numerous repeating pecuniary interests in local developments brought before Council have formed a 'syndicate of power' which is detrimental to a balanced decision making ability in favour of all the people making up our community. This community includes the weak, young, elderly, fragile and all people with a strong sense for preserving our environment which we enjoy, as well as many others which are unable to voice their opinion in a manner similar to this conference. . .

Submission 234


... I have absolutely no confidence in those members of Warringah Council who hold pecuniary interests within the property development area, such as estate agents and property developers. ...

Submission 210

Each Saturday, our local paper, the Manly Daily, carries notices from Warringah, Manly and Pittwater Councils.

Warringah Council's News includes the "Mayor's Message". Starting on Saturday 29 June 2002, the Mayor's Message had a new section, entitled "Sponsors Cheerio", which appeared to be nothing more than a promotion for a local real estate company. I believe has had interests in property development from time to time. The text read as follows;

'Sponsors Cheerio

Real Estate is a local company specialising in Warringah property that has operated for over 20 years. The 25 staff are very supportive of local groups especially surfing and local rugby, so give them a go when selling or buying property. . .

7.4.6.2 Warringah Council has a reputation within the community as a pro-development Council. There are Councillors sitting on the Council whose primary income is derived from the property industry. A number of people make a connection between the supposed pro-development stance of the "Majority" Councillors and the industry connections of some of those Councillors. They conclude that those Councillors must be making money out of the general development of the area. These conclusions are made, it should be noted, without any supporting evidence for the main part.

7.4.6.3 Not surprisingly there are people within the community who hold a different view. Equally unsurprising, people who are a part of the property industry (Submission 100) have defended the actions of the pro-development Councillors.

Submission 100

... In my capacity as owner of a busy real estate office, (no - I am not a developer), I have closely monitored the improvements and proposed changes that regularly occur brought about by Warringah Council. Having built a successful operation in a prominent position here in Dee Why , I have become well known throughout the local community. During my 22 years in Warringah, I have seen many changes and improvements to the community. Also as a long standing member of Long Reef Golf Club, I enjoy a very good local and broad view from fellow members concerning residential development.

In my opinion, recent council disruptions, particularly over the last four years, have come about over the reluctance to accept new development. It may well be that developers and real estate agents as representing their community on council is not a great mix as seen in the view of many in the community...

. . . Contrary to some quarters, both Collaroy and Dee Why suburbs now enjoy excellent reputations as vibrant progressive places to live. I can assure you this was not generally the case 22 years ago. New shopping, bright modern residential buildings, cleaner and safer beaches, fabulous Al Fresco dining have combined to lift the quality of life and appeal that Warringah offers. . .

Sir, for this current council to be dismissed from office would be a grave injustice. Instead, please look into the attacks on our elected members and look from which direction they have come. It should not be too difficult to recognize whom most gains from our elected council to be dismissed. . .

7.4.6.4 Councillor Jones argued that the critics were wrong, and that business people brought skills to the Council that were beneficial to the community.

Submission 294

...A lot has been said about business people being in council. I am not a real estate agent, but I don't uphold this blanket aggression against real estate agents. I have brought to the Council table my business acumen. I am a person who employs people and some of those that are very critical of business people wouldn't know and understand what it is like employing people and what goes with that...

7.4.6.5 Sections 442, 443 and 444 of the Local Government Act 1993 are meant to remove any suspicion that the public might have of a Councillor using his or her position to gain financial benefits.

A Pecuniary Interest is defined as a reasonable likelihood or expectation of an elected member receiving substantial financial gain (or loss) from an interest that his or her decisions on Council might influence. The interest spreads beyond the individual Councillors to include relatives, business associates, employees, and businesses.

In all such cases the Councillor must declare an interest at Council meetings if a matter is being discussed in which the Councillor has a Pecuniary Interest (Section 451). Within 3 months of being elected to Council, a Councillor must also lodge with the General Manager a statement of interests (Section 449). Complaints concerning failure to declare a Pecuniary Interest may be made to the Director-General of the Department of Local Government (Section 460). The Director-General may investigate the matter, and it may be referred to the Pecuniary Interest Tribunal (Section 469).

Local Government Act 1993 No 30 – Section 442–444, Chapter 14

442 What is a "pecuniary interest"?

(1) For the purposes of this Chapter, a ***pecuniary interest*** is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in section 443.

(2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in section 448.

443 Who has a pecuniary interest?

(1) For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

(a) the person, or

(b) another person with whom the person is associated as provided in this section.

(2) A person is taken to have a pecuniary interest in a matter if:

(a) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter, or

(b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

(3) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2):

(a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or

(b) just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or

(c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

444 What disclosures must be made by a councillor?

A councillor:

(a) must prepare and submit written returns of interests in accordance with section 449, and

(b) must disclose pecuniary interests in accordance with section 451.

7.4.6.6 The Inquiry considered the Pecuniary Interest statements of the elected representatives and senior staff and found no reason to consider them not to be accurate, with two exceptions. In one year Councillor Caputo omitted one item from his declaration, but the error was later rectified. Councillor Stephens failed to declare an interest in a family company.

Public Hearings Transcript – March 20 2003

MR BROAD: I have a couple of questions. Councillor Stephens, as is required by the Local Government Act, you lodge a return under section 449 of the Local Government Act. It is generally known as "a pecuniary interest return". In that return, you disclose a source of income from D. & L. Stephens Enterprises Proprietary Limited.

MR STEPHENS: Well, I'm a managing director.

MR BROAD: Yes. Now, do you have an interest in a company, I.R. Stephens Proprietary Limited? Now, that company is currently under external administration. I just want to know if you have an interest in that company?

MR STEPHENS: Actually, I did - used to. As far as I know dad has wound that up, he's been retired now for some 10 years.

MR BROAD: Right.

MR STEPHENS: I think we are an ordinary shareholder, I think - the three children are an ordinary shareholder in that company. It was an engineering company in Artarmon and, as far as I know, dad wound that up ages ago.

MR BROAD: Well, it appears to be currently registered.

MR STEPHENS: Well, I would have to ask my father.

MR BROAD: Yes.

MR STEPHENS: I had forgotten all about that because we've never had anything to do with it.

MR BROAD: Right.

MR STEPHENS: We don't get any dividends, or anything, its - if we're on the share register I had forgotten all about it and would have been on it since we were kids.

7.4.6.7 It is impossible for the Inquiry to gauge whether on all occasions the elected representatives have fully declared Pecuniary Interests at Council meetings. They claim that they have always done so, and the very large number of declarations by Councillors Caputo and Jones (who have the closest links to the property industry) suggest that they have been attentive to this requirement of the Act.

Public Hearings Transcript – March 24 2003

THE COMMISSIONER: As you would be aware, this is a public inquiry. We work off the information or suggestions or allegations - however people like to express it - in the submissions, so I would just like to run through a few things which have arisen. In a number of submissions, it has been noted that you and another Councillor absented yourself, I think, some 330 times was the figure I saw from Council meetings during the life of this Council. The theme in these submissions is that it suggests that such a large number of abstentions from voting suggests that you have strong relationships in the property industry within the Warringah Council area, and that fact seems to worry some people. Would you comment on that?

MR CAPUTO: Certainly. Mr Commissioner, I declared an interest. You know that I have an interest, and I do - as I said to you before, I have a real estate business in Brookvale, and we manage over 400 properties, and if I manage a property in Dee Why or whatever, in Regent Street, and there's a development a few doors up or whatever, I declare an interest. Now, I don't really think it is an interest personally but I take all precautions to make sure that I act under the law and I've done that. I declared an interest in a property that was the development across the road from where I live in Beacon Hill in Ladypen Drive.

It is a retirement village application, and I think that happened 69 times.

MR CAPUTO:
I can't help that I live in 23 Ladypen Drive, you know? I think everybody is entitled to live in an area. Basically, I declared an interest to comply with the law, and that is the nature of the business. I note also in some of the submissions that you had, and you probably might ask this question, that a few people say that real estate agents and developers should not be on Council.

My answer to that is that Australia is a democratic country, and everybody has got the right to stand for election and if you are elected, well, you do a job and if you have an interest and you walk out and declare an interest, so basically that is my answer. The other answer is that I've been elected on four occasions and the first time I was elected, I topped the poll in my ward and I beat two Councillors who were there previously. One was Shire President at that time, and one was a longstanding Councillor, and I think I brought in 1500, 1400 votes more than them. So if the residents of Warringah didn't want me to be on Council, they wouldn't vote for me.

7.4.6.8 Despite the very large number of Pecuniary Interests declared by the elected representatives, the Submissions show that many people in the community are not satisfied that Councillors with links to the property industry have not benefited from the development that has taken place in Warringah.

The simple argument by these critics is that as development takes place the whole property industry benefits through increased prices and enlarged business. Regardless of direct interests in building or trading or managing of particular properties within the DA process, Councillors that have links to the property industry will always have a fundamental conflict of interest. Each time they make a decision to approve a development they effectively improve their own business prospects, so the argument runs.

Councillor Jones was asked to comment on such general propositions of conflicts of interest. He dismissed the notion of conflicts of interest as a perversion of the truth, and stated that he believed that all of the Councillors have acted properly in this regard.

Public Hearings Transcript – March 27 2003

THE COMMISSIONER: . . .

Where councillors meet situations where they are expected to make a decision, and where they might have to declare a pecuniary interest, they must absent themselves from debating or voting on such issues.

Do you believe that in every case of pecuniary interest, this practice has been followed?

MR JONES: Yes. And in fact, there have been a number of instances where the urban myth wants to perpetuate itself when matters have been referred off to the department for investigation, and there has been no negative finding against the Council or any member of the Council.

MR BROAD: Could I take up another issue, because I think there is a little bit of confusion about pure pecuniary interests and conflicts of interest, and I think the public - and I will ask you this? Do you have a view as to whether the public understands the difference between a pecuniary interest and a conflict of interest?

MR JONES: I couldn't answer that. I couldn't think like some of these people think. Give me more credit than that, surely.

MR BROAD: In respect of conflict's of interest - well, actually, can I go back this way? Councillors are required to provide a return of their pecuniary interests?

MR JONES: That is correct.

MR BROAD: They, in those returns, can also make discretionary disclosures. I've had a look at your return, as I have with all the other councillors, and quite rightly, you have made a number of discretionary disclosures, and in reviewing your disclosures, clearly you have taken time to consider and to fill out that return. You make a number of disclosures regarding your business interests.

Public Hearings Transcript – March 27 2003 (cont.)

MR BROAD:
You make also, a number of disclosures which are in discretionary nature, as to memberships of clubs, and various other bodies. The point I'm trying to get to is this, that one of the issues that has come up and it may be simply statements in submissions to the effect that I believe that people with property interests or real estate agents, should not stand for Council, which is one of those blanket type submissions, has regularly arisen.

Now, the code of conduct provides an introduction which emphasises the importance of public perceptions of conflicts of interest, not just pecuniary interests. This is the most recent code of conduct. You have strong community ties with social, sporting and business interests.

You agree with me in those circumstances, that it is important, given - and I'm saying this in a general sense, not to you particularly - given those sort of ties of the part of yourself and other councillors, that it is important to avoid public perception that there is conflict of interest.

MR JONES: Mr Broad, I said earlier on that I was the Liberal candidate for Manly 4 years ago at the state election. If you wanted to believe the urban myth. I built every building from the Spit Bridge to the Barranjoey Lighthouse, and I own half of them. It wouldn't make any difference if I stood naked on the corner of George Street, to try and bring the attention to the fact that it was full of lies and whatever.

People wouldn't want to believe it. There is an element in society. I am a tall poppy, whether I like it or not, and there are people that take great delight in chopping down the tall poppy. Now, I would suggest, those people are under-achievers themselves. They are very jealous of someone that has worked hard. I employ people.

I give people an opportunity to feed their families, but there are still people out there in society that want to deny me that. They want to try and do whatever they have available to them to denigrate me, and my family, and they will use people such as Rhiannon the Upper House of the New South Wales Parliament and Barr in the Lower House of the New South Wales Parliament, under Parliamentary privilege, to slag me, my ailing father and other members of my family.

It is absolutely despicable, however, there is nothing I can do about it because there are people who will want to continue to do that, irrespective of whatever.

MR BROAD: Thank you for that. That really wasn't the question I was asking you, and the question I was seeking to lead to is this. That the code of conduct as presently adopted, deals in great detail with perceptions of conflict of interest. It gives examples and it goes to a number of questions to be considered before declaring a - well, when considering where the

Public Hearings Transcript – March 27 2003 (cont.)

MR BROAD:
councillor has a conflict of interest.

You know, I can go through those questions at length, but they certainly provide an insight as to whether the public could perceive a conflict of interest. The question I was leading to is this. Do you have concerns that during the life of this current Council - and I'm not saying in respect of yourself - councillors, individually or generally, may have been perceived to have breached the code of conduct in respect of conflicts of interest?

MR JONES: Mr Broad, I thought I answered that. If you went down to the local park and relieved yourself and you were coming out and there were kiddies there, people could assert that you were a paedophile. Now, it wouldn't make any difference what you did, if there is people there that don't like Angus Broad, and they wanted to throw some dirt at you, that will be the thing.

You can't deny that you were in the toilets. You can't deny you came out and there were children there. You may have spoken to the children, right? That is a public perception. If someone wants to square you up, that is what is going to happen. No matter how innocent you are. I would suggest to you, and the Commissioner, that there are people in society that have set about because of pure jealousy to try and create this perception.

Now, you had a lady in here on Friday, Ms Cox - do you not remember her? The lady that thinks the Council should be sacked and has never been to a Council meeting. That lady is my father's sister. The people next door to the Cox family home had an application come to the Council. I had a conflict of interest for the fact that my father's sister happened to live in the house next door.

I duly declared my interest, retired from the Chamber and refrained from voting. We are not going to refer to the Mitchell report, however, if you do, and I've got the Mitchell thing here where he asked about leaving the Chamber - and we will deal with that a little bit later if you care to. But Mr Mitchell states in very clear and succinct terms that:
Darren Jones has met all his obligations.

I can't do any more than that.

MR BROAD: Thank you for that, but again, with all respect, it does not answer my question. It does in part, as to yourself. But my question was of a general nature, and that is, whether you have a perception as to whether other councillors may have met their obligations to disclose conflicts of interest?

MR JONES: I believe the all have.

7.4.6.9 Some members of the public, sceptical of the ability of Councillors with property interests to sanitise those interests from their activities within the Council, point to the downstream benefits that may ensue from beneficial decisions made by Councillors on DA applications.

For example, Mr. Chirillo, who appeared at the Public Hearings on April 7 2003, said that he was friendly with some Councillors, and that they did not abstain from voting on a controversial development in Dee Why (built by his family company). This allegedly non-complying building was allowed to proceed. If some time later one of the "friendly" Councillors' company were to become manager of that building, a clear downstream benefit would accrue. This would not have been possible if the Councillor had not voted in favour of the development.

Public Hearings Transcript – April 7 2003

MR BROAD: In your applications which were before Council, do you personally have any friendships or associations with any of the current Councillors of Council?

MR CHIRILLO: Yes.

MR BROAD: When it came to your matters being dealt with by Council, did Councillors declare any interest in respect of your matters?

MR CHIRILLO: I think they did. I honestly can't remember. This is going back - - -

MR BROAD: Well, do you recall whether - sorry, can I go backwards? How many applications over the period would you have had before Council?

MR CHIRILLO: At the moment?

MR BROAD: No, no, no. The times that you attended the meetings.

MR CHIRILLO: Two. Two.

MR BROAD: You had two applications and in respect of the votes which were taken in respect of your applications, did any of the Councillors say: I have an interest, I am not able to vote in this matter and left?

MR CHIRILLO: No.

7.4.6.10 Another illustration of downstream benefits would concern any councillor who had shares in a building company. If that councillor voted in favour of certain developments, there is always the possibility of the building company being chosen to do the construction. If the developer has previously engaged the company the chances of a favourable downstream benefit grow. There are several developments in Warringah where the construction company, in which the Councillor owns shares, has been chosen as the builder.

7.4.6.11 The fact that a Councillor declares a Pecuniary Interest in relation to a DA, and removes him or her self from discussion and voting on it, does not prevent them from gaining downstream benefits. In the eyes of some in the community, the larger the business links with the property industry, the greater the likelihood of downstream benefits occurring.

Public Hearings Transcript – March 27 2003

THE COMMISSIONER: Okay, thank you for that. So in reference to a large number of abstentions, you are saying number one, the nature of your business - - -

MR CAPUTO: That is right.

THE COMMISSIONER: - - - means that you have a lot of properties that you might possibly be connected with in one way or another.

MR CAPUTO: Manage, mainly manage.

7.4.6.12 A broader aspect of perceived conflicts of interest is raised in some Submissions. This concerns Councillors with property industry links being involved in such matters as the preparation, or approval, of an LEP or residential development strategy.

Councillor Caputo was asked to discuss this issue during the Public Hearings. In relation to the LEP, Councillor Caputo stated that he had received legal advice that he was entitled to vote on the LEP. In the eyes of the community critics, however, the legality of the issue is not the crux of the matter. What disturbs them is that each time a Councillor with property interests votes on a particular matter (like a DA approval) or on a general matter (like the LEP), he or she can entertain the possibility of reaping a downstream benefit. It is a matter of Conflict of Interest, rather than a Pecuniary Interest problem. In fact, the more general the issue, the more possible the downstream benefit becomes.

Public Hearings Transcript – March 24 2003

THE COMMISSIONER: There seemed to be some confusion about whether or not you should or should not vote on the LEP, could you tell us about that?

MR CAPUTO: Sure, Commissioner, I had legal advice before I voted - if I can't vote on a matter, if there is a problem, then I have had legal advice and through my legal advice I have taken that when I voted on - I have done - on the basis of that advice.

7.4.6.13 Another area where Conflicts of Interest might arise is the sale of Council land or property. When Warringah Council set about repairing the very poor state of its finances, it disposed of a number of assets including property. Allegations have been made that some Councillors received direct benefits from these sales. Other Submissions have objected in principle to Councillors making decisions about property that does not belong to them, but to the community. They further argue that the sale of that property then benefits their colleagues in the property business. Some Submissions go so far as alleging that some of the property has been sold at below market rates, thus giving the purchaser a windfall gain. Ms. Sharp enunciated the general opposition to the sale of Council property.

Public Hearings Transcript – March 25 2003

THE COMMISSIONER: If you would like to make a comment on why you selected any one of these issues as important.

MS SHARP: Yes, the sale of Council land, it includes the Civic Centre land. It also includes the Council offices that were in Pittwater Road. It also includes Road Reserves, Council Road Reserves. I think the major issue was with the sale of the Council offices land and the Civic Centre land, primarily because the Civic Centre land had been accumulated over a number of years by previous Councils. It was a major asset and I feel that it could have been put to much better use in terms of consideration given to facilities there for public use, and also there was a sort of a sequence of events of how it was sold.

7.4.6.14 A more troublesome problem has been raised in some Submissions. This is the possible use of the options system to reap benefits from a pro-development Council. Associated with that is the use of proxies in property transactions. Whatever a councillor might declare in terms of pecuniary interests, it is still open to him or her to take options on property and gain substantial benefits from that property without the name of the councillor ever being identified on the

public record. The use of proxies within property transactions, whether using options or not, can have the same result.

Public Hearings Transcript – April 5 2003

THE COMMISSIONER: Okay. Moving on to another element in your examples. You cite the issue of bidders obtaining options on sites, then on selling them. Now, without referring to any particular site, is there anything illegal or dubious about people taking an option on a property and then later on-selling it to a developer?

MR MITCHELL: Not at all. It's who it might be and who they're associated with is the key.

THE COMMISSIONER: Right.

MR MITCHELL: And - well, it's really associations.

THE COMMISSIONER: Right.

MR MITCHELL: It's also an understanding - - -

THE COMMISSIONER: You are saying it is who places the option and who eventually buys the property. Are you saying that there is a connection in some way that may be shouldn't be there or?

MR MITCHELL: Well, I work for developers and you know, it's a very natural part of the process and the option taker is really, you know, the person who deserves the most credit in a way because they're acquiring property for consolidation. So as I see it, the issues that come out of that are who knows that's happening and who are the people associated with that person? I mean, the option taker might be someone acting for someone else, an agent of some sort. But an option taker that knows the internal workings of the Council or knows that acquiring certain property, the outcomes, are successful in getting something passed.

How does he know? If he is just keeping his ear to the ground and he's observant and knows sort of the general processes in Council, that's fine. But if it goes further than that and there's some negotiation with people or there's a connection of some sort which decision-makers or even knowing that an application doesn't get the scrutiny that it should, like with my comments and concerns about landscape area, you know, an observant developer can put in an application, say it's passed and somehow that's supported by staff when it's not actually.

Public Hearings Transcript – April 5 2003 (cont.)

MR MITCHELL:
He knows he can push the limits of it and get say 20 units or X number of units on a site that might otherwise if - they're thinking about prescriptive controls only yield 15 units, then that person's who is able to anticipate that outcome is pretty clever but I think it's unhealthy if - well, it's an unhealthy thing knowing that Council has, in my view, a disposition to facilitate development.

MR BROAD: Can I just explore and try and get the handle around what we are talking about when we start talking about options? Now, my understanding of options in these sort of circumstances is this, that a person goes to an owner and acquires an option to purchase a property and that option may have conditions attached to it, such as that it is conditional upon the developer, the option taker, being able to achieve a certain outcome. It might be to obtain a development approval. The option is, of course, never registered so there is never a sale of land associated until the option is exercised.

My understanding is that commonly an option will contain a clause which says I can nominate someone to exercise my rights, in which case a totally unrelated party may, in fact, become the purchaser of the property. Therefore the person who acquired the option to purchase who is the proponent of the development may not be seen ultimately on the title and the benefit passes outside the knowledge of the public. Is it the fact that the benefit can pass without the public knowledge that would be your concern?

MR MITCHELL: Well, it's something that I doubt we can ever change and I'm not sure if I'm concerned about that specifically. I mean, it happens, you know, it's been going on, you know, since there's been civilisation I suppose but what - what's of concern is in a situation where development control in local government has some rigour about it, that there are no conflicts of interest and you can see the system - the system of approving or assessing the developments is transparent, then I'm not sure if the problem, if it exists, would be a problem.

MR BROAD: Is it that the system opens up the use of an intermediator to blur the real relationship between the development and the ultimate purchaser?

MR MITCHELL: Well, there are other things that can happen. I mean, it's not just the option taker. The applicant in a development may have nothing to do with the development. I can be the applicant in a development. Anyone can be an applicant. The beneficiaries or the developer himself, the beneficiaries of profits out of that development the public may never see. So it's not just the option taker. You know, I've been trying to track down who developers might be on a couple of sites and it's been difficult. The applicant happens to be in one case the architect.

Public Hearings Transcript – April 5 2003 (cont)

MR MITCHELL:
The architect has no connection. He's just a professional, being paid for - - -

MR BROAD: He has signed the application?

MR MITCHELL: He's signed it, he's the applicant, he's the person the public sees. The person that - you know, I was able to determine who actually was the beneficiary because in this particular case, because he had to sign an easement arrangement for drainage with an adjoining property owner. So I was able - but that I discovered by accident and he's not mentioned anywhere in the development. I think my feeling is a lot of that goes on in Warringah. Now, we say why does it go on? You know, you can come to your own conclusions. I think there are - - -

MR BROAD: But is your threat that what runs parallel to this is an attempt by some people who might otherwise have a conflict in their interests or a higher duty such as a pecuniary interest not disclosing this interest?

MR MITCHELL: Yes.

7.4.6.15 If a councillor has the mind to do it, he or she can operate quite successfully within the property market without ever revealing to the community the extent of his or her interests.

Whether or not any Warringah Councillors do act in this manner is not known to this Inquiry, however there is a broad suspicion that Councillors with known property interests will make judgements in favour of the general interests of that industry, rather than considering development applications solely on their merits.

The suspicions of the public are roused when decisions are made using Mayoral Minutes, and/or when decisions are made in closed sessions of Council. An example of this is provided by Submission 114.

Submission 114

To: Office of the Commissioner
Locked Bag A5045
SYDNEY SOUTH NSW 1235
Tel 9289 4000
Email InquiryCommissioner@dlg.gov.au

Re Mayoral Minute and Modification of Consent

Dear Sir

I am concerned about the use of Mayoral Minutes as a mechanism for making decisions, without input from the community. There is no prior notice of mayoral minutes, and they are not printed in a council agenda. If discussed in confidential session, the subject of mayoral minutes is revealed only after a decision has been made.

The following instance relates to an application to modify conditions relating to the RSL War Veterans Retirement Village Ltd. proposed extension of 130 dwellings, adjacent to Narrabeen Lagoon. The development was refused by Warringah Council in 1995, but subsequently approved by the Land & Environment Court in 1998. The expiry date of the DA is 28th May 2003.

As one of the objectors to an earlier application for proposed modifications to the development, I received a letter dated 2nd April 2003, about a Land and Environment Court (LAC) hearing on 23rd April. On 15th April I received notification of a second modification, listed in the LEC on 17th April, and a meeting arranged for objectors on 16th April at Council to discuss the implications.

I attended the meeting at 2 pm on 16th April and learned that Warringah Council had already given support by means of a Mayoral Minute for the second application to modify the development. This allowed the War Veterans Village Ltd to commence construction on a section of access road, bypassing an existing condition that water quality control measures precede other works on the site.

The approval had been given at the council meeting on 15th April 2003, via a Mayoral Minute and the item was discussed in confidential session. Members of the community were not consulted, although I was informed that a representative for the applicant was present in the public gallery. There was no feedback on information or advice councillors had received prior to their decision.

Council approval pre-determined the outcome on 17th April at the LEC, which in turn approved works on a section of the access road. Fortunately, one resident, who had considerable knowledge about the area, explained to the LEC that works on the road access would have an impact on an endangered flora community and additional conditions were included.

This misuse of a mayoral minute is reminiscent of the occasion when consent was given, via a mayoral minute, for a road access to the Ardel site, in spite of the impact on an endangered flora community. The applicant was informed in advance, but not the community, who had particular knowledge of the issue.

Yours sincerely

7.4.6.16 Councillors who declare a Pecuniary Interest in a DA regularly absent themselves from the discussion of, and vote on, that DA. There are suspicions held by some in the Warringah community that the practice of Councillors absenting themselves from discussing or voting on certain DA approvals is nothing more than a charade.

The Councillors are alleged to work on a *"nod and a wink"* system, whereby they get the support their pro-development colleagues when they have to dismiss themselves from the meeting. The vote is allegedly organised by those colleagues to support the departing Councillor's interests. In turn, that colleague will repay the favour the next time another colleague has to absent himself or herself. In one Submission this is referred to as *"exchange voting"*. The suspicions are widely entertained in the community (Mr. Barwell's evidence, Public Hearings April 4). A number of Submissions gave evidence that appears to provide proof that the *"nod and a wink"* system is well practiced within Warringah Council (Submission 045, and Ms. Oliver's April 1 evidence, and Ms. Kvelde's evidence of April 7 2003).

Public Hearings Transcript – April 4 2003

THE COMMISSIONER: You raise the issue of councillors at Council meetings declaring pecuniary interests, then absenting themselves from the meeting and then the vote going to a split vote with a casting decision.

MR BARWELL: Yes.

THE COMMISSIONER: What are your worries about that?

MR BARWELL: Okay. Well, what I've seen, and I've been in attendance at the meeting, and I have heard from people who I know plus I've read the Manly Daily which is sometimes factual that certain councillors have developed their applications before the Council which they have an interest in it and they absent themselves and you will see one walk out the door and smile to his mate and a vote is taken. Then a short time later on the same evening, the mate who was smiled to then goes out the back and the other bloke from out the back comes in and he votes on the other chaps.

Public Hearings Transcript – April 1 2003

MRS OLIVER: The councillor who had the pecuniary interest left the Council Chamber and went up behind the curtain - the back of where the councillors sit - and during the debate another councillor, three times left the Council Chamber and went up behind the curtain to talk to the councillor. I could see it was - I could see because it was reflected in glass from where I was sitting and it gave a very, very bad impression in my mind of what was going on because the councillor who had left the Chambers three times, would come back then and put across other points. To me it is not right that when someone has a pecuniary interest, another councillor can go up and discuss things with him, when he is supposed to be totally out of all the discussion and debate.

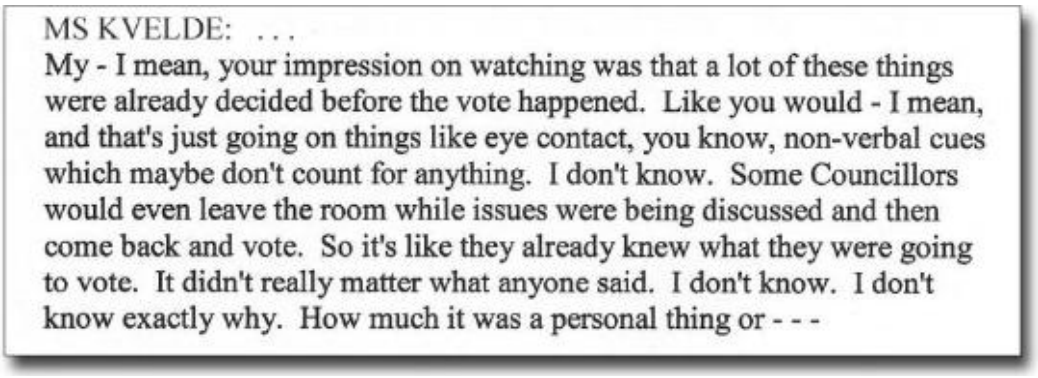
THE COMMISSIONER: So you are suggesting there was collusion on that occasion?

MRS OLIVER: Yes.

Submission 045

...Finally, Refering back To my previous submission, which were questioned mean, in Regard To The Councils meeting on 20th April. 1999, where I stated That Mr Jones - Councillor - left The Council chamber 3 Times To converse with Councillor Caputo, who had, because of previous interests, left The debate on The Development being discussed, and was seated on a chair, behind a curtain at The back of The Council Chamber, I wish To state, That The Councillors present at This meeting, were of a previous Council Elections Sept. 1995, — The present Council being elected Sept. 1999, have The pattern has not changed Regards voting after debates on Development Applications. The 4. majority Councillors - M. Jones, S. Caputo, S. Stratton, & P. Morham Remain again This Team - (S. Caputo and M. Jones all voted alike as a result of votes) — They are still in control & will The help of Councillor Stephenson will provide and intimidate The minority fraction. — The pattern has not changed, ...

Public Hearings Transcript – April 7 2003



MS KVELDE: . . .
My - I mean, your impression on watching was that a lot of these things were already decided before the vote happened. Like you would - I mean, and that's just going on things like eye contact, you know, non-verbal cues which maybe don't count for anything. I don't know. Some Councillors would even leave the room while issues were being discussed and then come back and vote. So it's like they already knew what they were going to vote. It didn't really matter what anyone said. I don't know. I don't know exactly why. How much it was a personal thing or - - -

7.4.6.17 It is not the task of this Inquiry to prove or dismiss the various allegations concerning the use of Councillors' powers in relationship to development consents. The Inquiry did not focus on whether Councillors actually benefited themselves through financial gain, or benefited colleagues in the property industry, when voting on a DA. There was insufficient evidence to draw any conclusions.

On numerous occasions throughout the Public Hearings it was stated that the Inquiry was not a trial of individuals. Its focus is on the efficiency and effectiveness of the governance of Warringah Council. It has a particular responsibility to consider the conduct of elected representatives, and to judge whether they command the community's confidence and support.

In relationship to the DA process, the focus has been on whether it has been managed by the elected representatives in a way that gives the community confidence in the probity and transparency of the process. The evidence of a very large number of Submissions suggests that the community has not been convinced that the elected representatives have made consistent and unbiased decisions in relation to DAs. Nothing has been so corrosive of the community's confidence and support for the elected representatives than the way in which they have managed the development approval process.

7.4.6.18 There is a serious flaw in the Local Government Act. It places too much reliance on declarations of Pecuniary Interests to ward off public suspicions of corrupt behaviour by elected representatives. There is nothing in the Act that allows conflicts of interest to be dealt with.

The Act, however, allows a councillor in any council to become an advocate for an applicant, or an objector, to a development. It further allows that councillor to then sit in judgement on the approval or refusal of the development. Since there is no separation of powers in this regard, it invites abuse of those powers. There is ample evidence, in Warringah and elsewhere, that such conflicts of roles do occur.

In many decisions about property developments the monetary outcomes for a favourable decision are very high. Applicants and developers may court any councillor in a variety of ways that might break no laws. They might assist a councillor with campaign donations, attend fund-raisers, or attend civic functions that raise money. In return, there is an expectation that the councillor will look after their "mates".

Even those councillors who do not have direct connections with property developers or other applicant/objectors, may be compromised in the approval process. A councillor who wishes to get re-elected in an area that has a large anti-development movement may make decisions guided more by the desire to become popular, and get re-elected, than by the merits of an individual case.

In their advocacy roles, councillors can exercise considerable influence over their elected colleagues to convince them to vote in a certain way. The influence of the Mayor can be especially significant in this regard.

7.4.6.19 If a Councillor has direct connections with the property industry, as a developer or as a real estate agent for example, the dangers and possible conflicts become much greater. The critical focus is not in proving that Councillors with property-related interests may succumb to temptations, but in removing the public perception that they might. Whenever a Councillor with such interests votes on a development application, there will be a suspicion in the minds of many in the community that his or her business interests bias his or her vote.

The theme, that Councillors with interests in property-related industries, was repeated in a large number of Submissions, and argued with vigour. It underlies the strong doubts that people have about the probity of such connections. There is only one way to remove such doubts. That is to prohibit people with personal, family or company interests in the property industry from standing for election to Councils. The loss of the democratic right of such a person to stand for public office is balanced by the assurance of probity in relation to development matters that would be given to the community. It would remove one of the great shadows that are cast on the public confidence in Local Government, and would be a huge step in restoring community confidence in Warringah Council in particular.

7.4.6.20 This would still leave the problem facing other Councillors, with no direct ties to the property industry, with the need to balance the conflicting roles of being both advocates and judges on development consent issues.

The simplest way of handling this problem is to remove Councillors from acting in an advocacy role. An example of the Mayor performing a strong advocacy role on behalf of the Netball Association has been discussed in Section 6.

The Councillors would not be allowed to take any part in the preliminary assessment of an application, nor would they be allowed to meet with either applicants or objectors. They would not be allowed to speak to, or in any other way influence the way an officer considers a matter prior to a report being presented to the Council. This would remove the system of patronage and influence that has so sullied the reputation of Local Government.

In connection with this, the establishment of IHAP systems provides a further means of making the decisions on approvals and refusals of development applications robust and transparent in the eyes of the community.

7.4.6.21 One further step should be taken if the confidence of the community is to be restored. This is the introduction or maximum terms for Councillors. Two terms should be the maximum. Many of the difficulties surrounding the roles of Councillors in the development application processes spring from their associations with staff. If Councillors stay on Council for a long period they inevitably come to form links with senior staff, and the separation of roles between the elected representatives and the corporate body (legislated in the Act) becomes blurred.

For a number of reasons a two-term limit on Councillors might apply only to metropolitan Councils, and perhaps to large provincial Councils. The human resources of smaller Councils and rural places do not afford the opportunity to limit the terms.

7.4.6.22 Another means of helping to restore the community's confidence in their elected representatives is to introduce popularly elected Mayors in Warringah. These would hold their positions for the term of the Council. This would remove the pattern of obligations created in the lobbying that precedes the election of the Mayor by the Councillors once a year.

[3] Comparative Information on New South Wales Local Councils 2001–2002 p. 218–219

7.4.7 Warringah Council and the Land and Environment Court

7.4.7.1 Warringah Council has had one of the highest levels of expenditure on legal expenses related to planning and development application in New South Wales. It is not the province of the Inquiry to form an opinion of the merits of any matter before the Land and Environment Court.

In 1999–2000 legal expenses as a proportion of total planning and DA costs for Warringah was 52.5%[3]. The average proportion for the 16 Councils in Sydney with populations above 100,000 was 12.7%.

In 2000–2001 legal expenses as a proportion of total planning and DA costs for Warringah was 27.1% compared to an average 21.6% for the 16 large Sydney Councils.

In 2001–2002 legal expenses as a proportion of total planning and DA costs for Warringah was 37.4% compared to an average proportion of 13.3% for the 16 large Sydney Councils.

Over the three years Warringah had either the highest level of expenditure on such legal expenses in New South Wales, or the second highest level in the State.

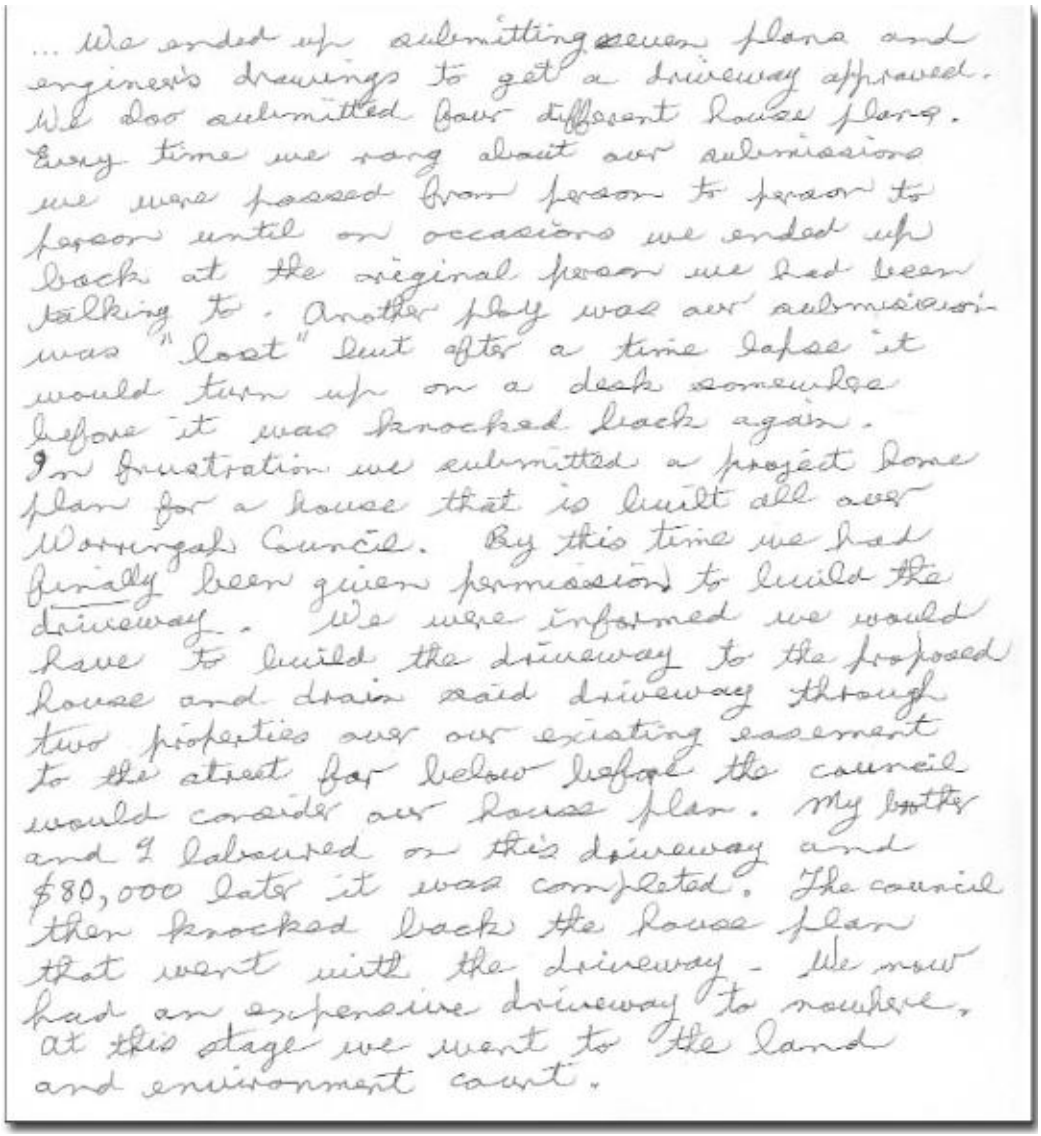
Whatever might be the reasons for this extraordinarily high level of legal costs, the fact that it occurs, and has persisted, is well known. Many in the community see these costs as evidence of poor management of the DA process by the Council. It is a further factor in the lack of confidence in the Council to manage its affairs effectively.

7.4.7.2 According to a number of Submissions, applicants have been forced into the Land and Environment Court because of the ineptitude of the Council.

Not only does recourse to the Land and Environment Court place high costs on the Council (and therefore the community), it also places a heavy financial burden on the applicants as well. If cases did go to the Land and Environment Court because of the Council's ineptitude, as alleged, it represents a loss-loss situation in a financial sense.

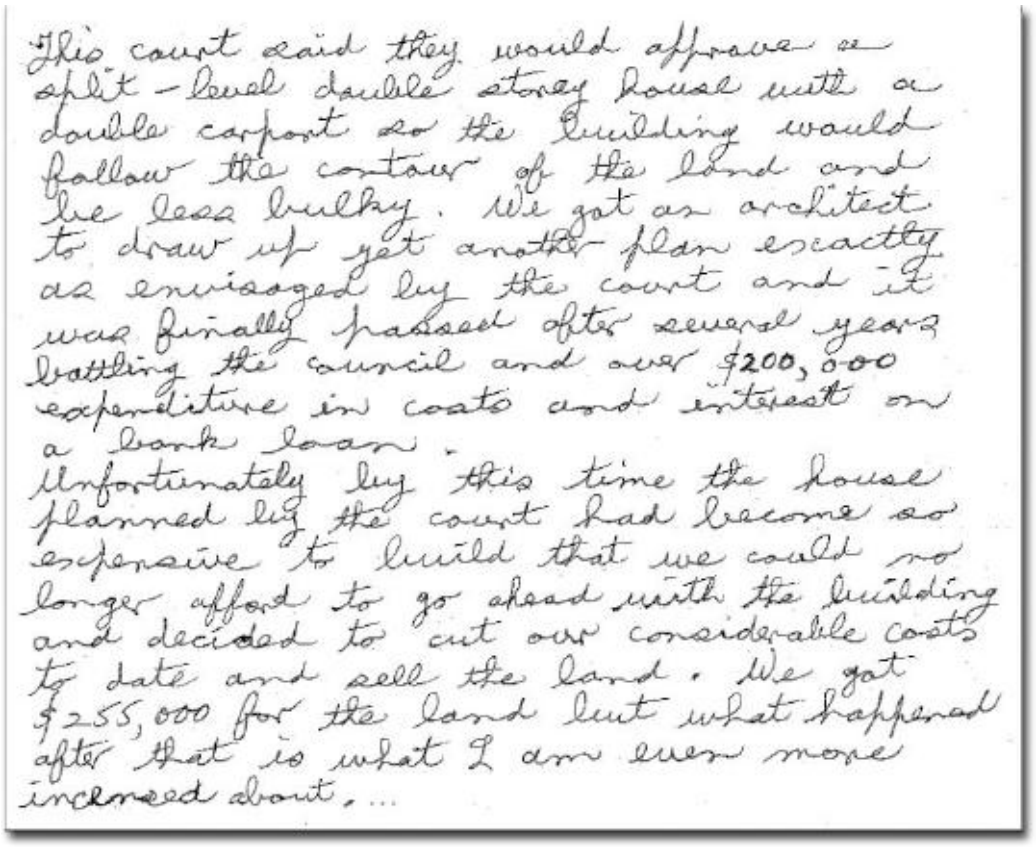
There are signals in the Submissions that the recourse to the Court derives from problems in interpreting the novel aspects of the LEP 2000. Submission 002 and the evidence of Mr. Timms (Public Hearings April 8 2003) and Mr. May (Public Hearings April 7 2003) illustrate the problems from the viewpoint of some members of the public.

Submission 002

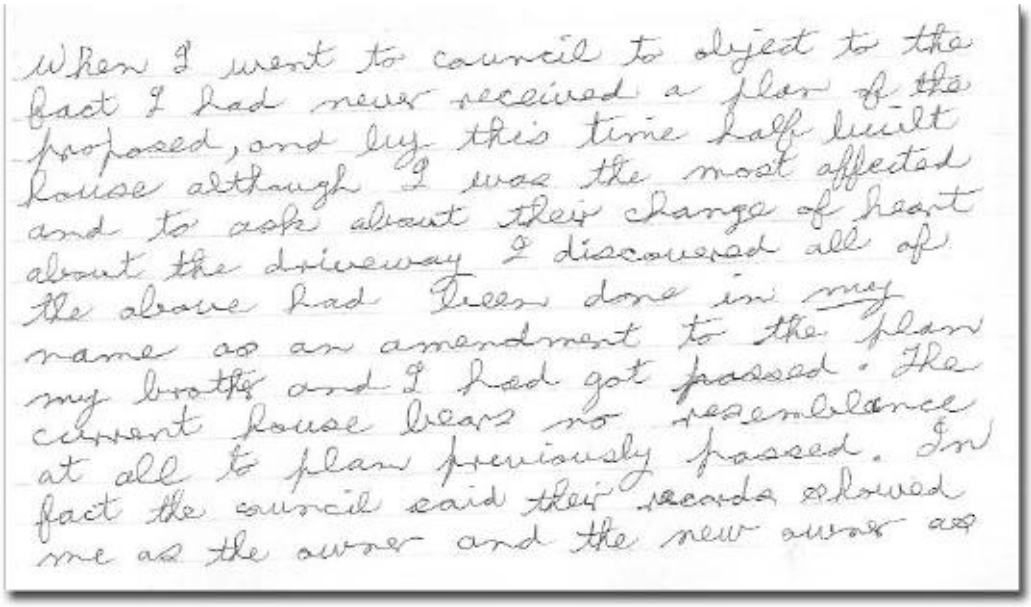


... We ended up submitting seven plans and engineer's drawings to get a driveway approved. We had submitted four different house plans. Every time we rang about our submissions we were passed from person to person to person until on occasions we ended up back at the original person we had been talking to. Another ploy was our submission was "lost" but after a time I was told it would turn up on a desk somewhere before it was knocked back again. In frustration we submitted a project home plan for a house that is built all over Warringah Council. By this time we had finally been given permission to build the driveway. We were informed we would have to build the driveway to the proposed house and drain said driveway through two properties over our existing easement to the street for below before the council would consider our house plan. My brother and I laboured on this driveway and $80,000 later it was completed. The council then knocked back the house plan that went with the driveway. We now had an expensive driveway to nowhere. At this stage we went to the Land and environment court.

Submission 002 (cont)



This court said they would approve a split-level double storey house with a double carport so the building would follow the contour of the land and be less bulky. We got an architect to draw up yet another plan exactly as envisaged by the court and it was finally passed after several years battling the council and over $200,000 expenditure in costs and interest on a bank loan.
Unfortunately by this time the house planned by the court had become so expensive to build that we could no longer afford to go ahead with the building and decided to cut our considerable costs to date and sell the land. We got $255,000 for the land but what happened after that is what I am even more incensed about. ...



When I went to council to object to the fact I had never received a plan of the proposed, and by this time half built house although I was the most affected and to ask about their change of heart about the driveway I discovered all of the above had been done in my name as an amendment to the plan my brother and I had got passed. The current house bears no resemblance at all to plan previously passed. In fact the council said their records showed me as the owner and the new owner as

Submission 002 (cont)

the builder and was I there to object about myself. I know when I am beaten – I slink off.

Then to add salt to my wounds Warringah Council recently rang me in a survey to see if I thought they were performing well. As you can imagine my comments were not flattering so the "market researcher" asked me my age and said "Oh, sorry, I should have asked your age earlier, we already have enough people in your age group thanks".
I do hope this epistle meets with a better response from you.

Public Hearings Transcript – April 8 2003

THE COMMISSIONER: Okay. The second on your list is inappropriate use of Council funds. Again what is the context of that?

MR TIMMS: There in regard to using Council funds to instigate totally unnecessary legal proceedings on two separate occasions, of no benefit that I could see or anybody else can see to the community.

THE COMMISSIONER: You further say inappropriate use of Council resources. What is - - -

MR TIMMS: Basically staff time. We found Council staff to be to us fair, reasonable and quite objective but we understand that they've had a direction to spend and have been directed to spend a lot of time on issues in relation to our property that really I don't think they could justify in terms of amenity or benefit to the community, again same thing.

THE COMMISSIONER: Without specifying persons, from where did those directions come?

MR TIMMS: Our understanding is from Council, councillors.

Public Hearings Transcript – April 7 2003

THE COMMISSIONER: Yes. Okay. Yes. Okay. In relation to development applications, you suggest that Warringah Council has a closed shop. I wonder if you could tell me what you mean by that.

MR MAY: Well, I can only answer that in terms of my experience and this is the second experience I've had where I've had to go to the Land and Environment Court to resolve what should be very straight forward and I think uncomplicated planning issues. The first incident I was successful and this incident I was unsuccessful. However, I chose to use the judgment as handed down by the Land and Environment Court to re-approach the Council and so make use of those issues in that judgment for the purposes of discussion and productive discussion.

THE COMMISSIONER: I will just - just want to ask you a couple of things about that.

MR MAY: Certainly.

THE COMMISSIONER: As I said, we are not so interested in the specific development or developments but just to give us some context. Were you dealing with a single house or a larger scale development units or can you just give me a sense of that?

MR MAY: The initial proposal - initial proposal was for a modest scale residential development and after extensive - - -

THE COMMISSIONER: Does that mean a single house?

MR MAY: No. A multi-unit - multi-residential accommodation.

MR BROAD: Can I ask you a question - - -

MR MAY: Certainly.

MR BROAD: - - - which flows from that? Did the application comply with the Council's local environment plan as it then existed? In other words, was it compliant or non-compliant?

MR MAY: I believe the answer to that is it was a matter of discretionary interpretation, given the inherent difficulties on that site as a result of its

Public Hearings Transcript – April 7 2003 (cont.)

MR MAY: . . .
split zoning. That's the best I can answer that question.

MR BROAD: Okay.

THE COMMISSIONER: The complicating thing - I'm trying to get an understanding of this.

MR MAY: Yes.

THE COMMISSIONER: It seems to me the complicating thing is that in a sense Warringah does not have zoning any more in the LEP 2000. It has a locality placed management type plan. So I wonder if you could tell me what you mean by zoning in that context.

MR MAY: Yes. Well, perhaps my term was inappropriate given the later generation of the planning controls. However, would you prefer a response specifically on this site or my general understanding from it?

THE COMMISSIONER: Your general understanding first off anyway.

MR MAY: Yes. It's just - my understanding is that it's a desired land use with certain controls.

THE COMMISSIONER: Right. Thank you. Sorry about the disruption. Okay. You believe - I guess the critical thing there is the desired future character of the locality. You believe, and let me go one step back.

MR MAY: Certainly.

THE COMMISSIONER: You are a professional in this general area.

MR MAY: Yes.

THE COMMISSIONER: So you have seen and understood documents like this a number of times before.

MR MAY: Yes.

THE COMMISSIONER: So your professional understanding was that it fitted the desired future character of the area.

MR MAY: On my interpretation and upon the advice from the professionals whom I had retained to advise me prior to discussions, prior to preparing draft plans and then prior to lodging development applications.

THE COMMISSIONER: Is part of the difficulty that as you move from a system which was pretty standard, that is, that areas were zoned and you

Public Hearings Transcript – April 7 2003 (cont)

THE COMMISSIONER:
knew what the zoning was, residential 2A or whatever and it was coloured on a map and you pretty well knew what would happen in that area to a more flexible system which are the series of 67, I think, locality plans. Do you think that that procedure, which seems to have been done for very good reasons to break down the stereo-typing of areas that occurred with the previous approach, do you think that there is a problem in how clear cut the outcomes can be then?

MR MAY: No. Personally and professionally, my capacity on this matter, I'm in favour of what has occurred and the general results. However - and I'm also in favour of the current scheme because it allows - it appears to me from my perspective as a valuer, not a town planner, that allows for proper and reasonable and qualified interpretation. My complaint is in this matter there hasn't been reasonable and proper interpretation, given the inherent difficulties of the site created by Council or specifically their plans.

THE COMMISSIONER: But given your dissatisfaction, you must know that there are avenues that you can go through to seek some way of sorting out the problems?

MR MAY: Well, in a planning matter, I think the best avenue was the Land and Environment Court.

THE COMMISSIONER: So instead of going back to the Council and saying: I've had these problems, they are caused by particular people at particular positions within the organisation, can you offer me a solution, you go to the Land and Environment Court?

MR MAY: I even spoke at the Council meeting, I think, on one or two occasions in an attempt to avoid a Land and Environment Court hearing but I was not heard and - - -

THE COMMISSIONER: What do you mean you weren't heard?

MR MAY: Well, I say that figuratively but it didn't make any difference. Didn't make any difference. So the matter went to the Land and Environment Court as I said. The outcome is - I've stated here today. I was then advised to write to the Mayor. I then received a letter from the Mayor urging me to again talk with the appropriate officers and the response was no different to what I'd had for 2 years prior and it's from there that I have agitated for the purpose of being here today.

Public Hearings Transcript – April 7 2003 (cont.)

THE COMMISSIONER: These individuals have for years wiggled their way out of accountability.

MR MAY: Yes.

THE COMMISSIONER: What does wiggling out of accountability mean?

MR MAY: Well, as principal to an application, I'm financially responsible. I have to find the financial resources. I personally bear the burden and the success and the failures of my actions. I am in no way quarantined or protected from the results and in these matters, you enter into these endeavours with full conscious - full consciousness that you can win and lose some, but that is not a problem. But I feel the temperament within - as I've described generally reflects the fact that, well, these individuals aren't responsible for their own negligence.

These individuals aren't responsible for the legal costs. They are protected under the veil of a Council entity and I feel, I believe I should say, that that privilege is used against individuals such as myself, or albeit, corporations to a great detriment and in a most unfair way.

THE COMMISSIONER: But why would they do that?

MR MAY: Well, it's very expensive to mount Land and Environment Court proceedings. It's very expensive to have a town planner or a traffic consultant - - -

THE COMMISSIONER: It is only expensive to - - -

MR MAY: - - - to answer an inquiry for information which common sense shows is available or should be available within their resources and I feel - I believe this is an opportunity available to these individuals for whatever their reason, whatever the agenda, to assist their efforts to block certain matters.

7.4.7.3 Whilst some members of the community think that they can explain why they end up in the Land and Environment Court (ineptitude), others seem to be genuinely puzzled about how this can happen. Mr. Kerr's evidence (Public Hearings April 5 2003) provides a long account of his own experience in dealing with the Council, his mystification with their procedures, and the costs that he has had to bear as a result.

Public Hearings Transcript – April 5 2003

MR KERR: Yes. Because of the days where you have to change things or where it's been stopped aren't included. Correct.

THE COMMISSIONER: So the fact that some of the developments that you have been involved with have taken five times the required length is not, in any way, a product of this stop the clock thing. It is a product of other things.

MR KERR: I would, if I was to generalise, I would imagine that none of those incorporated more than a couple of weeks of the stop the clock.

THE COMMISSIONER: Okay. Why has it taken so long?

MR KERR: That's what I'd like to find out. Our current DA by the way is now over 300 days and it had a recommendation of approval from the town planners. We were booked in to go to court next Tuesday and Council approved it at a meeting last week suddenly. So essentially what that means for someone like me, it's another, you know, extra 6 months. It's legal fees, it's - and the ratepayers are paying legal fees as well.

THE COMMISSIONER: Yes. But you haven't got any thoughts about

why it takes so long? I mean, you say that each of those projects had staff recommendations to approve them. . . .

MR BROAD: Can I jump in? You say that your applications were conforming development proposals. Do I understand by that you mean that they conformed with the local environment plan and the regime that falls underneath that?

MR KERR: Yes.

MR BROAD: So each of them conformed to Council's requirements.

MR KERR: Yes.

MR BROAD: Yet notwithstanding that, they have taken up to 300 days. Was the latest approval that you have just obtained, was that a conforming application or was some part of the application non-conforming?

MR KERR: Yes. There was a minor - there was - the basement poked out past the boundary, the setback boundary, by 500 millimetres and we actually redesigned that so it did fully comply.

MR BROAD: Yes. So otherwise - - -

MR KERR: The Council staff picked it up and we changed it accordingly.

MR BROAD: Right. But to that extent, the amendment was made and then it became a strictly conforming application.

Public Hearings Transcript – April 5 2003 (cont)

MR KERR: Correct.

MR BROAD: That has taken 300 days?

MR KERR: Yes.

THE COMMISSIONER: I'm just working through parts of your submission. You refer to section 82(A) review of the development application. I wonder if you could, just to help me understand that, tell me what that involves.

MR KERR: It's a process, so if you lodge your original DA and Council staff, you know, feel that something might be - need to be re-jigged a little bit, can be of a very minor nature and you've already been knocked back at the first Council meeting and they say, you know, in that particular case it was the, you know, the basement was 500 millimetres out so we did a very minor repair but that means that you have to resubmit. So the section 82(A) allows you to put that project back up to Council again for a review of their decision.

THE COMMISSIONER: Right.

MR BROAD: You are able to put an amended application up?

MR KERR: Yes.

MR BROAD: You talk about there being a legal dispute over whether you were entitled to lodge a section 82(A) application. That is a review application. Was there an issue that you were not entitled to lodge an amended plan for review? I'm just wondering why you - why there was this issue that Council said no, it can't - it can't exercise powers under 82(A) to review the matter and you were saying yes, you can.

MR KERR: Yes. That was our advice. Yes.

MR BROAD: What was the issue that underlay that? Why were Council saying that they couldn't conduct a review?

MR KERR: I'm not sure. I'm not a lawyer but evidently it was - it's not an old law. It's quite a new amendment and Council wasn't sure - this is

Public Hearings Transcript – April 5 2003 (cont)

MR KERR:
my understanding of it anyway - Council wasn't sure whether it had yet
come into force and they could use it.
MR BROAD: Well, my understanding was that section 82(A) was brought into the Act in about 1997, that its predecessor, which was section
96, goes back to 1979.

MR KERR: Well, maybe they're referring to an amendment of it or something like that but I know there was a date - they were argy-barging
about a date in February this year.

MR BROAD: Okay.

THE COMMISSIONER: Okay. Well, still down the same track. You put in the section 82(A) application. You got no response from that.
November last year you sent letters to all the Councillors asking that this
refusal should be reconsidered. In January of this year, you sent more
letters to Councillors. What response did you get from the Councillors?

MR KERR: A one paragraph letter from them saying that we've got your
letter basically.

THE COMMISSIONER: Okay. That is in response to the two sets of letters that you sent?

MR KERR: Yes.

THE COMMISSIONER: When did you get that response?

MR KERR: Shortly after the second letter.

THE COMMISSIONER: So in January of this year?

MR KERR: I think so. Yes.

THE COMMISSIONER: Okay. You were then told what you have just passed on that the Council said they were awaiting legal advice on whether
or not they could act under the section 82(A) provisions. You also note
that they had charged you a fee in relation to the section 82(A) proceedings.

MR KERR: Yes.

THE COMMISSIONER: Can you just outline that a bit further?

MR KERR: Well, the reapplication fee under section 82 I think is 50 per
cent of the original DA submission cost.

Public Hearings Transcript – April 5 2003 (cont)

THE COMMISSIONER: Which is about what?

MR KERR: Two grand or something like that. It was in this case. Then
Council rang us up the next day and said: well, we can't process this
section 82(A) because you haven't paid the money. So then we had to go
down to Council and show them the receipt because they'd lost that.

THE COMMISSIONER: Okay. Now, in the meantime you say you lodged an application with the Land and Environment Court.

MR KERR: Yes.

THE COMMISSIONER: Did you do this - why did you do this? Because you didn't think this process was getting you anywhere or what?

MR KERR: We had been made aware that one of the Councillors had friends in the area and it's pretty much our thought anyway that it's easy
for the Councillors to say: well, we lost in the Land and Environment
Court, you know, what can we do and therefore we don't upset any of
them.

THE COMMISSIONER: Okay. Eventually the Council agreed that the matter could be reviewed under section 82(A).

MR KERR: Yes.

THE COMMISSIONER: That was when you got that advice 3 months after you put in your section 82(A) application.

MR KERR: Yes.

THE COMMISSIONER: The changes to the plan, you say, were very minor.

MR KERR: 500 millimetres in one corner of the basement.

THE COMMISSIONER: The Council then said, and this is towards the end of February of this year, that because you had lodged an appeal with
the Land and Environment Court, your review couldn't be processed through the normal Council channels.

MR KERR: There was another question of law which is incorrect, I believe.

THE COMMISSIONER: So - yes. Your advice was that the Council could have reviewed the application and under section 82(A) and you
would have withdrawn the Land and Environment Court case.

Public Hearings Transcript – April 5 2003 (cont)

MR KERR: Correct.

THE COMMISSIONER: So am I understanding it correctly that in fact by not reviewing it, you had to go to the Land and Environment Court.

MR KERR: Well, we certainly didn't want to pull out our application to the Land and Environment Court. Yes.

THE COMMISSIONER: The effect essentially was that because Council said we can't proceed with section 82(A), you will have to stay with the Land and Environment Court.

MR KERR: Yes, because there's a long lead time to when you apply to the Land and Environment Court and when you actually get a court date.
In this case, I think it was around 4 months and that court date was set at next Tuesday.

THE COMMISSIONER: Right.

MR BROAD: Was the matter eventually dealt with as a review under section 82(A)?

MR KERR: Yes.

THE COMMISSIONER: You also say that you were informed by Council staff that they had not been able to find an external town planner who would present the Council's case in the Land and Environment Court because there was no real reasons to object to your proposal.

MR KERR: Correct.

THE COMMISSIONER: Does that happen often?

MR KERR: If you go to the Land and Environment Court, Council has to have its own set of consultants engaged to say yes, there is a problem with this development and it shouldn't be approved but quite often when the matter is clear cut, no consultants will act for them if they know that it's going to be approved in the Land and Environment Court. So if Council can't find a consultant to act for them, they really are in no other position but to say: well, we've got to approve it.

THE COMMISSIONER: Have you had experience with other projects where the same thing happened, where Council actually at the Land and Environment Court put up no case against you?

MR KERR: Yes. We have had one where the Land and Environment Court case was set down for 4 days and we were out of there in under an

Public Hearings Transcript – April 5 2003 (cont)

hour with the approval.

THE COMMISSIONER: Right.

MR BROAD: Can I explore that a little bit with you? You have spoken about the delays in lodging an appeal with the Land and Environment Court in obtaining a hearing. In this case, you have just spoken about, you actually got an approval on the first day of the hearing.

MR KERR: Correct.

MR BROAD: Do I assume that up until that time, you had to prepare the case as though it were to run?

MR KERR: Absolutely.

MR BROAD: So for that purpose, did you have to retain consultants?

MR KERR: Yes.

MR BROAD: My understanding of the Land and Environment Court is this, that the proceedings that you would have brought would have been known as Class 1 proceedings.

MR KERR: I'm not sure.

MR BROAD: They were an appeal against a refusal of a development that it is usual for the court not to make an order for costs.

MR KERR: Correct.

MR BROAD: Adverse to a party. In other words, do I - were you ultimately left in this position that you had prepared a case for hearing, that you had retained consultants to prepare reports, that you had exchanged reports with Council, that you had to retain your consultants to reply to the Council reports, that you had retained legal representatives. They involved a solicitor. Did they involve a barrister?

MR KERR: Yes, they did.

MR BROAD: That in retaining your barrister, you retained the barrister on the basis that the barrister would appear for 4 days.

MR KERR: Correct.

MR BROAD: That in leading up to the hearing, you were involved in conferences with your barrister.

Public Hearings Transcript – April 5 2003 (cont)

MR KERR: Yes.

MR BROAD: Did your barrister adopt the usual approach of saying: I have taken a brief for 4 days. Although I'm only here for 1 hours, I will still charge you for the 4 days that I've set aside.

MR KERR: I don't think he charged us for the whole 4 days from memory.

MR BROAD: Did he charge - - -

MR KERR: But he charged - - -

MR BROAD: - - - an additional amount over the 1 hours?

MR KERR: I think so.

MR BROAD: Did you obtain an order for costs requiring Council to pay your costs?

MR KERR: We didn't receive it. No. We were advised that it's a very difficult thing to obtain anyway.

MR BROAD: It's unusual for the court - - -

MR KERR: Yes. And we didn't really want to sort of upset too many people I guess either.

MR BROAD: So you were put to substantial expense when on the first day, Council presented no argument.

MR KERR: Correct.

MR BROAD: Thank you.

THE COMMISSIONER: Can I just follow that on? You said that last week it was approved at Council.

MR KERR: Yes. That was a different side we were just talking about then.

THE COMMISSIONER: Sorry?

MR KERR: That was a different side that we were just talking about.

THE COMMISSIONER: Yes, the earlier thing that we were talking about where it got held up because Council were seeking legal advice about

Public Hearings Transcript – April 5 2003 (cont)

THE COMMISSIONER:
section 82(A).

MR KERR: Correct.

THE COMMISSIONER: How did it get back into play? Did Council then say to you: well, we've now got legal advice and we can go ahead
with section 82(A) or what? What happened?

MR KERR: I think the push was more from our solicitor who kept on
explaining to Council's solicitors that this thing was legal and relevant and
she did it on many occasions and finally they believed her, I guess, that
they could process it under that Act.

THE COMMISSIONER: My understanding is that it should not have been as hard as that, that section 82(A) is fairly straight forward.

MR KERR: No doubt.

THE COMMISSIONER: Okay. The development industry is a highly competitive industry. You have had a delay of a year almost, getting onto
a year. Besides the actual costs that you had to meet in terms of a Land
and Environment Court case, did you have holding costs that - - -

MR KERR: Not only ..... holding costs. No.

THE COMMISSIONER: Sorry?

MR KERR: Mainly just consultants costs.

THE COMMISSIONER: Right.

MR KERR: Including legal fees.

THE COMMISSIONER: Okay. Did you feel you had lost competitive advantage in the period?

MR KERR: Well, I guess the major thing is the development cycle is
quite a long cycle between buying a site, obtaining approval, building it
and completing it, you can be talking well over 2 years and a lot of things
can happen in an economy in 2 years. So any lengthening of that period is
simply ..... of what potentially could happen. Prices falling, no demand,
etcetera.

THE COMMISSIONER: Have you found in any instances that you have been held up on a DA but other sites in similar locations have not been
held up and then come to market some time in advance of yours?

Public Hearings Transcript – April 5 2003 (cont)

MR KERR: Absolutely.

THE COMMISSIONER: Can you understand why this happens?

MR KERR: No.

7.4.7.4 In some instances the Land and Environment Court itself has been quite critical of the Council in bringing cases before the court. The comments of Judge Bignold (Submission 032) are illustrative.

Submission 032

Land and Environment Court
of New South Wales

CITATION :	Paterson v Warringah Council [2003] NSWLEC 25
PARTIES :	APPLICANT: Paterson RESPONDENT: Warringah Council
FILE NUMBER(S) :	10951 of 2001 and; (1)0391 of 2002
CORAM:	Bignold J
KEY ISSUES:	Costs :- costs in related class 1 proceedings involving the issue of two statutory planning enforcement orders-Parties having varying degrees of success in outcome of proceedings
LEGISLATION CITED:	Land and Environment Court Act 1979, s 69 Court's Practice Direction, par 10
CASES CITED:	Altomonte v Hunters Hill Council (2002) 120 LGERA 286
DATES OF HEARING:	02/12/02
EX TEMPORE JUDGMENT DATE :	02/12/2002
LEGAL REPRESENTATIVES:	APPLICANT: Dr I Paterson (Agent) SOLICITORS N/A RESPONDENT: Ms J Smith, Solicitor SOLICITORS Wilshire Webb

Submission 032 (cont)

...

8. In par 12 of his judgment the Commissioner indicates that at the commencement of the proceedings the Council amended the schedule of works by the deletion of items 3 and 4. In the course of argument, I enquired as to how this had happened and it appears that the Council did not exercise the statutory modification power conferred upon it by the *Environmental Planning and Assessment Act* which power requires the approval of the person to whom the order had been given but instead informed the Court that it did not press those matters in its order.

9. Ms Smith, on behalf of the Council, said that the metamorphosis in the order originally given by the Council containing five specific items and the order ultimately made by the Court containing but two and those two are expressed in a different language from the two in the original order (which they reflect) could be substantiated by the power of the Court conferred by the *Environmental Planning and Assessment Act*, 121ZK(4) which enabled the Court, inter alia, to revoke an order, to modify an order or to substitute for the order any other order that the person who gave the order could have made.

10. Significantly however, the Council had conducted the proceedings on the basis that item 2 of the original order remained pressed. That order in terms required:

Submission 032 (cont)

the removal of all structural walls and other building works that had converted the sub floor area at the front of the building to habitable areas.

11. Dr Paterson on behalf of his father has informed the Court that it was that particular requirement that caused both his father and himself, as agent and carer, much distress and considerable concern because in terms it required the removal of all structural walls that had converted the subfloor area at the front of the building to habitable areas and it was his view (and I should add that Dr Paterson is a highly credentialed building architect having a doctorate of philosophy in that discipline) that compliance with that order would have imperilled the very existence of the entire building.

12. Ms Smith on behalf of the Council contended that that was not the way in which the item in the original order should be interpreted and she relied upon Dr Paterson's professed and acknowledged expertise in this area. However, it must be remembered that the order was issued to Dr Paterson's father, a ninety-year-old, and it perhaps is just fortuitous that Mr Paterson had the benefit of his son, as carer and agent, with his experience to advise and act for him. However, I am not impressed with the argument that item 2 was clear to all and sundry and did not require the removal of structural walls which would in fact support the entire building. In my view, in exercising the powers for statutory enforcement under the *Environmental Planning and Assessment Act* it behoves a consent authority to express itself with crystal clarity particularly in requiring mandatory works to be done to buildings, and on the competing argument I am entirely satisfied that Dr Paterson's view of the original item 2 in the original order and the necessity to have that deleted was a reasonable and cogent understanding of that order. I also accept his submission that it was the existence of that requirement which in truth required him, on behalf of his father, to maintain a steadfast resistance to the statutory order.

13. In the circumstances where only at the end of a two day hearing did the Council finally concede that item 2 of the original order should not be pressed and settled upon a form of order which, albeit referring to the removal of a southern wall, identified in

order 1 of the orders made by the Commissioner, nonetheless that wall, as Dr Paterson has pointed out, was not a structural wall. This metamorphosis in the statutory order did not vindicate the Council's original order or render the order ultimately made a mere re-drafting of the original order. In my opinion, the Applicant was entirely justified in resisting the original order and in my view the deletion of that particular vexing provision, item 2, was ultimately the true stakes for the whole proceeding, and on that matter the Applicant was successful.

14. In these circumstances, I am of the view that the Council could not reasonably be regarded as being the successful party in the litigation such as would warrant any order for costs even if I were to adopt the view that seems to be emerging in the cases in this Court as to the disposition of the costs question arising in appeals against orders given pursuant to the *Environmental Planning and Assessment Act*, s 121B.

15. The other order was the order for the cessation of the use of the premises as three dwellings. It is true that the Council did succeed in that order but it is necessary to contextualise the place and significance of that order in the proceedings. It arose well after the appeal against the Council's original works order had been filed in the Court and I think as I read the chronology of the history of the case in the Court the decision to link the two appeals in relation to the two statutory orders was only made fairly recently by Justice Talbot, the list judge.

16. I should say that the issue of the separate order requiring cessation of the use of the same premises as three separate dwellings arose in circumstances that caused the Council to move for the vacation of the original hearing date in relation to the works order statutory notice and in the meanwhile the Applicant had lodged a development application with the Council seeking approval for the continuance of the use of the premises as three separate dwellings. That application was refused by the Council and that was the situation when the appeal came on for hearing. In my view the appeal in relation to the cessation of use order though successful so far as the Council was concerned did not reflect any unreasonable conduct on the part of the Applicant. The

Submission 032 (cont)

Applicant had put in a development application and that had been refused. All this happened as I say late in the piece and I am satisfied that the litigation and the great bulk of the litigation was focussed upon the original order requiring the removal of a number of elements of the building itself and that the use order was almost an incidental postlude to that matter particularly after the development application was lodged and rejected by the Council.

17. In the circumstances, I would regard the second appeal as being of relatively minor or incidental importance in the totality of the litigation but nonetheless it is clear that the Council was successful in it. However, in view of my conclusion that the Applicant was essentially successful in relation to the statutory notice requiring works to be undertaken and that that litigation was the true focal point or centrepiece of the entire litigation, and certainly the main contributor to the incurring of costs in the proceedings, I am of the opinion that the success of the Applicant in that behalf cancels out the success of the Council in relation to the second order requiring the cessation of use of the premises as three separate residences.

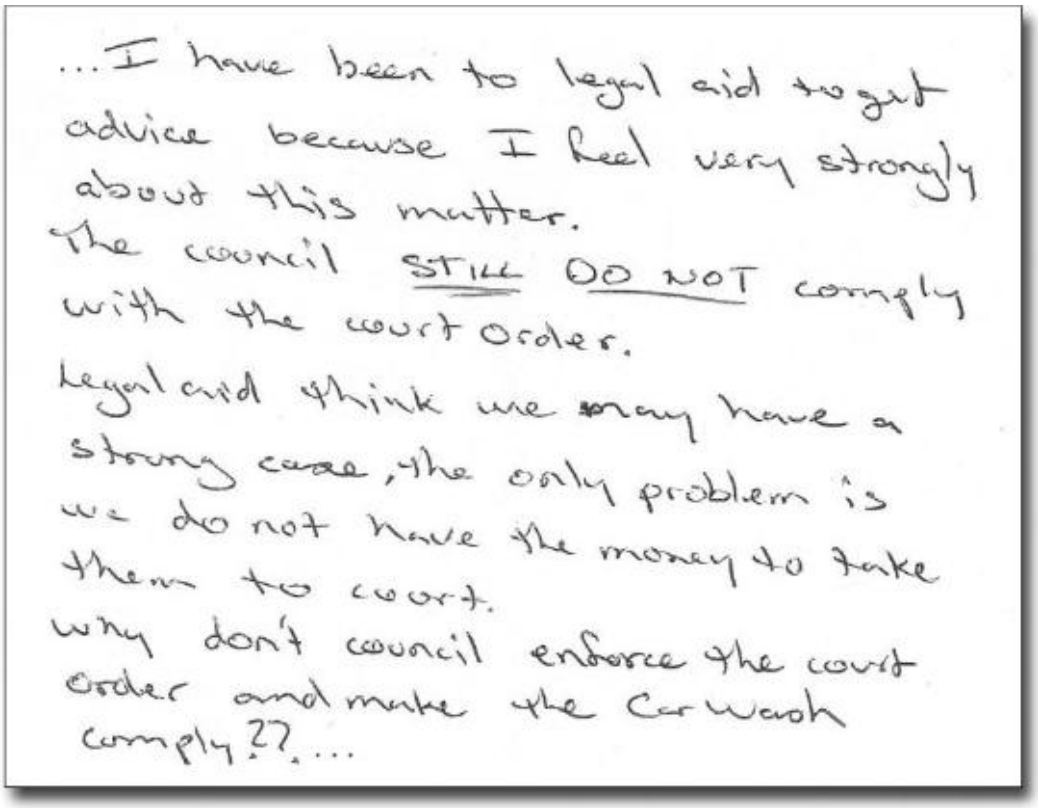
18. In all of the circumstances, having regard to my analysis of the nature of the cases, their outcome and the circumstances in which the orders were issued, I am of the opinion that each party can justifiably claim a measure of success in the various parts of the litigation and that to recognise that measure of success in each of the parties is such as to warrant the order that in both proceedings each party bear its own costs. . . .

7.4.7.5 Other Submissions complain that when matters are decided by the Land and Environment Court, the Council does not follow up to ensure that conditions set by the Court are put in place. The extracts from Submissions 262 and 027 illustrate this. Mr. Brisby, the Team Leader of Environmental Compliance Services, gave the Inquiry a summary of the activities of the Council in respect of compliance issues, assuring the Inquiry that compliance issues were followed through (Public Hearings April 8 2003).

Submission 262

In spite of these restrictions listed by the Land and Environment Court and the objections by the local approvals Committee of the Warringah Council, nevertheless the development application was passed unanimously at the Warringah Council Meeting on 1st August 2000.

Submission 027



...I have been to legal aid to get advice because I feel very strongly about this matter.
The council STILL DO NOT comply with the court Order.
Legal aid think we may have a strong case, the only problem is we do not have the money to take them to court.
Why don't council enforce the court order and make the Car Wash comply??...

Public Hearings Transcript – April 8 2003

MR BRISBY: Yes, I do feel that perception, as generally those inquiries end up with myself and we are always at pains to try and explain to the community members the process, and I certainly understand that it is difficult for them to understand why it works and often one of the major complaints I do receive is that I've been told orders have been issued on certain people and the work is continuing, or the use is continuing, and then you know we do go out of our way, in particular, both the develop control inspector and myself to try and explain this to people and just to reassure them that action is being taken and that we need to follow these steps as set out in the Act, otherwise, we could jeopardise any future positive action through the Courts.

THE COMMISSIONER: Okay.

MR BROAD: Could I ask you whether the problem of work which is non-compliant being undertaken is common?

MR BRISBY: It would be difficult to comment. All I could say is we have a fairly strong work load, yes.

MR BROAD: In other words, you get a fairly large number of complaints?

MR BRISBY: It would be difficult to quantify it because against what kind of benchmark we would look at, but all I could really say from my experience in this role is that we have a very diligent and demanding community who require us to be on top of this.

MR BROAD: What I'm trying to do is get a handle on, roughly, how many complaints you would get per year of illegal work being undertaken, or non-compliant work being undertaken?

MR BRISBY: I couldn't give you a number here, I'm sorry.

MR BROAD: On a totally different matter, what sort of qualifications, what sort of professional qualifications do your staff have?

MR BRISBY: Our environmental health and building surveyors are building surveyors who are qualified to work, both in our area and our local approval service unit in assessing development applications. Our development control inspector has a strong background in investigations and does not have any formal qualifications.

MR BROAD: Can I take you to another topic. There are a number of prosecutions, I assume, which occur in the Land and Environment

Public Hearings Transcript – April 8 2003 (cont)

MR BROAD:
Court. Is Council extensively involved in bringing those prosecutions, whether they are a stop work order - a Class 4 proceedings, a stop work order. Is Council actively involved in that?

MR BRISBY: We are the - yes, we are the authority that brings that forward, yes.

MR BROAD: Right. Are you involved in Council's conduct of proceedings generally in the Land and Environment Court where there are Class 1 proceedings?

MR BRISBY: No, our role sits primarily with illegal works. The jurisdiction between ourselves and the local approval service unit is as Mr Fletcher just explained, whether a development is under construction, it is dealt with by the development control officer responsible. If the work is outside that development consent, ie, the development is being completed and the use is in place and conditions are being breached, etcetera, it sits with our group. If the works are being done without any formal prior approval it sits with our group. There is a fairly - there is a strong integration with our groups, but that is the distinction.

MR BROAD: Can you give me a time frame that it would take for Council to issue Class 4 proceedings, stop work orders, in respect of a non-compliance from start to commencement of proceedings. How long Council would normally take before it issued proceedings?

MR BRISBY: I wouldn't have any figures exactly as issues are quite different, depending on minor to major, but we - as I explained before, we follow the step process under the orders and the environmental planning assessment.

MR BROAD: So you have given us a figure of about 28 days?

MR BRISBY: Yes. The variation outside the 28 days and then the assessment of any submissions and the issue of final orders which would generally involve the further 28 days, gives us a period of 2 months. Now, extensions around that would obviously depend on things such as work loads of the staff, when we can get - as we talked about there is a big work load and being able to juggle many cases at once.

It is generally not possible for final orders to be issued the day after they expire, but they are certainly monitored through our reporting and management systems, so that we are aware of them, but those time frames will vary there. We may also be involved with trying to resolve

Public Hearings Transcript – April 8 2003 (cont)

MR BRISBY:
the matter to the community's benefit, which may involve receiving written undertakings for compliance, which may involve the time periods where the offenders have agreed to fix the works, or remove the illegal works. We then may also - if we followed the procedure exactly - we are talking probably having it with our solicitors within the 3 month period.

MR BROAD: Does Council have a policy of strictly enforcing breaches, or non-compliances?

MR BRISBY: It is generally our policy, there is no written policy in that regard, but we just follow - the matters that sit with us are generally black and white. They're either illegal or they're not and there is very little discretion that can be applied either way.

MR BROAD: So if there is a black and white situation, is there an overriding policy that you will, if necessary, institute proceedings in the Land and Environment Court?

MR BRISBY: Well, I can state, if the final orders aren't complied with and the use, or the illegal works still exist, the final step is to proceed to the Land and Environment Court and lodge an application for a Class 4.

MR BROAD: Thank you. My question is, whether as a matter of policy that step is taken?

MR BRISBY: Yes.

7.4.7.6 In other Submissions there is evidence that the Council has forced both applicant and objectors into Court, rather than solving problems through their own system. The evidence of Ms. Oliver (Public Hearings April 1 2003) illustrates this approach.

Public Hearings Transcript – April 1 2003

MR BROAD: . . . Mrs Oliver, can I take up some of these procedures that have taken place in the Land and Environment Court.

MRS OLIVER: Yes.

MR BROAD: I understand there have been some more recent proceedings and I will deal firstly with the Land and Environment Court. When the initial application, which as I understand it, was 16 units.

MRS OLIVER: Yes.

MR BROAD: Was before Commissioner Blye in the Land and Environment Court, was he made aware that it would be necessary for the developer to acquire a drainage easement?

MRS OLIVER: At that stage, no.

MR BROAD: Right. Now, when the second application which was - actually, I will stop and I will ask one further question on that. On the first application, you say that Commissioner Blye suggested that the site was suitable for eight to ten units?

MRS OLIVER: Yes.

MR BROAD: And a two-storey structure.

MRS OLIVER: Yes.

Public Hearings Transcript – April 1 2003 (cont)

MR BROAD: Did he say that in his judgment - - -

MRS OLIVER: Yes.

MR BROAD: He did in his judgment - - -

MRS OLIVER: It has been recorded in the Land and Environment Court hearing.

MR BROAD: It is in the judgment?

MRS OLIVER: Yes.

MR BROAD: Thank you. Now, in the second proceedings in the Land and Environment Court, I assume what happened was that Council reconsidered its views - - -

MRS OLIVER: Yes.

MR BROAD: - - - regarding the application after the Court proceedings had commenced?

MRS OLIVER: No. It was in the Land and Environment Court, but the proceedings had not - the Court had not been heard.

MR BROAD: Yes, but - - -

MRS OLIVER: So it was prior - a couple of weeks prior to being heard - the case being heard.

MR BROAD: Yes, but the proceedings had commenced?

MRS OLIVER: Yes.

MR BROAD: Whilst the proceedings were awaiting a hearing, Council had a meeting - - -

MRS OLIVER: Yes.

MR BROAD: - - - and the Council changed its views in respect of the application?

MRS OLIVER: Yes.

MR BROAD: That when the matter came before the Land and

Public Hearings Transcript – April 1 2003 (cont)

MR BROAD:
Environment Court - - -

MRS OLIVER: Yes.

MR BROAD: Council's legal representative notified the Court that Council was not opposed to the application?

MRS OLIVER: Yes. He did that throughout the whole proceeding.

MR BROAD: Right. Now, how was it that you came to speak? You said that you spoke about this easement?

MRS OLIVER: I came - I came to speak about the density and different things like that and, also, to speak about the easement, because prior to this - 7 or 8 months before that we had - the developer had approached us about putting an easement down through our place. We already have one easement on our eastern boundary that services units next to where he wants to build. He wanted to put another easement down our western boundary and we objected, we said: no, we refused him to have it and that is where it was when it went to the Land and Environment Court.

MR BROAD: Now, what you say was that, it had been suggested to the Commissioner on the second case - - -

MRS OLIVER: Yes.

MR BROAD: - - - that there were no problems with storm water?

MRS OLIVER: Yes.

MR BROAD: Yet, despite this you gave evidence. Did you have to jump up and say: yes, there are, or what actually occurred?

MRS OLIVER: I was - Mr Blye asked me to take the stand and we went through a few other things that I wasn't happy with and then he asked me: is there a problem with the storm water drainage? And I said: yes, there is a very big problem with the storm water drainage. The solicitor for the Council had said there was no problem, and I said: we don't want the storm water drainage.

He then went through the process of: what would we do? And I said: well, we have never been submitted with a plan. We've never been asked about this really, nothing concrete, and if it - we would have to have a meeting. He asked how the voting would go? And I said: it

Public Hearings Transcript – April 1 2003 (cont)

MRS OLIVER:
would be unanimous at this stage. The strata laws have changed since then and a special resolution of 75 per cent. When I went back to our people they definitely didn't want this easement.

MR BROAD: Can I ask you another question? The second hearing was also conducted by Commissioner Blye.

MRS OLIVER: Yes.

MR BROAD: Now, can I turn away from that. You say that there has been an application under section 88K - - -

MRS OLIVER: Yes.

MR BROAD: - - - of the Conveyancing Act - - -

MRS OLIVER: Yes.

MR BROAD: - - - for the grant of an easement?

MRS OLIVER: Yes.

MR BROAD: Those proceedings are in the Supreme Court of New South Wales.

MRS OLIVER: They are in the Supreme Court at present.

MR BROAD: I take it those proceedings involve the corporate body of your strata?

MRS OLIVER: Yes, yes.

MR BROAD: And also the developer?

MRS OLIVER: Yes, which I'm the chairperson so I go to all those, yes.

MR BROAD: Now, they do not involve Council?

MRS OLIVER: No, these don't involve Council at all, except - except for the fact this developer could - has got access, or benefit of our present easement we have, which he refused to use. He could also have done gravity feed into Banksia Street, which he didn't do, but because the Council had passed his development application, we now are going to be forced to have another easement on our property, because to do

Public Hearings Transcript – April 1 2003 (cont)

MRS OLIVER:
the other ones he would have to put in another development application with whole new plans, because of the extra OSD tanks.

MR BROAD: So do I take it the corporate body of your block of units is faced with, one, having to incur legal costs?

MRS OLIVER: We are negotiating at present, hoping to settle this out of Court, but it is not final yet.

MR BROAD: If you settle it out of Court - - -

MRS OLIVER: It will - - -

MR BROAD: - - - you will have to grant an easement?

MRS OLIVER: Even if we go to Court - if we go into the Court because of the way the - because the development itself is passed, we cannot force him to put in another application, and so therefore we have been pushed and bullied into having an easement we don't want.

7.4.7.7 There is no doubt that the Council has also adopted a policy of not taking cases to Court if they do not think they can win them (Public Hearings Councillor Caputo March 24 2003). This has reduced the Council's legal costs from their very high level in 1999–2000, but it also opens them up to criticism that they are allowing bad developments to take place because they are not willing to fight them in court (Submission 082).

Public Hearings Transcript – March 23 2003

THE COMMISSIONER: You probably know what I'm talking about. There is often reference made to the Land and Environment Court.

MR CAPUTO: Mm.

THE COMMISSIONER: The suggestion seems to be that sometimes the Council has passed applications because they are concerned that if it went to the Land and Environment Court, it couldn't be defended. Would you like to comment on that?

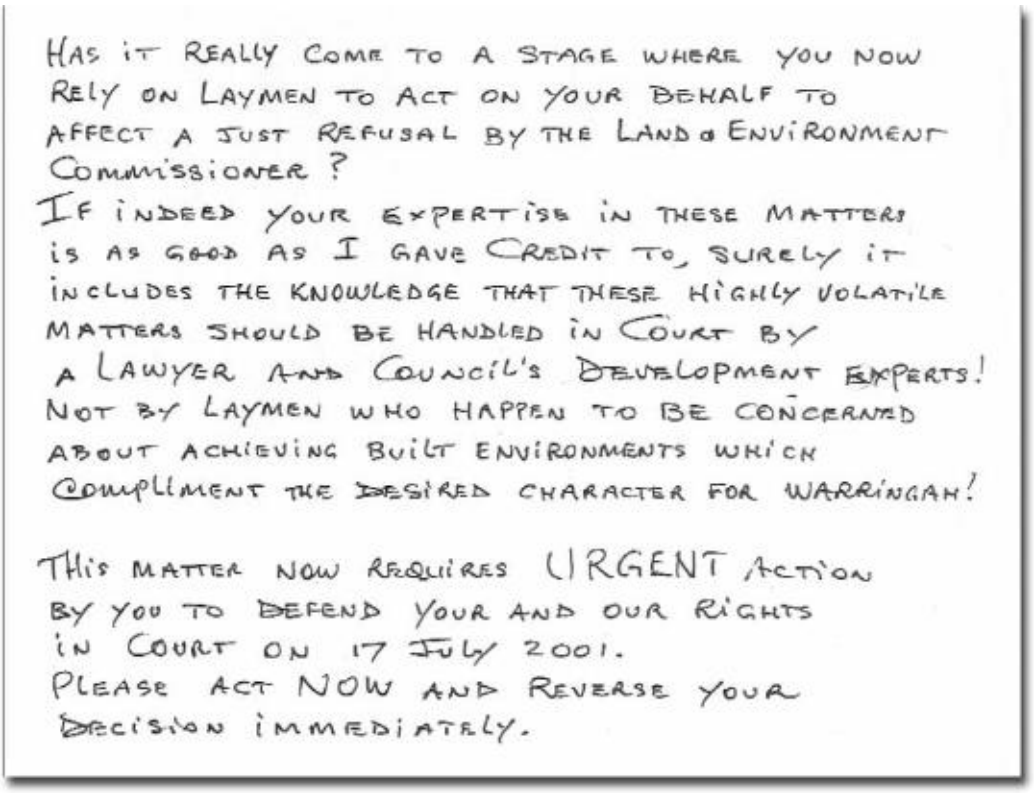
MR CAPUTO: Yes, certainly. Mr Commissioner, as far as applications are concerned, as I said, I - my personal view is that I look at the application, I read it, I read the staff recommendation, speak the residents if there's objectors, whatever, and if I believe that that application should be supported, I will support it. Of course, we have got to look at the situation that if an application complies with all the Council regulations, policies, I mean, it is very difficult to refuse. We can't afford to waste ratepayers money by, to please a few residents, we refuse an application and we are taken to the Land and Environment Court, we will lose, spend 50 to $100,000.

Submission 082

TO ALL WARRINGAH COUNCIL' COUNCILLORS.

THIS D.A. WAS UNANIMOUSLY REFUSED BY YOU ON 7 NOV. 2000
A SIMILAR, PREVIOUS D.A., WAS ALSO REFUSED BY YOU AND
INDEED BY THE LAND & ENVIRONMENT COURT ON 23 DEC. 1999
ON APPEAL BY THE DEVELOPER.
YOUR REFUSAL ON 7 NOV. 2000 WAS-NO DOUBT- BASED UPON
THE RECOMMENDATIONS FROM YOUR MANAGER, APPROVALS AND
GENERAL MANAGER, YOUR OWN EXPERTISE IN THESE MATTERS
AND HOPEFULLY YOU WERE INFLUENCED BY THE MANY OBJECTIONS
RAISED BY LOCAL RESIDENTS.
THE DEVELOPER HAS NOW SUBMITTED VERY SLIGHTLY REVISED
PLANS AND IS APPEALING DIRECTLY TO THE LAND & ENVIRONMENT
COURT ON 17 JULY 2001.
COUNCILS' SOLICITOR HAS NOW ADVISED OBJECTORS THAT
DESPITE UNANIMOUS DECISIONS TO REFUSE THE D.A. YOU NOW
HAVE DECIDED NOT TO DEFEND THIS APPEAL (26-6-2001).
WHAT ALL OF A SUDDEN HAS HAPPENED TO YOUR OWN
MANAGER LOCAL APPROVALS, GENERAL MANAGER'S
RECOMMENDATIONS NOT TO APPROVE ?
WHAT ALL OF A SUDDEN HAS HAPPENED TO YOUR OWN
EXPERTISE AND YOUR UNANIMOUS DECISION NOT TO APPROVE?
WHAT ALL OF SUDDEN HAS HAPPENED TO THE WISHES OF
THE MANY OBJECTORS TO THIS D.A.?
(THE PROPOSED D.A. HARDLY DIFFERS FROM THE ORIGINAL
AND STILL IS FULL OF NON-COMPLIANCES!

Submission 082 (cont)



HAS IT REALLY COME TO A STAGE WHERE YOU NOW RELY ON LAYMEN TO ACT ON YOUR BEHALF TO AFFECT A JUST REFUSAL BY THE LAND & ENVIRONMENT COMMISSIONER ?
IF INDEED YOUR EXPERTISE IN THESE MATTERS IS AS GOOD AS I GAVE CREDIT TO, SURELY IT INCLUDES THE KNOWLEDGE THAT THESE HIGHLY VOLATILE MATTERS SHOULD BE HANDLED IN COURT BY A LAWYER AND COUNCIL'S DEVELOPMENT EXPERTS!
NOT BY LAYMEN WHO HAPPEN TO BE CONCERNED ABOUT ACHIEVING BUILT ENVIRONMENTS WHICH COMPLIMENT THE DESIRED CHARACTER FOR WARRINGAH!

THIS MATTER NOW REQUIRES URGENT ACTION BY YOU TO DEFEND YOUR AND OUR RIGHTS IN COURT ON 17 JULY 2001.
PLEASE ACT NOW AND REVERSE YOUR DECISION IMMEDIATELY.

7.4.7.8 The evidence taken as a whole suggests that much of the blame for the very high legal costs associated with the Council's DA processes rests significantly with the Council itself.

One reason for the public perception that Council handles matters in the Land and Environment Court poorly is the public's own inability to know, or understand, circumstances where the Council may make a reasonable decision to resolve the matter on terms acceptable to the parties. The public often perceives that matters can only be resolved by a determination of the Court, and that settlements indicate capitulation.

Council commonly deals with legal advice in closed sessions, whilst this, given the particular circumstances of a case, may be appropriate, public confidence of decisions reached in closed sessions is weakened if an inadequate explanation of the decision is not contained in the Minutes.