

## Issues and Conclusions

### Procedural Issues

- 3.1 At the public hearing, the Committee raised a number of procedural issues in relation to the so-called ‘interim’ works, described in Defence’s supplementary submission as
- “...a series of separate medium works projects.”<sup>1</sup>
- 3.2 Medium works, as defined by the Committee, are stand-alone projects estimated to cost between \$2 million and \$6 million. While such works fall under the statutory limit for Committee referral, the Committee requires that agencies notify it of medium works, and may investigate such projects if it chooses. Notification is required to avoid the disaggregation of larger projects into smaller components, which are not subject to appropriate parliamentary scrutiny.
- 3.3 The Committee noted that the works identified by Defence as “separate medium works” were elements of the project referred to it in December 2002.<sup>2</sup>

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<sup>1</sup> Submission No. 27, paragraph 11

- 3.4 Members pointed out that under the terms of the Act,<sup>3</sup> a work which has been referred to the Committee must not commence before the Committee has considered and reported on the work and the House of Representatives has resolved that it is expedient for the work to be carried out. ‘Commencement’ in this context includes the preparation of contract documentation.<sup>4</sup>
- 3.5 The Committee, therefore, required that Defence explain why works which stood referred had been commenced prior to the completion of the required parliamentary process.
- 3.6 In written evidence, Defence contended that it had a requirement to execute the nominated work elements prior to the finalisation of the scope and delivery mechanism of the remainder of the project in order to meet revenue commitments to Government and undertakings to Council.<sup>5</sup>
- 3.7 At the public hearing, Defence stated that the ‘interim’ works had commenced after primary responsibility for the Randwick disposal project had been transferred from Defence’s Property Disposal Taskforce to the Infrastructure Asset Development Branch (IADB). Defence explained that the IADB had taken a different approach to the project, in which the project elements identified as ‘interim’ works were viewed as separate medium works projects.<sup>6</sup> Defence added that the Committee was notified of this new approach by letter in October 2003.
- 3.8 The Committee noted, however that notification of the ‘interim works’ had occurred after those works had begun. Members observed that in October 2002 Defence had requested the Committee’s approval to undertake the remediation and preparation for sale of Stage 1A of the Randwick Barracks disposal project as a separate medium work, on the grounds that revenue from the sale of that

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<sup>2</sup> Appendix C, Submission No. 1, paragraphs 29 - 45

<sup>3</sup> *Public Works Committee Act 1969*, Part III, Section 18 (7)

<sup>4</sup> Appendix D, Official Transcript of Evidence, pages 2 - 3

<sup>5</sup> Appendix C, op cit, paragraph 5

<sup>6</sup> Appendix D, op cit, page 3

portion was necessary to enable Defence to meet its 2002-2003 revenue targets – a request that was subsequently granted.<sup>7</sup>

- 3.9 The Committee wished to know why a similar course of action was not pursued in relation to the three work elements subsequently identified as ‘separate medium works’.
- 3.10 Defence described a ‘temporal disconnect’ between the development of the projects and the notification of the works to the Committee, stating that:
- “Somehow those two occurrences actually got slightly out of sequence.”<sup>8</sup>
- 3.11 The Committee asked Defence if it was aware that its actions on this occasion constituted a breach of the Act.
- 3.12 The Defence spokesperson acknowledged the Committee’s position and stated that the Department was working to ensure that such issues did not arise in the future.<sup>9</sup>

## Contamination

- 3.13 A number of public submissions received by the Committee expressed serious concern at the contamination of soil and groundwater at the Randwick Barracks site and associated health risks to current neighbours, site workers and future residents.<sup>10</sup>
- 3.14 Defence’s main submission reported asbestos cement sheeting to be the predominant contaminant, occurring across
- “...a reasonable portion of the site.”<sup>11</sup>
- 3.15 According to Defence, this contamination resulted from poor management practices in the past, whereby asbestos sheeting had been broken up and bulldozed into the soil.<sup>12</sup>

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<sup>7</sup> Appendix D, Official Transcript of Evidence, page 3

<sup>8</sup> *ibid*

<sup>9</sup> *ibid*, page 4

<sup>10</sup> See Submission Nos. 4, 5, 6, 7, 8, 9, 11, 13, 28, 31 and 32

<sup>11</sup> Appendix C, Submission No. 1, paragraph 30

- 3.16 Defence's evidence stated that other contaminants located in discrete pockets at the site include heavy metals, petroleum hydrocarbons, polycyclic aromatic hydrocarbons, slag fragments and metallic wastes.<sup>13</sup>
- 3.17 The NSW Department of Environment and Conservation accredited site auditor, who is responsible for certifying the decontamination of the site, identified the following major contamination issues :
- underground storage tanks related to vehicle manufacturing and refuelling;
  - waste dumps;
  - uncontrolled fill activities;
  - demolition waste;
  - asbestos fragments;
  - groundwater contamination; and
  - ash and slag.<sup>14</sup>

## Level and Extent of Contamination

- 3.18 In view of this evidence, and the high level of anxiety expressed by members of the public, the Committee wished to know how the site might be classified in terms of the degree and extent of contamination.
- 3.19 The site auditor stated that, in his experience, contamination at the site was "on the low side". He added that:
- "...a service station site – if it were the same size as this site – would be a higher risk than this site."<sup>15</sup>
- 3.20 Defence pointed out that a map showing the extent and distribution of contaminants at the site had been included in its written evidence to the Committee.

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<sup>12</sup> Appendix D, Official Transcript of Evidence, page 8

<sup>13</sup> Appendix C, Submission No. 1, paragraph 79

<sup>14</sup> Appendix D, op cit, page 58

<sup>15</sup> ibid, page 65

- 3.21 In response to the concerns expressed by local residents, the Chair requested that this contamination map be made readily available to the public on the development web site.<sup>16</sup>

### Recommendation 1

**The Committee recommends that a map showing the extent and distribution of contaminants at the Randwick Barracks Disposal site be placed on the project web site for ready access by members of the public.**

## Contamination Testing Process

- 3.22 At the public hearing, Defence stated that extensive studies had been conducted across the site to determine the level and extent of contamination. Witnesses described a two-step process comprising:
- historical analysis and a desktop study of past activities at the site, and development of an appropriate testing regime; followed by
  - bore sampling, soil testing and subsequent analysis.
- 3.23 Defence explained that the remediation strategy was based upon the results of these studies, and is in turn subject to the scrutiny of the State-appointed site auditor.<sup>17</sup>

## Migration of Contaminants

- 3.24 Several submissions received by the Committee expressed concern that dust borne by strong winds might carry contaminated soils off-site into the surrounding neighbourhood.<sup>18</sup>
- 3.25 The Committee asked Council if it was aware of the results of any off-site contamination tests. Council representatives replied that, in response to community concerns, air-monitoring tests had been

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<sup>16</sup> Appendix D, Official Transcript of Evidence, page 10

<sup>17</sup> *ibid*, page 6

<sup>18</sup> Submission No. 6, Appendices F and P; Submission 13, page 3; Submission 32, page 2; Submission 8, page 3; and Submission 31, page 2

conducted at two locations – a private home and the council’s child-care facility. Council reported that the results obtained

“did not show contaminants of any concern, and certainly no asbestos.”<sup>19</sup>

## Remediation

3.26 According to evidence supplied by Defence, the primary aim of the Randwick Barracks project is the remediation of contaminated land for future public sale and residential development. Defence’s main submission states that:

“The remediation of areas of land contaminated as a result of past Defence activities and the removal of hazardous materials will ensure contaminated substances do not pose any adverse future health and/or environmental risks.”<sup>20</sup>

## Level of Remediation

3.27 Having received evidence on the nature and extent of contamination at the site, the Committee wished to ensure that the site would be remediated to a level suitable for residential use. Defence responded that it was confident that it could satisfy all legislative requirements for the certification of the land for that purpose.<sup>21</sup>

3.28 The Committee then sought to ascertain the level to which the site would be remediated, considering that one witness attested that there was no established safe level for asbestos in soil<sup>22</sup>, and that the Council had made it a condition of approval for the development that the site be asbestos free or

“...remediated to a level where no unacceptable health risk remains.”<sup>23</sup>

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<sup>19</sup> Appendix D, Official Transcript of Evidence, page 55

<sup>20</sup> Appendix C, Submission No. 1, paragraph 29

<sup>21</sup> Appendix D, op cit, page 11

<sup>22</sup> ibid, page 32

<sup>23</sup> Submission No. 12, paragraph 17

- 3.29 The site auditor, appearing at the public hearing, confirmed that  
“there is no regulatory standard for asbestos in soil.”<sup>24</sup>
- 3.30 The auditor explained that in such cases, regulatory agencies take a risk-based approach under which consultants develop a model based on level of exposure.
- 3.31 The auditor stated that with the technology currently available, the detection limit for asbestos in soil is 0.001 per cent. After consultation with NSW Department of Health and the Environment Protection Authority (EPA), it was decided that this non-detect level should serve as the acceptable measure for asbestos at the site.<sup>25</sup>
- 3.32 The auditor remarked that the work undertaken at the Randwick site had assisted in the establishment of draft national asbestos guidelines, a copy of which was tabled before the Committee.<sup>26</sup>
- 3.33 When asked whether the proposed residential use of the land impacted upon the level of rigour for investigation and remediation, the auditor assured the Committee that the process remained the same irrespective of the proposed land use.<sup>27</sup>

## Development of Remediation Methodology

- 3.34 In 2000 the proposed Randwick Barracks redevelopment was the subject of a case between Defence and Council, conducted in the NSW Land and Environment Court. As a result of this litigation, Defence was required to work with the NSW Department of Health to determine the methodology by which the remediation of the Randwick site should be executed and certified.
- 3.35 The remediation process was developed by Defence’s environmental consultants in consultation with the EPA, Comcare, the Labour Council, the NSW Department of Health and the Council.<sup>28</sup>

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<sup>24</sup> Appendix D, Official Transcript of Evidence, page 58

<sup>25</sup> *ibid*, pages 58 - 59

<sup>26</sup> See Exhibit 3

<sup>27</sup> Appendix D, *op cit*, page 65

<sup>28</sup> *ibid*, page 7

- 3.36 A Council spokesperson explained further that Council had been instrumental in obtaining from the Commonwealth an agreement that no development could occur at the site unless the land was certified by an appropriately qualified auditor, under the provisions of the *NSW Contaminated Land Management Act 1997*.<sup>29</sup>

### **Tried and Tested versus ‘Leading-Edge’ Methodology**

- 3.37 At the hearing, Defence stated that it had been employing ‘leading-edge’ methodologies in the treatment of asbestos-contaminated soils. Committee members wished to know whether these technologies had a proven track-record of success at other sites.
- 3.38 Defence responded that the tried and tested approach is to remove everything from the site, and characterised this as
- “...passing the problem off to somebody else”.<sup>30</sup>
- 3.39 Defence explained that, using the new process, it could remove the contaminants from the soil and re-use the soil on-site.<sup>31</sup>
- 3.40 The site auditor later confirmed that asbestos remediation trials conducted at the site had demonstrated that asbestos fragments could successfully be removed from the soil using the new technology.<sup>32</sup>

### **Staged versus Whole-of-Site Remediation**

- 3.41 Concerns were raised by several submittees about what they described as a ‘piecemeal’ approach to the remediation process.<sup>33</sup> The authors of these submissions expressed the fear that a staged approach to remediation may result in cross-contamination of ‘cleaned’ areas by dust from areas under remediation. The Committee sought to discover if there was any disadvantage in doing the remediation in stages.<sup>34</sup>

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<sup>29</sup> Appendix D, Official Transcript of Evidence, page 53

<sup>30</sup> *ibid*, page 7

<sup>31</sup> *ibid*

<sup>32</sup> *ibid*, page 61

<sup>33</sup> Submission No. 13, pages 2 – 3 and Submission No. 4, page 3

<sup>34</sup> Appendix D, *op cit*, pages 6 - 7

- 3.42 Defence explained that the remediation was being executed in stages because :
- commitments to Council and Government required that some works be completed ahead of the main project;
  - the site is large and Defence is able to learn more about the process as remediation works progress; and
  - Defence wished to avoid a single large capital outlay.<sup>35</sup>
- 3.43 The Committee asked the site auditor if there was a cross-contamination risk associated with staged remediation. The auditor responded that:
- “The cleanup of large-scale contaminated sites is best managed in a staged manner rather than holistically. The greater the area of disturbance of a site, the higher the risk of cross-contamination. The regulatory agency in New South Wales has a guidance note for staged remediation.”<sup>36</sup>
- 3.44 He added that the process designed by Defence’s consultants isolated cleaned areas and stipulated controlled access, specifically to prevent cross-contamination.

## On-site versus Off-site Remediation

- 3.45 A submission from the Communications Electrical Plumbing Union (CEPU) argued that remediation of contaminated materials on-site is not usual practice and that screening of asbestos fragments is
- “...a new initiative and something that we believe should not have been piloted on a site where population density is so high...”.<sup>37</sup>
- 3.46 During a confidential briefing on project costs, Committee members learned that removing contaminated soil from the site is more expensive than treating it in-situ and requested that Defence provide a comprehensive cost comparison. Defence agreed to supply the

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<sup>35</sup> Appendix D, Official Transcript of Evidence, page 7

<sup>36</sup> *ibid*, page 64

<sup>37</sup> *ibid*, page 23

information, but assured members that the decision to process the soil on-site was not predicated solely upon cost considerations.<sup>38</sup>

3.47 The Committee questioned the site auditor as to the suitability of treating the contaminated soil at the site. The auditor explained that

“...the transport risk associated with moving a hazardous material is generally of a level which is much greater than the treatment of that same material within the boundaries of a site, provided all of the right environmental controls are in place within the boundaries to prevent things like uncontrolled dust and other incidents from occurring that might put the local population at risk. So it is generally better to treat a problem within the boundaries of a site than to pick it up and move it somewhere else. That is also consistent with the Australian national guidelines with which I have to conform.”<sup>39</sup>

3.48 Although the CEPU representative expressed concern at Defence’s plan to re-use some of the soil for fill<sup>40</sup>, the site auditor expressed himself satisfied with the results of tests conducted at the site.<sup>41</sup>

## Execution of Remediation Works

3.49 Several witnesses were critical of the way in which works at the site had been carried out to date. The Council stated that this issue had caused the community a great deal of concern and asserted that

“...more attention to detail and work practices and so on should have been in place...”<sup>42</sup>

3.50 The CEPU specifically mentioned that dust mitigation practices, such as water quenching, had been infrequent and inadequate, and also questioned the effectiveness of air-monitoring to detect contaminants.<sup>43</sup>

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<sup>38</sup> Appendix D, Official Transcript of Evidence, page 7

<sup>39</sup> *ibid*, page 63

<sup>40</sup> *ibid*, page 26

<sup>41</sup> *ibid*, page 61

<sup>42</sup> *ibid*, page 53

<sup>43</sup> *ibid*, pages 28 – 29 and Submission No. 13, page 3

3.51 Another witness pointed out that, although the works are certified by a qualified site auditor, the auditor:

“...is not concerned with the process of remediation. He is only concerned with certifying that the soil is in a state that is fit for the zoning for which it is nominated”.<sup>44</sup>

3.52 When questioned on this issue, the auditor confirmed the existence of what he called “a regulatory gap” between the role of the site auditor, who signs off on sites, and the role of the Council and EPA, who control what will be done at the site. He stated that :

“There is not enough regulatory control, in my opinion, in terms of the works as they proceed...”.<sup>45</sup>

3.53 The auditor said that while he was satisfied with the characterisation of the site and the design of the remedial works, he believed that environmental controls during the execution of the works had

“... been questionable at times.”<sup>46</sup>

3.54 Reflecting upon these comments, the Chair stressed that an appropriate regulatory body should be responsible for monitoring the execution of works to ensure that proper health, safety and environmental controls are exercised.<sup>47</sup>

## Recommendation 2

**The Committee recommends that an appropriate regulatory body be given responsibility for monitoring the execution of contamination remediation works to ensure that proper health, safety and environmental controls are exercised.**

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<sup>44</sup> Appendix D, Official Transcript of Evidence, page 35

<sup>45</sup> *ibid*, page 60

<sup>46</sup> *ibid*, page 61

<sup>47</sup> *ibid*, page 62

## Groundwater Contamination

- 3.55 Several submissions mentioned that groundwater contamination at the site was yet to be addressed.<sup>48</sup>
- 3.56 The site auditor confirmed that groundwater contamination had been detected at the site. This had comprised some localised pollution near the underground fuel storage tanks, which was remediated, and an anomaly of dry-cleaning solvent, which had occurred intermittently over a six year period. Using innovative investigatory techniques, this anomaly was traced to a leaking sewer, which was carrying waste from a nearby dry-cleaning site. Having dealt with the anomaly, the site auditor was satisfied that all groundwater contamination issued at the site had been resolved.<sup>49</sup>

## Transparency of Remediation Process

- 3.57 Comments made in several submissions prompted the Committee to investigate the transparency of the remediation process, in terms of public access to information.<sup>50</sup>
- 3.58 A representative of the CEPU described difficulties in obtaining information about the works, stating that his organisation
- “...had to continually raise the issue of making residents aware of what was going to take place so that, when something did take place on site, those who were maybe of the Machiavellian ilk did not think there was some eleventh hour removal of some special contaminant that was buried on site...”<sup>51</sup>
- 3.59 When questioned, Defence responded that all relevant information was
- “...readily available if anybody wishes to inspect it.”<sup>52</sup>

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<sup>48</sup> Submission No. 5, page 2; Submission No. 13, page 3 and Submission No. 28, page 4

<sup>49</sup> Appendix D, Official Transcript of Evidence, page 58

<sup>50</sup> *ibid*, page 6

<sup>51</sup> *ibid*, page 29

<sup>52</sup> *ibid*, page 6

3.60 By way of elaboration, Defence stated that it had made information on contamination available to the community through a series of briefings; specifically to users of the Community Centre, the SOS Preschool and the Moverly Green Child Care Centre. Newsletters were distributed inviting residents to visit the site office, to view documentation and to obtain copies of the asbestos results summary. In addition, a catalogue of all project documentation relating to contamination assessment was provided to the NSW Labour Council.<sup>53</sup>

### Role of Site Auditor

3.61 Given the high level of concern regarding contamination at the redevelopment site, the Committee sought clarification of the role of the accredited auditor, who is responsible for certifying the suitability of the remediated land for residential use.

3.62 At the hearing, the site auditor detailed his 20 years' experience in the field and added that he was currently part of a national body working to develop national standards for asbestos in soil.<sup>54</sup>

3.63 The auditor explained that his work is carried out on behalf of both the planning agency and the NSW EPA. He stated that he is personally accountable for all the work he does and can go to jail for 6 years, or face fines in excess of \$137,000, for making false statements or breaching relevant legislation.<sup>55</sup>

3.64 The auditor elaborated that the normal process in relation to contaminated land is for the polluter to engage a consultant who investigates the site, prepares a report classifying the site's characteristics and develops and implements a remedial action plan. The consultant then undertakes validation testing to ensure that remediation has been effective and presents a final report. The auditor's role is to review the performance of each step in this process, which is controlled under the NSW *Contaminated Land Management Act 1997*.<sup>56</sup>

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<sup>53</sup> Appendix D, Official Transcript of Evidence, page 9

<sup>54</sup> *ibid*, page 56

<sup>55</sup> *ibid*, page 57

<sup>56</sup> *ibid*, pages 56 - 57

- 3.65 The auditor stated that if he is not satisfied with the integrity of the investigations and validation work, remediation and validation is continued until he is prepared to sign off.<sup>57</sup>

### **Independence of Site Auditor**

- 3.66 The CEPU expressed doubts at the independence of the site auditor, who is appointed by the NSW EPA, but paid by Defence. The union's view was that

“... someone who is completely financially independent of Defence and their principle contractor ought to oversight the work method procedures...”<sup>58</sup>

- 3.67 The auditor responded that this question was raised frequently, but assured the Committee that

“...the EPA are especially very aggressive about ensuring that there is no conflict of interest between the site auditor and any work that the auditor is carrying out.”<sup>59</sup>

- 3.68 The auditor described the remediation process as a ‘user pays system’, in which the polluter is responsible for the clean-up of the site. He highlighted the advantage of having polluters pay to correct the effects of flawed past practices.<sup>60</sup>

## **Environmental Issues**

### **Removal of Vegetation**

- 3.69 Several submissions from local residents criticised the removal of mature trees from the development site.<sup>61</sup> Committee members wished to know how much clearing had taken place and whether vegetation would be replanted following the remediation process.

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<sup>57</sup> Appendix D, Official Transcript of Evidence, page 60

<sup>58</sup> *ibid*, page 27

<sup>59</sup> *ibid*, page 63

<sup>60</sup> *ibid*, page 61

<sup>61</sup> See Submission Nos 5, 6, 7, 8, 9, 11, 28, 31 and 32

- 3.70 Defence responded that, while it attempted to minimise clearing, there was a need to remove some trees in order to access soil for remediation. Defence estimated that it had, to date, removed approximately 10 trees from the site.
- 3.71 The department added that landscaping would form part of any future development, in addition to the embellishment of the proposed Randwick Environmental Park.<sup>62</sup>

## The Wetlands

- 3.72 One submission received by the Committee expressed concern at the proposed development of a detention basin at the site, which will involve scooping out a natural ephemeral wetland.<sup>63</sup> A second witness echoed this view at the public hearing.<sup>64</sup>
- 3.73 When questioned on this issue by the Committee, a witness for the Council responded that the wetlands had been severely degraded over time, and that the proposed Randwick Environmental Park was a very positive aspect of the proposed work. The witness added that the proposal had been reviewed by local and State environmental departments in order to ensure that it was environmentally sound.<sup>65</sup>

## Ecologically Sustainable Development

### Development Design

- 3.74 Having inspected the site, Committee members wished to know why Defence had chosen to design the development on a grid pattern, and whether such a design was consistent with the principles of ecologically sustainable development (ESD).
- 3.75 Defence explained that elements of the previously existing grid pattern had been retained for heritage reasons, but added that

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<sup>62</sup> Appendix D, Official Transcript of Evidence, page 5

<sup>63</sup> Submission No. 8, page 4

<sup>64</sup> Appendix D, op cit, page 36

<sup>65</sup> *ibid*, page 53

modern urban planning techniques had been incorporated, in consultation with professional town planners and the Council.<sup>66</sup>

## Reuse of Materials

- 3.76 Defence highlighted its intention to recycle materials at the site as a further example of ESD principles in practice.
- 3.77 Defence informed the Committee that it intended to use decontaminated soil as fill material, and to re-use concrete from crushed slabs as road base.<sup>67</sup>

## Traffic Management

- 3.78 A local resident appearing before the Committee raised issues in relation to traffic management; in particular the nuisance occasioned to residents of Bundock Street as a result of the proposed new Oval Avenue intersection. The witness provided written and verbal evidence that amenity to nearby residents would be decreased by headlight glare, fumes and brake dust.<sup>68</sup>
- 3.79 When questioned on traffic management issues, the Council replied that it remained concerned that construction vehicles were using Bundock Street, rather than the larger thoroughfare Avoca Street, and would be seeking to address the issue through future developments applications.
- 3.80 Council reported that, in response to community concern, it had agreed with Defence upon a management plan to minimise the expected traffic impacts of the completed development.
- 3.81 Further, Council stated its intention to work with Defence to find the best possible solution to the headlight glare problem associated with the proposed new Bundock Street - Oval Avenue intersection.<sup>69</sup>

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<sup>66</sup> Appendix D, Official Transcript of Evidence, pages 4 - 5

<sup>67</sup> *ibid*, page 8

<sup>68</sup> *ibid*, page 33 and Submission Nos 6 and 28

<sup>69</sup> Appendix D, *op cit*, page 51

- 3.82 A lighting consultant's report referred to in one submission detailed possible solutions to the headlight glare issue<sup>70</sup>. Given that this evidence had been presented at the Land and Environment Court hearing in 2000, the Committee wondered why Defence had not adopted any of the suggested measures.
- 3.83 Defence explained that the report was only concerned with minimising headlight glare to properties on Bundock Street and had not taken account of all aspects of traffic management at the site, or the retention of the heritage grid pattern.<sup>71</sup>
- 3.84 Defence confirmed Council's statement that the two parties continued to work on the headlight glare problem, and suggested that this may be achieved by adjusting the angle of the ramp at which Oval Avenue meets the intersection.<sup>72</sup>

## Consultation

### Community Consultation

- 3.85 Two witnesses to the inquiry, both of whom had a long history of involvement with the Community Centre, were very pleased with level and extent of community consultation undertaken by Defence in relation to the proposed works<sup>73</sup>. However, this view was not shared by the majority of submittees.<sup>74</sup>
- 3.86 The CEPU representative, also a local resident, argued that consultation with those not involved with the Community Centre had not been as extensive as Defence claimed.<sup>75</sup> Another witness opined

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<sup>70</sup> Submission No. 6, Appendix A

<sup>71</sup> Appendix D, Official Transcript of Evidence, page 68

<sup>72</sup> *ibid*, page 69

<sup>73</sup> *ibid*, pages 14, 16 – 17 and 18 and Submission Number 2, page 1; Submission No. 3, page 4

<sup>74</sup> See Submission No. 6; Submission No. 11, pages 6 – 8; Submission No. 8, page 5; Submission No. 31, page 1; Submission No. 32, page 1

<sup>75</sup> Appendix D, *op cit*, page 24

that the approach taken by Defence's consultants was not genuinely consultative.<sup>76</sup>

3.87 Defence submitted that consultation with the community had been extensive, referring to public briefings, invitations to visit the site office, regular newsletters and a website that had been 'live' for some 18 months. Defence disputed a claim by one witness that the website contained no information and undertook to provide further details to the Committee following the hearing.<sup>77</sup>

3.88 The Defence spokesperson stated that the department had provided a number of avenues for consultation and information, but added that

“...in many cases people have not availed themselves of that information and have continued to be disappointed.”<sup>78</sup>

3.89 Defence stated that its decision not to adopt certain views offered by community members did not mean that those views had not been heard. It was the department's view that working with the Council, as the representative of the local community, was the key component of consultation.<sup>79</sup>

3.90 The Committee asked Defence to comment on the distribution of project newsletters to the local community. Defence tabled copies of nine bulletins distributed since November 2001. The spokesperson elaborated that the first newsletter, distributed in July 1996, had been delivered to 15,000 households, but that distribution of subsequent issues had been confined to the 500 households in the streets immediately adjacent to the barracks site.<sup>80</sup> Defence added that, in addition to the regular mail-out, 20 to 30 copies are provided to Council, and copies are mailed directly to local precinct committees and to the groups using the community centre.

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<sup>76</sup> Appendix D, Official Transcript of Evidence, page 44

<sup>77</sup> *ibid*, page 67

<sup>78</sup> *ibid*, page 68

<sup>79</sup> *ibid*, page 67

<sup>80</sup> *ibid*, page 71 - 72

## Consultation with Trade Unions

- 3.91 In view of the CEPU's criticisms of Defence's consultation, Committee members asked the CEPU representative to describe what union consultation, if any, had taken place.<sup>81</sup>
- 3.92 The CEPU witness explained that the NSW Trades and Labour Council had approached Defence after the local community had written requesting its support. The Labour Council's occupational health and safety officer was subsequently involved in discussions with Defence and its consultants.
- 3.93 The CEPU attested further that unions representing workers on the site had organised for an independent environmental consultant to oversee reports from Defence's consultants, and that union officials had ensured that only appropriately licensed contractors were used in the removal of asbestos cladding.<sup>82</sup>
- 3.94 Defence stated that it had consulted with the Labour Council of NSW about standard labour issues, but that no major concerns had been raised by either the Labour Council or the Construction Forestry Mining Energy Union (CFMEU), which has the largest membership at the site.<sup>83</sup>

## Occupational Health and Safety

- 3.95 Written and oral evidence provided by the CEPU expressed fears that contamination at the Randwick Barracks site represents a health risk to both workers at the site and nearby residents.<sup>84</sup>
- 3.96 The CEPU maintained that, over the preceding year, there had been
- "... a tapering off in relation to the responsibility of the principal contractor and client in some of the assurances, guidelines and work organisation that had been negotiated

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<sup>81</sup> Appendix D, Official Transcript of Evidence, page 24

<sup>82</sup> *ibid*, page 25

<sup>83</sup> *ibid*, pages 67 - 68

<sup>84</sup> *ibid*, page 22 and Submission No. 13

by the unions involved in the infrastructure remediation and construction.”<sup>85</sup>

3.97 The Committee stated its requirement that

“...the removal or remediation of toxic contaminants is done properly in a way that will ensure the safety of both workers on site and residents in the area....And also of future users.”<sup>86</sup>

## **Commitments to Council**

3.98 According to Defence’s evidence, a major objective of the ‘interim’ works is to meet commitments made to the Randwick City Council.<sup>87</sup>

3.99 A supplementary submission from Council noted that these commitments – namely a new community centre and the embellishment of the Randwick Environmental Park - had not been delivered by the agreed deadline of November 2003.<sup>88</sup>

3.100 The Council argued that, given the effluxion of time since the finalisation of the agreement, the budgets for the projects should be augmented to compensate for the delay, and to ensure that all elements detailed in the Master Plan and development applications would be completed as committed. Council suggested that \$50,000 be added to the Community Centre budget and that an additional \$300,000 - \$500,000 be provided for the environmental park.<sup>89</sup>

3.101 At the hearing, Council stressed that a program of works had been agreed and that the figures established had been estimates of the funding needed to complete the works.<sup>90</sup> A Council witness expressed concern that the passage of time since Defence made its financial commitments to Council

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<sup>85</sup> Appendix D, Official Transcript of Evidence, page 22

<sup>86</sup> *ibid*, page 25

<sup>87</sup> Submission No. 27, paragraphs 5 and 7

<sup>88</sup> Submission No. 30, pages 4 - 5

<sup>89</sup> Submission No. 30, pages 6 - 7

<sup>90</sup> Appendix D, *op cit*, page 54

“...means that to some extent the nominal values have lost their relevance.”<sup>91</sup>

3.102 The Committee asked Council what action it intended to take if Defence failed to deliver the works as committed. A witness for Council responded that, in such a case, he would

“...be recommending to Council that it give serious consideration to not accepting the handover of the environmental park.”<sup>92</sup>

3.103 Having considered the Council’s evidence, the Committee was curious why a rise and fall clause had not been part of the original agreement. The Council explained that:

“...given the cooperation that the Council gave the Commonwealth right through this process, there would have been a reasonable expectation that a bit of give and take might have been okay...”.<sup>93</sup>

3.104 The Committee subsequently questioned Defence on its position, in view of the delay in the delivery of the projects and the Council’s request for supplementary funding. Defence responded that, although it had failed to meet the timing requirements, it intended to satisfy the remaining provisions of the agreement.

3.105 In respect of the Community facility, Defence stated that there was contingency funding available, which would be value-managed to meet as many of the Council’s specifications as possible.

3.106 It was Defence’s view, however, that the agreement in relation to the environmental park was different. The department reaffirmed its original intention to embellish the park to the value of \$1 million, and to provide \$2.5 for maintenance over the next 19 years.

3.107 Defence stated that the budget for the ‘interim works’ was capped at \$8.75 million, and did not allow for any further financial commitment to Council. Defence added that there may, however, be some funding flexibility in the packaging of the remaining works.<sup>94</sup>

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<sup>91</sup> Appendix D, Official Transcript of Evidence, page 51

<sup>92</sup> *ibid*, page 54

<sup>93</sup> *ibid*, page 55

<sup>94</sup> Appendix D, Official Transcript of Evidence, page 70

## SOS Preschool Partition Wall

- 3.108 The SOS Preschool, an occupant of the proposed new community centre, requested that the Committee resolve the matter of a retractable partition wall, costed at \$20,000, which had been omitted from the plans for the new facility.<sup>95</sup>
- 3.109 At the public hearing, the preschool Director underscored the importance of such a wall in the education and management of 35 young children. The witness stated that she had requested the wall at a meeting with the developers in July 2002, but discovered at a subsequent meeting in December 2003 that the wall had not been included in the final design.
- 3.110 The Director explained that, as an independent, non-profit organisation, the Preschool could not itself afford to fit such a partition. An approach to the Council had also been unsuccessful.
- 3.111 When questioned on the matter by the Committee, Council expressed the hope that
- “...the Committee and the Commonwealth can see the way clear to supplement the allocation in order to fully sign off on those commitments.”<sup>96</sup>
- 3.112 Wishing to resolve the preschool’s problem, the Committee asked if Defence could fund the retractable partition. The department responded that it would be consulting with Council to determine priorities for expenditure of the contingency funds available for the project, and would be sympathetic to the preschool’s needs should the Council agree that the partition wall was a high priority.<sup>97</sup>
- 3.113 The Committee requested that Defence keep it apprised of its arrangements with the Council regarding funding priorities and expenditure for the community facility.
- 3.114 Defence later wrote to the Committee confirming that Defence, in consultation with Council, had approved the construction of the retractable partition wall.<sup>98</sup>

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<sup>95</sup> Submission No. 33

<sup>96</sup> Appendix D, op cit, page 52

<sup>97</sup> *ibid*, page 69

<sup>98</sup> letter from Acting Director General, IADB, 6 May 2004

## Land and Environment Court Case

- 3.115 The Committee also sought to learn the particulars of the Land and Environment Court case relating to the development proposal, which took place between Defence and the Council in 2000. In particular, the Committee wished to know:
- the reason for the court case;
  - details of any attempts to negotiate a solution to the dispute before pursuing litigation; and
  - the cost to Defence of the legal action.<sup>99</sup>
- 3.116 As the Defence witnesses present at the hearing had not been directly involved in the matter, Defence undertook to research the matter and provide details at a later date.

## Conclusion

- 3.117 Reports of the Public Works Committee typically conclude with a recommendation that the works under investigation proceed at the estimated cost. On this occasion, however, the Committee is of the view that such a recommendation would be redundant as the ‘interim’ works described by Defence have already commenced.
- 3.118 The Committee does, however, desire that the remaining portion of the works be brought before it for full consideration at the earliest opportunity.

### Recommendation 3

**The Committee recommends that the remaining portion of the works referred to it by the Department of Defence in December 2002 be subject to a thorough investigation by the Committee at the earliest opportunity and prior to the commencement of any further work elements.**

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<sup>99</sup> Appendix D, Official Transcript of Evidence, pages 70 - 71

Hon Judi Moylan MP

Chair

26 May 2004