



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE ON PUBLIC WORKS

**Reference: Remediation of Defence land at Neutral Bay, Sydney**

WEDNESDAY, 25 OCTOBER 2000

SYDNEY

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**JOINT COMMITTEE ON PUBLIC WORKS**

**Wednesday, 25 October 2000**

**Members:** Mrs Moylan (*Chair*), Mrs Crosio (*Vice-Chair*), Senators Calvert, Ferguson and Murphy and Mr Forrest, Mr Hollis, Mr Lindsay and Mr Ripoll

**Senators and members in attendance:** Senator Murphy and Mr Lindsay and Mrs Moylan

**Terms of reference for the inquiry:**

Remediation of Defence land at Neutral Bay, Sydney

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**Committee met at 1.05 p.m.**

**BAIN, Mr Ross, Acting Head, Defence Estate Organisation, Department of Defence**

**BLACKLEY, Mr Bernard, Director, Sydney Property Disposal Unit, Defence Estate Organisation, Department of Defence**

**MOSS, Mr Douglas William, Manager, Operations and Development, Thiess Environmental Services**

**CHAIR**—I declare open this public hearing into the proposed remediation of Defence land at Neutral Bay. This project was referred to the Public Works Committee on 17 August 2000, for consideration and report to the parliament. In accordance with subsection 17(3) of the Public Works Committee Act 1969:

(3) In considering and reporting on a public work, the Committee shall have regard to:

- (a) the stated purpose of the work and its suitability for that purpose;
- (b) the necessity for, or the advisability of, carrying out the work;
- (c) the most effective use that can be made, in the carrying out of the work, of the moneys to be expended on the work;
- (d) where the work purports to be of a revenue-producing character, the amount of revenue that it may reasonably be expected to produce; and
- (e) the present and prospective public value of the work.

This morning the committee received a briefing and inspected the site. The committee will now hear evidence from the Department of Defence. The committee has received a submission from the Department of Defence dated July 2000. Do you wish to propose any amendment to that submission?

**Mr Bain**—No.

**CHAIR**—It is proposed that the submission dated July 2000 be received, taken as read and incorporated in the transcript of evidence. Do members have any objections? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—I invite the Department of Defence to give a short statement in support of their submission.

**Mr Bain**—The Department of Defence proposes to take environmental remediation of the former submarine base at Neutral Bay in Sydney. The 1.8-hectare site was used as a gasworks from 1876 until gas production ceased in 1931. The Commonwealth acquired the site in 1942 for naval operations. In 1967 it was commissioned as HMAS *Platypus*, the eastern Australian base for the Oberon class submarines, also accommodating a submarine school and the Royal Australian Navy torpedo maintenance engineering facility. In 1995, in anticipation of the introduction into service of the new Collins class submarines, to be home based in Western Australia, the site was declared surplus to Defence requirements. Berthing for the Collins class submarines in Sydney will be provided at Garden Island. HMAS *Platypus* continued operations until decommissioned in May 1999.

From 1995 until earlier this year, contamination testing of the site was undertaken in parallel with comprehensive land use planning studies to determine a future use of the property once it became vacant. The committee is aware that Defence has responsibility for the properties under its control. When properties are declared surplus to requirements, Defence seeks to secure the relevant approvals for a future land use prior to disposal. By adding value in this way, it seeks to optimise the revenue return from a future sale. That process was followed here, and culminated in October 1998 with the New South Wales Land and Environment Court approving a future residential land use for the site. A condition of approval was that development of the land be substantially commenced within five years; that is, by October 2003. Investigations have confirmed that the site is highly contaminated, primarily from its use as a gasworks. That fact was confirmed at several public meetings convened by North Sydney Council in 1996, at the outset of the land use planning for the site.

Remediation of that contamination is intended to mitigate Commonwealth environmental liability and to optimise the revenue to the Commonwealth from the sale of the site. It will deliver the land to the environmental standard set out in the New South Wales Contaminated Land Management Act and be certified by an independent auditor as being suitable for the approved future land use. Earlier this year Defence engaged a remediation contractor, Thiess Environmental Services, to design the remediation solution for the site. The outcome for that design is the proposal contained within the department's statement of evidence to the committee. The proposed works have been designed to reflect the highest environmental standards of the Commonwealth. The essential components of the works include demolition of all buildings and structures except for some heritage items, excavation, backfilling and compaction of clean fill material, treatment and disposal of contaminated material, and treatment of contaminated ground water. The out-turn cost of the proposed works is \$16.5 million. Subject to the committee's consideration, the works would commence early in 2001, with the objective of having the works completed by December 2002. Completing the works by this date will satisfy the condition imposed by the Land and Environment Court, thus enabling the site audit statement to be issued and the site to be sold in time for the purchaser to commence development prior to October 2003.

**CHAIR**—Have any actions been brought against the Commonwealth relating to contamination and/or remediation of the HMAS *Platypus* site? Would there be less exposure for the Commonwealth in terms of any future liability if the site was not remediated?

**Mr Blackley**—There have been no approaches to the government or to Defence in regard to the liability on this site. However, the level of contamination on the site is fairly well contained at the present time. At this stage, it would be most unlikely that that would arise. In regard to your second question, it stands to reason that if the site is remediated the risk to environmental standards, human health and safety will be considerably reduced.

**CHAIR**—So the risk of any future liability to human health would actually reduce, in your view?

**Mr Blackley**—Yes. It is unlikely that the Commonwealth would ever completely free itself of liability. However, as I said, it stands to reason that, if the remediation to the standard that the submission is proposing is undertaken, that liability would be considerably mitigated.

**Mr LINDSAY**—In the information you have given us, you talk about things like heavy metals, cyanide compounds and whatever, and everybody says, ‘Gee!’ We have seen a lot of talk about tar and so on. There is tar on every roadway here in the city. Why are we worried about tar on the site, and so on?

**Mr Moss**—The tar is an issue from the point of view of exposure of humans. In its current form, the site would be unsuitable for any land use without some form of remediation. The guidelines that establish the level of remediation required have been set down by the New South Wales EPA. The presence of tar is one of the drivers to the clean-up, in that it presents both a human health risk and also an ecological risk in that it results in contamination of ground water which then has the potential to migrate from the site. If the site were to be developed or were to remain as a submarine base, it is our opinion that there would still not be a significant effort made in terms of the clean-up of the site—firstly, to protect the environment from the ground water contamination. Secondly, there may need to be works done from a human health point of view as well.

**Mr LINDSAY**—In other developments where sites have been cleaned up, some material has been retained on site and capped. Is that possible on this site?

**Mr Moss**—It is technically possible. In our opinion it is probably not advisable given the proximity of the site to the harbour. Clearly—

**Mr LINDSAY**—The site we saw this morning is on the harbour?

**Mr Moss**—it is entirely possible to do it that way. The other consideration, aside from the ecological risks which such an approach brings, is the ‘cost’ of the land. At this site, the land is obviously quite valuable. To contain materials on the site would sterilise large parts of the site and so there would be a very significant cost to the Commonwealth because the return which you would be able to obtain via the sale of the property would be significantly reduced.

**Mr LINDSAY**—It is in the Commonwealth’s interest not to accept that line of remediation?

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**Mr Moss**—That is correct. That is the advice.

**Mr Blackley**—As we said in the submission, the primary objective here is for the Commonwealth to mitigate any future environmental liability. It also wants to clean up a property in an environmentally unsafe condition. But, equally, I should tell the committee that while the Commonwealth wants to remediate the site it does not want to retain that ongoing liability. It wants to sell the site, and the government is keen to optimise the revenue from the sale of the site.

**Mr LINDSAY**—How did you select an auditor for this particular project?

**Mr Blackley**—Defence has for a number of years had what is called an environmental panel—a panel of environmental experts. We call for registrations of interest and tenders from companies off that panel to be appointed.

**Mr LINDSAY**—That is a person off that panel?

**Mr Blackley**—Yes.

**Mr LINDSAY**—The auditor made a number of recommendations. Do you accept all of the recommendations, or are there any that you do not accept?

**Mr Blackley**—The strength of having an auditor is the fact that he is entirely independent, under the New South Wales Contaminated Land Management Act. At the end of the day, we are relying on the auditor to produce a site audit statement that certifies that the site is environmentally suitable for its future land use. So in most respects, if the environmental auditor asks a question, it is usually a fairly genuine question and we go to every length to try are explain it.

**Mr LINDSAY**—I am not sure if we are on the same wavelength. The audit report I am looking at talked about things like the inclusion of GST charges. Have I got the wrong auditor?

**Mr Blackley**—I think we have.

**Mr LINDSAY**—Let us get on with the one I am talking about.

**Mr Blackley**—Are you referring to the cost audit report?

**Mr LINDSAY**—Yes.

**Mr Blackley**—To arrive at the out-turn cost of the works of \$16.5 million that we have identified in the submission—

**Mr LINDSAY**—The question was: do you accept the recommendations the auditor has made to you?

**Mr Blackley**—Yes.



**Mr LINDSAY**—All of the recommendations?

**Mr Blackley**—I would have to take that on notice. It has been some time since I have actually looked at them.

**Mr LINDSAY**—The particular item I refer to is GST charges. The auditor says that an additional allowance will need to be included should the project budget be required to include GST costs. Is it to be my understanding that the project does not have to account for GST costs?

**Mr Moss**—The \$16.5 million does not include GST costs.

**Mr LINDSAY**—But does not need to?

**Mr Moss**—My understanding is that the Commonwealth will be exempt from them.

**Mr LINDSAY**—It is refunded?

**Mr Moss**—That is correct.

**CHAIR**—As a business operation, you would get a rebate on any GST that was charged, so it cancels itself out.

**Mr Moss**—Yes, I would have thought so.

**Mr Bain**—I thought that was consistent with the way that the recent RAAF Edinburgh proposal was dealt with.

**CHAIR**—That is correct.

**Mr LINDSAY**—For the record, it came up in the material here that some of the residents suggested—and the auditor looked at this—hauling materials off site by barge rather than by road. Do you have any evidence on what the cost would be to remove material from the site by barge rather than by road?

**Mr Moss**—We have looked at that. I do not have the figures off the top of my head. They would be significant.

**Mr LINDSAY**—A percentage increase?

**Mr Moss**—I would think we would be looking at several million dollars extra over cost on the project. More importantly, though, from a technical point of view why we have recommended to Defence to go with trucking rather than barging is simply the environmental risks which a barging operation entails, particularly when you are dealing with contaminated materials of the type that are found on this site.

If we were to barge, we would need to barge the materials to White Bay, say, or some other location, unload the materials at that location and then put them back onto trucks for transport to

landfill. So we would still have the trucking component. We would have simply have added in a quite risky process in that contaminated materials would be being loaded onto barges—which would be over the water. It would then be transported via water and then unloaded next to the water as well. We see that there are significant risks to the Commonwealth and to the environment from such an operation.

**CHAIR**—You have based the cost of remediation on your fairly extensive investigative data on the quantity of contaminated material that has to be removed from the site. Can you explain to the committee why your proposed costs are based on an increase of about 160 per cent?

**Mr Blackley**—I am not exactly sure where the 160 per cent has come from. We have three elements to our cost. One is a normal construction contingency that one would add to any capital facility project. In addition to that, there are a number of additional contingency items that we have included in the out-turn cost in the event that they become necessary. It is my understanding that that percentage is somewhere closer to 90 per cent than 160 per cent.

**CHAIR**—I see. It reads:

A qualitative comparison of the quantities shows the proposed Out-turn Cost of the project is conservatively based on an increase of 160% in the quantity of contaminated material—

so it is the contaminated material, not actually the cost.

**Mr Moss**—The prime focus of the allowances which you talk of relates to contamination which may be present in the rock mass on the site. It comes in two parts: the rock which is to be excavated from the cliff face—which is to my right, here—and also the rock which exists on the lower part of the site around the known and the suspected tar pits. We have brought a lot of experience to bear from other gasworks sites undertaken by ourselves and others in Sydney. Historically, it has been very difficult to identify the full extent of contamination within sandstone bedrock. The contaminants tend to migrate preferentially along pathways, along bedding partings and joints and other fractures. So from a sampling point of view it is very much a difficult thing to identify the full extent of the contamination. What we have done is to look at the history of the site and the experience from other sites and to put a ‘worst case’ picture on the extent of that contamination which may possibly occur. That is the largest part of the discrepancy between the ‘best case’ estimate, which is the \$8½ million, and the out-turn cost, being the \$16.5 million.

**CHAIR**—Can you tell the committee what other sites you have compared and what was the source of contamination at those other sites?

**Mr Moss**—The most recent and probably the most relevant is the AGL Mortlake Gasworks. This is a very large gasworks; in fact, it is the largest gasworks in the Southern Hemisphere, I understand. It is about 52 hectares and is on the foreshore of Sydney Harbour, at Concord. Experience there has shown that the contaminants present on gasworks sites, principally the tars and the phenol type materials, have a great propensity to migrate through the rock mass along these partings, particularly around and in the vicinity of underground structures such as tar pits, tar tanks, gas holders and the like. We have some evidence from some of the boreholes that have been drilled at this site that they have in fact encountered tar at depth. We have taken a

worst-case view on that and extrapolated it to other parts of the site to come up with those estimates. Other gasworks sites where rock has been a problem include work we have undertaken in Melbourne, at the Port Melbourne Gasworks. I understand there was some significant rock work done at the Oyster Cove Gasworks in Sydney. The work was not done by Theiss but by others. We also did some rock excavation on the Little Manly Point Gasworks many years ago for the same sorts of concerns.

**Senator MURPHY**—I would like to continue on the cost aspects of the overall project. In terms of the greater cost—that is, the unknown factors—can you tell the committee at what intervals you expect to be in a position to report that you know there will be a significant increase in the cost, particularly as it relates to contaminated rock, soils and/or water?

**Mr Moss**—This would be done as a two-step process. Once the demolition on the site is complete we will have access to greater areas of the site, in particular beneath the administration building. We will then be able to go in and do some more drilling at the commencement of the remediation works. So we will be able to have a better handle, if you like, on the extent of contamination in that area. Following that, during the course of the remediation works, it is a requirement on Theiss that we report to Defence monthly with a detailed cost estimate and forecast for the cost of the works as part of our project reporting structure. Those reports will be made available on a monthly basis to Defence. I am not exactly certain as to what Defence proposes as far as going back to the committee, but I think I can safely say that we would be happy to advise the committee at any juncture on the progress of those reports and budgets.

**Senator MURPHY**—A forecast of what you are doing; ahead of your next stage?

**Mr Moss**—Yes.

**Senator MURPHY**—Will you forecast a price for that?

**Mr Moss**—Yes. We will work from our budget—the budget being the \$16.5 million—and we will adjust that during the course of the works as the ground is uncovered and validated. So we will treat the \$16.5 million as the maximum cost of the job, and we will be looking to make savings to that at every turn that we possibly can.

**Senator MURPHY**—With regard to the contamination and the various things that have been found or are known, there is no specific level. We say there are elevated levels or unacceptable levels, but it might be useful for us to understand if there is an acceptable level and whether you take that into account when you are making your update and forecast on the costings.

**Mr Moss**—Certainly. The levels which are acceptable have been dictated by the New South Wales EPA and they have been agreed to in this case by the site auditor. They are criteria which were established by the National Environmental Health Forum, which was a forum, I understand, of the various state governments. They are risk based numbers; in other words, they come up for varying land use scenarios and there are varying concentrations of contaminants which would be acceptable as a maximum.

**Senator MURPHY**—There is a formula at the moment. As you go through your forecast, does the auditor become involved in the process? When you do further test drilling, does the

auditor then check the work and give you a report to say, 'We will accept this soil, it can be reused, but this can't'? Is that the process? Those reports will be given to Defence?

**Mr Moss**—Yes. The auditor will be involved on a monthly basis. We will be seeking progressive sign-off of the site as the works progress across the site. We do not want to get to the end of the project and then have surprises. The auditor is going to be involved on a day-to-day basis providing advice on the extent of the work that we have to perform. So there will be no surprises by the end of the project—we should have a full sign-off of the site by the time the works are completed.

**Senator MURPHY**—I want to go to the EPA submission, which we have recently received. There are a couple of issues that they raise in that submission which I raised with you privately. Could you respond to those, and in particular the issue that relates to Defence's use of this site and any contamination that Defence may have caused? There are allegations contained within the EPA submission that there has been some contamination caused by Defence.

**Mr Blackley**—Firstly, could I just address some general points in regard to the submission. Firstly, it quotes a chronology which sets down the relationship and the meetings we have had with the EPA, which is very incomplete and misrepresents the situation of the dialogue that Defence has had with the EPA, both formally and informally. They have been to our premises on many occasions, dating back to 1996.

**Senator MURPHY**—Were they formal invitations in writing?

**Mr Blackley**—Yes. I have got a number of papers which I can leave with the committee, but I have got here a copy of a letter that I wrote to the then director-general of the EPA in February 1998 which established that over the past 12 months several briefings have been arranged with their staff, and I have named the staff and the circumstances of those. They have itemised the status of our contamination knowledge of the site at that time. It is disappointing that that is not reflected in their submission. In fact, they say in the submission at one point that the Commonwealth has been somewhat reluctant, I think are the words, to engage in dialogue. That could not be further from the truth.

Extending that across the submission, I have got concerns about a number of comments they have made, principally because we have sought, as you will see in this letter and a range of letters I am actually going to table, input from them as to various levels and what they thought about things. One of the issues that immediately comes to mind is that when the Navy was still here there was an ongoing concern that the Navy members may have been affected by some of the contamination. For that reason, we had undertaken an air monitoring program. We asked them what they thought the most appropriate assessment was to do. Without advice, we did the air monitoring anyway. We have forwarded that to the EPA. That is an example where they misrepresent a situation where Defence has been very proactive in its dialogue with them.

**Senator MURPHY**—Did they respond to that?

**Mr Blackley**—No.

**CHAIR**—I think it is important for those here today to understand that the submission from the EPA has only just been received by the committee today. It was forwarded to my Canberra office probably in the last week while parliament has been up and has not therefore been received by me or the secretariat and therefore it has not been distributed to people who would be interested in that submission. Also, you did mention that you were prepared to table the correspondence, and I think that would be a very useful thing to do, if you think that is appropriate.

**Mr Blackley**—They raise a number of issues in regard to the application of the New South Wales Contaminated Land Management Act. Presently, we are looking at the implications of that act. We have not yet come to a conclusive view. In particular, Defence is examining any cost recovery which may be available under that act. However, as I said, Defence has not come to a view at this stage. We are still examining the proposal. All I would do at this stage is raise some concerns that it does not accurately reflect our relationship.

**Senator MURPHY**—I appreciate that. We will take that matter up with them in due course.

**Mr Blackley**—The second part of your question was in regard to contamination that may or may not have been caused by the Navy when they were here. There is an inference right at the end of the submission which suggests that there is a lot of contamination which was Defence related or Defence caused. The only contamination that I am aware of is underground storage tanks on the site, which were decommissioned when the base was decommissioned. They are now all empty. They have not been removed. It is intended to remove those during the remediation program. As to the oblique suggestion that there is a range of other activities and chemicals that were being used on the site during the Navy occupation, I am not aware of that.

**Senator MURPHY**—Could you check that with Defence, so that we have an accurate picture from Defence's point of view as to the claim by the EPA?

**Mr Blackley**—Certainly. I will not be able to do that before we come back this afternoon.

**Senator MURPHY**—That is okay. In terms of the final certification of the site, you say at page 7.16 that:

The CLM Act established a system for managing site contamination throughout NSW.

There is another matter which they raise in their submission. I assume you will seek certification in compliance with the act. Is that the intention?

**Mr Blackley**—The auditor is engaged under the act. Hopefully, he will certify the site to the standard that Defence will require.

**Senator MURPHY**—What role does the EPA play in that?

**Mr Moss**—In practice, the EPA plays no role during the course of the works, except to police any off-site impact of the works—odours or dust going off the site, those sorts of things. During the course of the works, the EPA has effectively delegated their authority in terms of certifying the site as suitable for its intended land use to the auditor. The EPA has a body of 15 or 20

persons who have been certified by them as accredited land auditors. Mr Nyland is one of those persons.

**Senator MURPHY**—And the EPA gives no direction to Mr Nyland with respect to the CLM Act?

**Mr Moss**—My understanding is that the auditor follows published guidelines which have been set down by the New South Wales EPA. They are published. We all understand those guidelines and I understand that he will comply with those guidelines.

**Senator MURPHY**—There is the other aspect that they raise with external—

**Mr Moss**—In so far as off-site impacts are concerned?

**Senator MURPHY**—Yes.

**Mr Moss**—Off-site impacts are something where the auditor in determining whether the site is a significant risk of harm—which is a term used to describe a site which has off-site impacts which come from the site—then gives the EPA responsibility for that activity, but not for determining whether a site is suitable for its intended land use.

**Mr Blackley**—At the present time, we are, and have been for a number of years, negotiating and discussing the remediation project with the federal Department of the Environment and Heritage and presently the project is being considered under the EPIP Act, the federal legislation.

**Senator MURPHY**—That is very important clarification in terms of the two roles, thank you.

**CHAIR**—I have another question. Clearly, the works methodology is of vital importance to the community of people living in this area in terms of public safety and impact on lifestyle during the course of this work—things like noise, dust and pollutants, and safety issues of course. Can you outline here for us the steps that you as a contractor are taking to minimise the impact on the community?

**Mr Moss**—I might just start by looking at where we see potentially some of the adverse impacts coming from. From our experience probably the prime concern relates to odour coming from the site, particularly from tarry materials of the type found in the tar pits. It is a very pungent odour. From my experience at Mortlake and other sites it does not have a human health risk associated with it, but it certainly is something which is very noticeable. So there will be a lot of effort tailored to controlling the escape of odours from the site.

The prime mechanism for odour control will be that we will on the lower part of the site where the tar pits exist construct a steel shed, which will be in two parts. It will in fact cover the entire excavation area at any point in time, so any material excavated from the lower part of the site, where we know there are tars present in large quantities, will be excavated under cover. Basically this will be a shed that will be about 100 metres long—so about the full length of the wharf—and about 30 metres wide, so it will extend from the wharf back this way for 30 metres.

We will go into that shed, it will be fully sealed, we will do the excavation of the materials and load those materials out beneath the cover. There will be a vacuum extraction system on that enclosure, drawing fresh air into the enclosure and contaminated air out. It will be put through a carbon filtration system. Once the excavation is complete adjacent the foreshore we will then move the shed back towards the cutting and then repeat the process.

Any trucks that depart the site will be fully sealed and tarped. There will be no wet material taken from the site. Any material which is recovered from beneath the water table will be stockpiled within the enclosure and allowed to drain. So we will be avoiding any leakage from the trucks of this odorous material. The trucks will be tarped, as I have just said, to seal in the materials which are being carried.

Other environmental controls include that all of the trucks will go through an automated wheel wash system at the boundary of the site. The access is proposed back out through the cutting to High Street. All of the trucks will be inspected at that point. There will be some quality control procedures in place there whereby the gate controller will inspect the vehicles and make sure that they are thoroughly cleaned and thoroughly sealed.

In terms of stormwater controls we have made allowances for the likes of silt fences, swales, hay bales, salitation ponds and the like, to control any of the run-off from the site. We will have a sewer discharge system and a water storage system in place for materials which cannot go into the sewer. So we will be managing contaminated waters properly.

In terms of dust control all of the excavation activities will be done beneath a spray system. We propose to construct a pipe with spray nozzles along the full length of the boundary of the site to direct sprays back onto the site. We will also then have water carts and the like to direct water at the excavation face to minimise any dust emissions.

There will be noise coming from the site. I think that is unavoidable to a certain extent. The New South Wales EPA has set down the maximum level of noise which can be generated and also the duration of that noise. We will comply with those. This will entail potentially improving on the muffler systems and the like on the plant on the site and adopting excavation practices which try to minimise the amount of noise. This is particularly important with regard to excavation of the rock on the site.

**CHAIR**—What about vibration?

**Mr Moss**—We will again adopt methods as far as practicable to minimise vibration. There will be vibration, and we propose to monitor the vibration at the boundary of our site to ensure that it remains within safe limits. On that issue, we propose to undertake a dilapidation survey, prior to construction starting, of all the adjoining properties to establish their current condition and to ensure that no damage is caused to them. There will then be monitoring on the boundary of the site during the works.

**CHAIR**—What methodology will you adopt to minimise vibration during the work? What techniques are available to you?

**Mr Moss**—It relates primarily to the method of excavation, particularly of the rock. We have experience in doing large rock excavations in the city, for example, and also adjacent residential properties. It is more to do with the size of the plant, the speed at which the work is undertaken and whether, for example, you take the rock out with a hammer or a bulldozer. They each require a different response. We can tailor the work on a day-to-day basis to suit the results of the monitoring which we are undertaking. I guess the scale of the work is such that there is going to be inconvenience to some of the local people, and I think it is unavoidable. We will do everything that is possible to mitigate those impacts. Our project costing has taken all those things into account as far as we possibly can.

**CHAIR**—Do you have plans to manage the increased traffic that will occur from trucking the material off site and on site?

**Mr Moss**—That is correct. There has been a traffic study undertaken by Chris Hallam and Associates. Chris Hallam is a transport specialist. He has come up with a number of alternative scenarios for managing traffic in High Street. Off the top of my head, I think the preferred system involves signage and radio transmission between trucks. The point is that we do not want trucks passing in the street. I think other traffic controls are also proposed, but they escape me at this point in time.

**CHAIR**—But you have a specialist person to particularly manage that?

**Mr Moss**—That is correct. They will advise us on that.

**CHAIR**—This also leads me into another question about people living in this area and the management of it from that perspective. In the submission, you said that as one of the objectives of the proposed public consultation process you will establish mechanisms for feedback from the community. Later on, you provided to the committee some objectives, one of which was a complaint response mechanism in order that complaints concerning the work can be effectively and efficiently addressed. Are you doing both of these?

**Mr Blackley**—Yes.

**CHAIR**—On page 10 of the notice of intention for demolition and remediation of the former Platypus site, you say the project manager will be ‘the first point of contact for community matters’. Can you direct me to the section of the contract between you and the contractors that outlines that responsibility?

**Mr Blackley**—Can I take that on notice and advise you?

**CHAIR**—Yes. Can you outline for us today precisely how you are going to manage the community consultation process and complaint response mechanism? If the first point of contact is going to be the contractors, Thiess, what will Defence’s role be in also making sure that that system is adequately put in place and works to the community’s satisfaction?

**Mr Blackley**—Perhaps I will leave that until we come back later this afternoon.



**Mr LINDSAY**—To those who are attending the public inquiry today, could I have an indication of who are local people, please? Thank you very much. Thank you for your interest today. Gentlemen, in relation to legal issues, do you accept the Minter Ellison advice with respect to future liability that has been given?

**Mr Blackley**—Yes, Mr Lindsay.

**Mr LINDSAY**—It would appear that legal liability would be lessened if you dispose of the site without remediation. Do you agree?

**Mr Blackley**—Would the liability be lessened?

**Mr LINDSAY**—Would legal liability be lessened if you dispose of the site without remediation?

**CHAIR**—I did actually ask that question at the beginning—why remediate?

**Mr Blackley**—The purpose of the remediation is to remove as much as possible the ongoing legal environmental liability that the Commonwealth has from its ownership of the site.

**Mr LINDSAY**—Okay. Would the Commonwealth be liable for actions relating to loss of amenity during the remediation process?

**Mr Blackley**—Yes. If there are impacts off-site, we will be liable for them.

**Mr LINDSAY**—In relation to the risk to the Commonwealth of this project, other members of the committee who are not here today have expressed concern which I have spoken to you about in the private briefing. Would you please, for the public record, give evidence in relation to what the risk might be in the sense that it is my understanding the majority of the site is going to be rehabilitated, that it is not going to be like other projects we have seen previously? In fact, because most of the site is being remediated, there is not going to be a significant risk over and above what you have put to us in this project. Could you just put that on the public record, please? You understand what I am asking you?

**Mr Blackley**—Yes. Perhaps I could answer that in the context of other Defence remediation projects which have been commenced in times gone by when the environmental assessment process has not been as rigorous as it is today. I must say, Mr Lindsay, it is easy to talk in hindsight but, with some previous projects, remediation started in advance of knowing what the approved land use was. I would suggest that any state of Australia or any country in the world that does that is bound to be ending up wearing a lot of risk. Without knowing the future intended purpose of the land which you are remediating, it is obviously raising a lot of risk, and that risk increases almost exponentially, given the size of the site. Here the risk is not as high as, say, a site such as our very large site in Melbourne at Albion. This site is 1.8 hectares; the Albion site is 460 hectares. The first stage of that project was remediating all of it regardless, and it was an unfortunate outcome to the end of the first stage. However, when the remediation process was arrested and the remediation of the second stage was tied to the future land use it became very much more manageable and responsible and there was a very much more favourable outcome.

**Mr LINDSAY**—So you are saying that this is a small site, you know what its future use is, and we already allow for remediating the majority of the material on the site, so the risk is low?

**Mr Blackley**—Yes.

**Mr LINDSAY**—The North Sydney Council fought this particular project and Defence had to take this to the New South Wales Land and Environment Court. Are there any other risks in relation to what the North Sydney Council might require in the development of this project?

**Mr Blackley**—Understandably the North Sydney Council continue to be very much a stakeholder in the remediation of the project when it commences and Defence has every intention of engaging the council. They have actually written to the committee. I do not know whether they are appearing today. Defence has not yet initiated any discussion with the council but, subject to the outcome of the hearing and the committee's consideration, Defence has every intention of engaging North Sydney Council in environmental management issues that may arise or any concerns that they have in regard to the remediation over the next two years.

**Mr LINDSAY**—At point 10 in your statement of evidence you said that gas production ceased in 1931 and you also talked about an adjoining parcel of land that was sold. Was that site remediated?

**Mr Blackley**—I presume you are talking about the adjoining site to the west—Iora.

**Mr LINDSAY**—I am talking about your evidence in point 10.

**Mr Blackley**—Yes, as far as I know it was remediated before the residential development was constructed on that site. I do not have any personal—

**Mr LINDSAY**—That is all I needed, thank you. With regard to heritage issues, there seems to be a small conflict here that I want to clarify. In point 21 of your evidence you say:

Excluding the former Exhauster House ... demolition of all structures on the site will occur ...

But in another point you say:

Three of the five heritage items will be adaptively reused following the remediation works:

- compressor House (former Exhauster House);
- framework of the Stores Building (former Retort House); and
- remnant Sea Wall.

Which is right?

**Mr Blackley**—I am sorry if there is any ambiguity about it. The majority of the cliff line is to be removed. The Retort House is to be dismantled and placed in storage throughout the remediation and then to be reassembled at some location on the site yet to be finally determined. There is the Exhauster House in the cliff at the present time which will be retained in its present condition without any substantial works. There is the Bunker House at the top of the cliff at the end of the car park which is to be entirely removed. The final one is the sea wall. We are not

going to know a lot about the extent to which works will be done on the sea wall until we actually get into the remediation program.

**Mr LINDSAY**—The Retort House is going to be dismantled and re-erected. The Heritage Commission have requested that the whole thing be re-erected, but that is not in the prerogative of Defence to ensure. Is that the situation?

**Mr Blackley**—The Heritage Commission have expressed a preference that it be reassembled in its current location. That would virtually render null and void the approvals that we have in place at the present time. It would change the format of the approval substantially. What we undertook to do, in discussion with the Heritage Commission and prior to their coming to that view, was that it be reassembled on the site precisely in a site to be determined in association with them and the future owner. Since that discussion, which is now some months old, they have expressed in their submission to the committee their preference for it to be re-erected in its current location. My personal view of that is that it is impractical, and we will have to discuss that with the Heritage Commission.

**Mr LINDSAY**—There are parts of that structure missing already. Is that right?

**Mr Blackley**—All I know from our heritage consultant is that—

**Mr LINDSAY**—Mr Moss?

**Mr Moss**—That is correct.

**Mr LINDSAY**—So it may not in fact be practical. If it was the desire of the Heritage Commission to re-erect the whole thing—

**Mr Blackley**—There is capacity on the site to do that but not in its current location.

**Mr LINDSAY**—Yes, I understand that. But even so, it might be prudent not to re-erect the whole thing.

**Mr Blackley**—It might be—

**Mr LINDSAY**—Because some of it is missing?

**Mr Blackley**—Yes. The principal philosophy is to adaptively reuse it in some way, and we have yet to define precisely what that is.

**Mr LINDSAY**—Thank you.

**CHAIR**—For the record, I would like to pursue some questions on seepage from the cliff face. The first question is: was a specific risk assessment undertaken to demonstrate contaminated ground water moving onto the site and also seepage water migrating from the cliff face?

**Mr Moss**—Yes, that is correct.

**CHAIR**—There was an assessment done?

**Mr Moss**—Yes, there has been an assessment done. A number of boreholes and monitoring wells have been constructed in the upper car park level. There has also been a human health risk assessment undertaken on the seepage to identify whether or not that seepage represents a risk to human health. The results of that study indicate that the seepage does not represent a significant risk to human health, but the ecological component of that risk assessment is not complete at this stage. It will not be completed for about another month or so.

**CHAIR**—When that is complete will it be made available to the public?

**Mr Moss**—It is not really a question that I can answer.

**Mr Blackley**—I see no reason for it not to be on the public record.

**CHAIR**—Thank you. And further to that, when we inspected the site today there were some discussions around the removal of that cliff face and whether or not that is going to resolve any issues of seepage. That is a bit of an unknown quantity, but would you explain to us why you are contemplating removing that cliff face?

**Mr Moss**—The works in the cliff happen for a variety of reasons. The first reason relates to all the contaminated fill which exists on top of the bedrock beneath the car park. That extends down to about three to four metres in parts. That is evident in the sandstone retaining walls, which you can see have been constructed immediately beneath the car park. All that material will be removed as part of remediation because it is contaminated. Secondly, beneath that material, in the bedrock, drilling which has been undertaken has confirmed that tar is present within the bedrock to depths of at least nine metres beneath the existing car park level. Our recommendation to Defence is that that material be removed because it is contaminated material which is on the Defence property. Thirdly, beyond the contamination issues there is also the issue of the approvals given by the Land and Environment Court which have specified the levels to which the excavation of the cliff line is required for the subsequent residential development. So it encapsulates those three issues.

**Mr Blackley**—Madam Chair, can I just clarify that? There is a preliminary amount of contaminated material in the cliff face that needs to be removed. Also, the remainder of the removal is to bring it to the level which has been approved by the court for the development. Defence is seeking to try to optimise the revenue from the sale of the site, it is not trying to suggest that this is all for contamination reasons. However, a very large part of it is, and that is going to modify the cliff line in any event and probably destroy its heritage significance. That is the reason why the Heritage Commission has agreed to it. It is very similar in certain respects to the Retort House, and any heritage authority would prefer to retain it if at all possible. But we are removing some of it for contamination purposes, as well as to optimise the revenue from the sale of the site.

**CHAIR**—Will that also minimise your liability for future contamination?

**Mr Blackley**—Indeed it does.

**Senator MURPHY**—There are a couple of questions I want to ask you about the consultation process. You say at point 43 of your submission on page 12:

A range of newsletters, technical planning consultations, media releases, and a site open day were arranged to keep the community informed of the planning process.

At point 44 and at annexure D there is a community information letter which related to the test drilling. What other information letters or newsletters have been sent out?

**Mr Blackley**—The newsletter that you are referring to is only recent—the one that you are holding in your hand.

**Senator MURPHY**—June?

**Mr Blackley**—June, yes. It is intended that that format be adopted in regular newsletters over the ensuing remediation period.

**Senator MURPHY**—You say at point 43 that newsletters, technical planning consultations, media releases and the site open day were arranged to keep the community informed of planning progress.

**Mr Blackley**—That is right. That was during the planning process leading up to the submission of our development application to the council and then to the court.

**Senator MURPHY**—So you are talking about back in 1996?

**Mr Blackley**—Yes. Then it goes on over the page in paragraph 44 to suggest that these are proposed consultations.

**Senator MURPHY**—Yes. When did this actually go out? It says that the work commenced on 5 June.

**Mr Moss**—I think it went out a week, or several days, beforehand.

**Senator MURPHY**—How was it distributed?

**Mr Moss**—There was a letterbox drop— I cannot recall the radius—to about 500 residents.

**Mr Blackley**—To all adjoining residents.

**Senator MURPHY**—Were there any press releases or advertisements in the paper with regard to this?

**Mr Moss**—The scope of the work covered there is quite minor. It simply involved a single drilling rig on the site for a few days.

**Senator MURPHY**—I note there are some contact numbers there for Mr Michael Glass. Did Mr Glass get any calls or complaints?

**Mr Moss**—I would have to ask Mr Glass. I do not recall any.

**Mr Blackley**—No, he did not receive any.

**Mr Moss**—I guess it was commensurate with the works that were being undertaken. They were very small.

**Senator MURPHY**—Yes, I can see that.

**Mr Blackley**—In that newsletter, I think we notified Michael's mobile telephone. It is proposed to do something a little more formal with a 24-hour telephone hotline. That is one of the ways that Defence will receive feedback on how things are going.

**Senator MURPHY**—So all of those things set out in points 44 and 45 will be complied with?

**Mr Blackley**—Yes.

**Senator MURPHY**—And they are part of what the chair was referring to?

**Mr Blackley**—Indeed.

**Senator MURPHY**—It will be part of the contract.

**Mr Blackley**—And any other suggestions that arise during the process—if it is inadequate—and there is feedback to whomever or to Defence.

**Senator MURPHY**—It will be part of the contract?

**Mr Moss**—Consultation is part of our contract, that is correct.

**CHAIR**—I have asked Mr Blackley to give us the details. I could not find it in the contract. So, if you could detail, as you have agreed to, later.

**Mr Blackley**—I will provide the contractual obligations of the contractor.

**Senator MURPHY**—I assume that you would have seen the North Sydney Council submission, essentially the four points that they raised in their submission.

**Mr Blackley**—Yes.

**Senator MURPHY**—Would you like to respond to those, given that they are the next witness, if you have not done so already?

**Mr Blackley**—I have here a quick response. Of the four points raised by the council, we have actually raised the first one with regard to the proposed excavation levels of the cliff.

**Senator MURPHY**—It would be useful to have a formal response from you in respect of these submissions, particularly where they have raised issues which go to the proposed work.

**Mr Blackley**—In addition to providing for the remediation of the contaminated bedrock, the proposed excavation of the cliff line has simply been designed to accommodate the construction of the approved residential development. What Defence is proposing to do is to remove the cliff line for purposes of contamination and then the residual amount of the cliff line will be removed to the approved levels. In terms of impact on cliff stability, we have actually raised that. As far as I understand, there is no intention to use high impact drilling equipment in those areas close to adjoining properties. Doug Moss has actually outlined those processes and all of that has been included within our cost. As Doug said, it is proposed to undertake a dilapidation survey so that we can actually have a before and after assessment. The second point talks about the disturbance and disruption to the surrounding residential community which we have also addressed—a comprehensive environmental management plan, which is subject to the assessment of Environment Australia under the EPIP Act, for the works.

**Senator MURPHY**—One of the issues that they raise is about the proposal to seal off the malodorous bedrock with a non-permeable barrier. I raise a question about why you cannot seal off the cliff face. I think there is, as I understand it, a legal reason, that that may not be possible. It would be useful to put that on the record. As a matter of interest, did council raise any of these matters directly with Defence?

**Mr Moss**—In terms of the capping of the cliff face, we do not propose to cap the cliff face, primarily because of the geometry of the area. It would not necessarily avoid destroying the heritage value of the cliff face. The face has a heritage value, as the council has put it. It will be destroyed by any sort of capping or containment system. In addition, such an approach would amount to on-site containment of contaminants, which would then expose the Commonwealth to ongoing liability for the management of those contaminants on this site indefinitely. For reasons that we discussed previously, we do not believe that on-site containment at this location is appropriate. So it is not the preferred remediation method for this site. I think in the RAP the reference to capping of malodorous rock is more relevant on the lower part of the site, down at this level—

**Senator MURPHY**—I understand that.

**Mr Moss**—but I think they then extrapolated that to the cliff line.

**Senator MURPHY**—Yes. What about enforcement with regard to the contractors enforcing their own environmental management plan. What is your response to that?

**Mr Moss**—That would not be the case. We obviously take a very proactive approach. There will be a lot of monitoring done by our consultants during the work. There will be dust samples taken, odour monitoring done on a daily basis. But in terms of the regulation or the policing of the off-site impacts, as I said previously, will be subject to the New South Wales EPA in that regard.

**Senator MURPHY**—They also raised the question about the migration of contaminants. They say it is highly probable that the migration of contaminants from the site to other neighbouring properties has already started. I am not sure which ones except for C. Do you want to respond to that?

**Mr Moss**—The works that we are undertaking will ensure that this site no longer represents a risk to the environment, be it the adjoining properties or to the harbour.

**Senator MURPHY**—With regard to legal liability, they raise the issue about whether or not Defence has an ongoing liability. I think that is a matter that is also a question of legal liability.

**Mr Blackley**—At the moment we are trying to minimise any legal liability, for the long term.

**CHAIR**—I think you said, Mr Blackley, that the Heritage Commission were in favour of or were happy about the removal of the cliff face. Was I correct in understanding you to say that?

**Mr Blackley**—No. I said that my understanding of their position in regard to the cliff face was that they would prefer it to remain.

**CHAIR**—But they are not greatly opposed?

**Mr Blackley**—They have said that they believe, in their opinion, that it is prudent and feasible for the works to be undertaken if contamination makes it necessary. The position I am putting to you is that nine metres of the so many metres is necessary from an environmental point of view and the remaining amount is necessary to bring it to the levels approved by the court for the future residential development.

**CHAIR**—I asked that because in North Sydney Council's submission they put it that it was more about site levels than the removal of contamination.

**Mr Blackley**—No, that is not true.

**CHAIR**—And that that flies in the face of Heritage Commission recommendations that may cast doubt on whether the cliff face needs to be removed at all. We did get into some questions about that earlier and I think Mr Moss has probably answered that.

**Senator MURPHY**—Back in 1996, you set up what was listed here in your submission as a community reference group. Does that still exist?

**Mr Blackley**—No.

**Senator MURPHY**—Is it the intention to establish another one?

**Mr Blackley**—No, we had not intended to have one in our public consultation program.

**Mr LINDSAY**—In your submission, at point 32, 'Management of contaminated water', the second sentence says:



A hierarchy of contaminated water management methods has been established to minimise the volume of contaminated water to be recovered and handled, while complying with all the regulatory requirements.

Is that in fact not reading right? Is it saying that you are trying to minimise the volume of contaminated water to be recovered? Does that mean you are going to leave some there?

**Mr Moss**—We are trying to minimise the amount of contaminated water which is generated, not so much recovered, by the works. During the course of excavation of contaminated materials, we will have seepage coming in from the harbour, for example, as the primary source, and also from the rainfall. Our approach is to minimise the amount which is generated as a result of our works, not to minimise what we recover.

**Mr LINDSAY**—Thank you for clarifying that. It is scary when the committee actually reads the documentation, isn't it! In Dr Swane's report, one of the risks that was identified was that the project 'should commence on schedule and be completed without disruption'. Do you see those issues as a risk to this project and therefore a risk to the cost of the project?

**Mr Moss**—The costs of the project will be affected by disruptions, certainly.

**Mr LINDSAY**—What kinds of disruptions might there be? Are we talking industrial?

**Mr Moss**—It could be industrial. That is not something that I have had any experience with, in a decade or more of doing this sort of work. It is more disruptions in terms of—

**Mr LINDSAY**—Weather?

**Mr Moss**—Weather, and perhaps any off-site impacts. If we are unable to effectively manage those impacts then there will be delays whilst other mechanisms are put in place to manage them.

**Mr LINDSAY**—But, as project manager, you see that as a minimal risk?

**Mr Moss**—That is correct.

**Mr LINDSAY**—There is a recommendation that the project budget be independently reviewed at six-monthly intervals. Is that your intention, Mr Blackley?

**Mr Blackley**—Again, we had not intended to. But that is possible. As Doug said previously, we will be reviewing and monitoring the costs on a monthly basis.

**CHAIR**—Thank you for your evidence, gentlemen.

[2.20 p.m.]

**ROLFE, Mr Michael Richard, Secretary, Sydney Harbour and Foreshores Committee**

**CHAIR**—Mr Rolfe, on behalf of the committee I welcome you. The committee has received a submission from you dated 25 September 2000. Do you wish to propose any amendments?

**Mr Rolfe**—Not to the submission, no.

**CHAIR**—It is proposed that the submission dated 25 September 2000 be received, taken as read and incorporated in the transcript of evidence. Do members have any objections? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—I now invite you to give a brief statement in support of your submission, and then we will have some questions.

**Mr Rolfe**—I think I ought to explain for the gallery who and what the Sydney Harbour and Foreshores Committee is. The committee was founded in August 1979 as a community organisation. Its first objective is that it is a community advancement society for the defence and protection of the natural and cultural character of Sydney Harbour, its tributaries and its foreshore for general public enjoyment. The committee has previously appeared before the PWC with respect to the program for the redevelopment of Garden Island, *HMAS Watson* on two occasions, and the Prince Edward Victualling Yard at Pyrmont, which I believe was the last occasion on which we appeared.

I think it might help the committee if, instead of going through my submission, I make some comments on the Defence statement which we heard previously. For the gallery, the submission is basically that the development of this site in terms of its remediation should be dealt with as are other sites around Sydney Harbour which comply with the national guidelines where you seek to remediate the material on site, and that has been done, I think, at most of the gasworks sites. It does mean that there is some land on the site that in fact cannot be used other than for open space. We have heard that it is technically possible to remediate the land. We have also heard that, in setting the standards to which you remediate the land, you have to take account of the land use and the degree of exposure. Clearly, if in fact the site is going to be used for high density residential you have to adopt the highest level of remediation. If in fact it is going to be an area where people might walk a dog you can accept a lower standard. We have also heard in terms of cost factors that there is a factor of 1.5 in the material that could possibly be taken from the site. We have heard that there are more costs to be carried out on drilling the site once the buildings are demolished. We have heard that the ecological assessment on certain parts of the site are outstanding. So we have a lot of unknown factors, and I believe the committee would be well within its rights to say to Defence, ‘What we need is a matrix of all the various elements that are variable and we can look at what is in fact going to be the reasonable mix.’ If in fact the site became a park, the remediation costs would fall and maybe other things would occur. If it were a balance between both, it might be, overall, the best thing to do.

Obviously, into that matrix you would have to put community benefit, the benefit of creating the open space over the capped area, as against the profit to the Commonwealth. You would also have where the point of return is maximised, because if you go for the highest use you have to invest the most money. There is a developer in this town who specialised in making very minimum developments, because he discovered that the maximum development of the site was not necessarily the most profitable.

We then come to another issue which I think should be of concern to the locals. Because we are being driven in this case by a decision of the court that the development has to occur within five years of consent being granted, we have a time constraint that the work has to be carried out within the time frame, which means time is of the essence in the procedures. We also have a statement made that the budget will be adjusted to make savings wherever possible.

So you have two things: you have a desire to get on with the job as fast as you can, and knowledge of building sites tells you that when they want to get on with the job fast you get noise. I noticed the response in terms of vibration was in terms of safety—in other words, the buildings next door will not crack. However, I know from personal experience that, for example, a nurse on night duty is woken by a vibration at a much lower level than the level at which a window cracks in the building. That is a problem. Vibration is not an issue of the safety of the building; it is the amenity of the people in the building. And that places another constraint on this. So you have got that problem.

You have got the problem that the smell coming from old gasworks sites in summer months is much higher than in winter months, and some people who are remediating gasworks sites choose to only work on the odorous areas in the winter months. So you have got a lot of things happening that will influence the local community, and I think that those sorts of issues should be explored more fully with Defence.

**Senator MURPHY**—Do you support the site being remediated at all, in some form?

**Mr Rolfe**—I think that there has to be a degree of remediation, because of the problem of—as Defence have said—the tarry substance getting into the ecological environment of the harbour. Therefore, at one point you have to deal with that migration of material. So, yes, you have to do something. You cannot just walk away.

**Senator MURPHY**—If it were to be the case that the site could be remediated without there being a significant need for disposal of contaminated material that could not be treated on site for reuse on site and that the site could be remediated to the extent that it would still allow for high-density housing to proceed, would you still support the remediation?

**Mr Rolfe**—Given the terms of reference and the fact that we have a court decision, yes. I am assuming that that is not an issue. The fact is that we lost five years ago. I feel that it is unreasonable to bring it up again and then start again and say, ‘Hey, we want to go back five years.’

**Mr LINDSAY**—How many members belong to your committee?

**Mr Rolfe**—The standard question. Let me get the right piece of paper. I brought it.

**Mr LINDSAY**—Mr Rolfe, if it is a standard question you should be able to tell me straightaway.

**Mr Rolfe**—Yes, but you asked in such a nice way I decided that, instead of saying ‘four councils, 10 community groups and 18 individuals’, I might list the organisations—that is why I turned over the page. The four councils that were members last year were Hunters Hill Council, Ku-ring-gai Municipal Council, Leichardt Municipal Council and North Sydney Council. Of the community groups, there were the Bradfield Precinct Committee, which is North Sydney; the Friends of Cockatoo Island; Hunters Hill Trust; Lane Cove Bushland and Conservation Society; Mosman and Parklands and Bushlands Association; Ryde-Hunters Hill Fauna and Flora Protection Society; the Snails Bay Residents Group; the Glebe Society; the Upper Middle

Harbour Conservation Committee; the Willoughby Environment Protection Association; and then there are the 18 individuals.

**Mr LINDSAY**—Thank you for that. How often do you have a meeting?

**Mr Rolfe**—The committee meets 11 times a year.

**Mr LINDSAY**—In your submission to the committee you strongly suggest that no material should be removed from the site.

**Mr Rolfe**—Sure.

**Mr LINDSAY**—In relation to a harbour and foreshores committee, that puzzles me. That is probably a wider environmental issue. You raise it and say, 'Look, you're just transferring the problem somewhere else.' What has that got to do with a foreshores committee?

**Mr Rolfe**—That arises out of the 1992 national guidelines that, where possible, in remediating sites you keep the material on-site. In doing that, you may well adversely affect the development potential of the site. But on the basis that it is done correctly, it will have no adverse impact on Sydney Harbour.

**Mr LINDSAY**—But it would have an adverse impact on the residents who live here. It would extend the life of the project to have to do that on-site. Isn't that right?

**Mr Rolfe**—It may well but, equally, they inherit other problems: they inherit all the trucks and various other things.

**CHAIR**—Could you outline the other problems?

**Mr Rolfe**—The other problems are the vehicle transportation away from the site.

**CHAIR**—Yes, but they are only short-term problems, aren't they? They do come to an end; whereas if the contaminated materials are stored on-site, they remain there forever.

**Mr Rolfe**—Yes. They are perfectly innate.

**CHAIR**—The vehicle movement at the end of the project would no longer exist.

**Mr Rolfe**—There is a million and a half cubic metres of contaminated material sitting at Homebush Bay.

**Mr LINDSAY**—But how can you say that when, if you store it on-site—we will cap it? There is sandstone underneath, so it would just go down into the sandstone as it is now.

**Mr Rolfe**—No, you just have to seal it. And you cap it, you create a cell.

**Mr LINDSAY**—Do you mean putting in a big garbage bag? I do not say that flippantly; I am talking about plastic membranes all around the thing. Is that what you are saying?

**Mr Rolfe**—You have to protect it. No matter where that material ends up, you have to protect the environment. So whether you protect it on-site or in somebody else's backyard, its environmental impact is going to be the same. You have to deal with it in exactly the same way.

**Mr LINDSAY**—You referred to what was done at the RAN Newington Armaments Depot—that was on the Homebush site. I am not a local, so I do not know that issue, but the contamination there would likely have been different from here. This is a very significantly contaminated site. Is that right? What contaminated the armaments—

**Mr Rolfe**—If you believe what Greenpeace believes, Homebush Bay is the most contaminated site in the Southern Hemisphere.

**Mr LINDSAY**—As I said, I am not a local so I do not know. Am I wrong? I have no further questions. Thank you.

[2.34 p.m.]

**MASSEY, Mr Peter, Environmental Services Manager, North Sydney Council**

**McCAFFERY, Ms Genia, Mayor, North Sydney Council**

**CHAIR**—Welcome. The committee has received a submission from you dated 5 October 2000. Do you wish to propose any amendments?

**Mr Massey**—No.

**Ms McCaffery**—No.

**CHAIR**—It is proposed that the submission dated 5 October 2000 be received, taken as read and incorporated in the transcript of evidence. Do members have any objections? There being no objection, it is so ordered.

*The submission read as follows—*

**CHAIR**—I now invite you to make a short statement in support of your submission before we ask questions.

**Mr Massey**—The overarching concern of North Sydney Council is the potential for the remediation of Defence land at Neutral Bay to affect residential amenity. By that I mean, with the proximity of residential premises in the nearby streets and the residents across the harbour, Neutral Bay, Cremorne Point and Kirribilli, we anticipate dust nuisance, odour nuisance, vibration and noise nuisance being the main problems with the remediation process itself. In fact, if you look at the photo across there, you can see the high density living that exists, particularly around this area of North Sydney.

Noise and dust movements will create amenity problems. In particular, we are very concerned about the truck movements. When I say the RAP, I mean the remedial action plan prepared by Thiess for the site, which you have probably already had the opportunity to look at, which indicates there are going to be quite a number of truck movements but does not quite indicate the amount of truck movements, except that the remediation process is going to extend over a two-year period. So we surmise that there are going to be significant truck movements over a two-year period. We have a good example in the northside sewage tunnel project by Sydney Water where, instead of truck movements removing spoil off site, they actually used barges. To our understanding, that did not create any significant environmental effects.

Another issue associated with residential amenity is odour. Odour is going to be a real problem there because of the nature of the chemical make-up of the contamination itself. Hand-in-hand with that is that we have to ensure that community dialogue is engaged in in a meaningful fashion—in a fashion that actually means something and that they are serious about it. What I mean by that is there could be—and we have already anticipated this; we have heard this before the committee—a 24-hour hotline. Not only should the hotline run for 24 hours but there should be a 24-hour response to the problems associated with it and also a 24-hour turnaround in the response to those complaints.

Other strategies which could be employed include letterbox drops or, what might be a useful exercise, some sort of community reference group that would actually have some sort of independence in the process and would report back to the consultancy, ensuring that they are doing the job and are trying to minimise the amount of nuisance caused to residents. As was mentioned before by the Department of Defence, the EPA would actually be enforcing the ongoing remediation process to ensure that the residential amenity effects were kept to a minimum. That is reassuring to know because at least the EPA can talk to the council. Given that the remediation is of a highly technical nature—you have experts engaged in the whole process—the New South Wales EPA have technical experts to discuss as one technical equal, if you want, to another technical equal. That is important to the council. Also, the fact that they are a state government authority lends itself to them possibly taking a little more notice than local council.

Off-site migration is another issue that we are concerned about. The remedial action plan talks about off-site migration but actually does not go into any significant evaluation of the off-site migration effects. We have heard before of the Contaminated Land Management Act which

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is the New South Wales piece of legislation which deals with contamination. That has a component whereby the site order has to comment on off-site migration. The analysis so far has not gone into any great depth about the potential for off-site migration that has already occurred in the harbour and is possibly gathering in the sediments. That is not something that we know because they have not tested for it. They have largely contained their testing—which is fair enough—to on-site containments but, given the nature of the contamination, we would have thought it would be prudent to actually test some of the sediments outside to see whether it has spread across to sediments in the harbour.

On that issue, in terms of liability—and I know liability has been brought up quite a bit so far and the Department of Defence are trying not to hold any ongoing legal liability for contamination issues and off-site migration in the future—if you look at some of the other old gasworks sites that have been remediated, they have—similar to the way you have been talking about, Mr Lindsay—contained it, encapsulated it. What has happened then is that the previous owners have retained management of the containment and looked after those contaminants on site. It seems to me to make the department a little bit more accountable about the whole contamination process if they should have some sort of ongoing management of an encapsulated containment.

As the previous witness mentioned, you can retain more on site and you are not passing off the problems in landfill to someone else. In terms of liability, I do not think it is fair for the Department of Defence to be up-front and say, 'Look, we want to wipe our hands of any legal liability.' I think there is a responsibility to take over the problems they have made in the past in a similar way to what other government instrumentalities here have done, including old gasworks sites.

Also, there has already been some discussion about the cliff line. I do not know whether I should go into it again but it is interesting to note that they have been fairly up-front, that it is because of the development rather than necessarily the remediation, although the remediation will be involved in it. It is interesting to note the Heritage Commission considered it a significant heritage landscape element to be retained but, on the basis of that, they justified its removal on the basis of remediation purely—not necessarily because it complies with a land and environment court hearing. I will close off there.

**CHAIR**—Thank you very much. In relation to paragraph 5 of your submission, you raise the issue of ongoing liability. What was the legal advice regarding ongoing liability, if any, that the council obtained with respect to it approving the remedial action taken for the Iora properties, and what alternative remediation would you put forward?

**Mr Massey**—This is for the Iora site itself?

**CHAIR**—For both. You say that you are not happy with what Defence has put forward. What would be an acceptable remediation alternative—incorporating my first question into that?

**Mr Massey**—As I mentioned before about ongoing legal liability, I believe they should be encapsulating it and maintaining a management role over the encapsulated contaminated material as similar gasworks sites have done in the past. The Iora development is a little bit tricky because basically no legislation was in place specifically for contamination at that time. It

was done in about the mid-1980s. So there are mechanisms or processes in place that, under New South Wales legislation now, will deal with contamination issues of the Iora site. But that would largely be dealt with by the state government rather than by us. So I have no answer to your question about Iora at all.

**CHAIR**—Defence were not responsible for the pollution that occurred on the site. Is that correct?

**Mr Massey**—That is correct.

**CHAIR**—And there is land above what Defence owns that continues to be contaminated and will continue to contaminate once Defence remediates this particular site. Is that correct?

**Mr Massey**—Yes. And what they are proposing to do is kill it off, basically—seal it off. So the Department of Defence is proposing to seal off that cliff face so any future leachate from the Iora development would cease at that cliff face. That is all we know at this stage. I do not know how they will dispose of the actual leachate itself or what ongoing role the body corporate may have to have. If the development goes ahead and it is handed to a body corporate, the body corporate for the Defence site would have to deal with leachate from the Iora site.

**CHAIR**—Would that be the responsibility of the council for having approved the development on that top site, or would it be the responsibility of the New South Wales government?

**Mr Massey**—The New South Wales government.

**CHAIR**—So it is not really the responsibility of Defence anyway to deal with the material coming out of that top site?

**Mr Massey**—No.

**Ms McCaffery**—It is responsible for the contaminants that are currently on its site.

**CHAIR**—Yes, I understand that, but I am talking about the site that it adjoins which it is going to take some responsibility for in terms of dealing with the cliff.

**Ms McCaffery**—Could I re-emphasise the point that Peter brought up? There has been an issue about the heritage significance of that cliff face, and I think the Heritage Commission in its letter to you said that it was only justifiable—this is a heritage item of national significance, that is on a national register of heritage significance, and they are obviously extremely unhappy with the removal of that heritage item—if decontamination was required. I was not here for the evidence but Peter informs me that the Department of Defence have actually admitted that the excavation or the removal of this heritage item is not being done for decontamination but for the development that is approved by the court.

I would just like to emphasise to the committee that this is really contrary to federal legislation which protects sites of heritage significance, and I think the Department of Defence

as a federal instrumentality have to provide some kind of leadership for the rest of the community. If we expect the rest of the community to respect heritage items, particularly ones of national significance, the Department of Defence should be doing at least as much as we expect the rest of the community to do. If you are able to seal the cliff once you have excavated it for this development, then surely decontamination can be sealed now on the cliff using the same method that would be used once you do the excavation. There is one other thing I will say and then I will stop.

**CHAIR**—Just on that point, do you believe that decontamination of the site is necessary?

**Ms McCaffery**—Certainly as I walked down today there is that rather lurid colour that is coming out of the cliff that obviously needs to be dealt with.

**CHAIR**—It is not just the colour; it is cyanide, as I understand it, and tar leaching out of that cliff.

**Ms McCaffery**—Yes. That obviously needs to be dealt with, but I guess I question the necessity to remove a heritage item of national significance if it is not required for decontamination—if it is required for development.

**CHAIR**—So you agree that it should be decontaminated but you disagree with the methodology; is that what you are saying?

**Ms McCaffery**—Yes. I think we have to respect and look after heritage items, particularly ones on the national register.

**CHAIR**—Mr Lindsay.

**Mr LINDSAY**—Your evidence is inconsistent in that you say, ‘It is a heritage item, please protect it,’ but in the next breath you say, ‘Please cap it.’

**Ms McCaffery**—I admit there are lots of methods to cap these—

**Mr LINDSAY**—What is the heritage value of the sandstone cliff? Is it the sandstone or the bulk?

**Ms McCaffery**—No, it is its appearance, and appearance is not just about the colour of the sandstone. Frankly, the technology is very good and you can certainly cap it and still provide the appearance of sandstone.

**Mr Massey**—It should be clear that we did not say that we were going to cap it or we intended to or that it should be capped. We say that it is indicated in the remedial action plan that it will be capped. I did not say that that is the right way to do it.

**CHAIR**—I have one other question. I am sorry, Mr Lindsay, but this carries on from where I was. That obviously then affects the use of the site by Defence. So would council pick up the cost of capping that wall under those circumstances?

**Ms McCaffery**—No, the Department of Defence certainly would not pick up that cost. It is the Department of Defence site, and the Department of Defence, as I emphasised before, has a responsibility as a federal department to at least comply with federal laws in terms of the protection of heritage items. We require it of every private individual. There surely is greater weight—

**CHAIR**—But they have put forward a plan to do that.

**Ms McCaffery**—No, I am sorry. The Heritage Commission, which is another federal instrumentality, says that it is not justifiable to remove this heritage item unless it is for decontamination, and we have evidence from the Department of Defence this morning saying it is not for decontamination, it is for development. So there is an inconsistency there on their own evidence.

**CHAIR**—I think they said it was for both, if I recall correctly.

**Senator MURPHY**—Would you be happy for it to be removed on the basis that it is for contamination?

**Ms McCaffery**—No. I am saying that you can cap the cliff once you have excavated although, obviously, you cannot excavate it all the way under Iora. So at some point you have to cap this cliff line. If you can cap the cliff line and protect the rest of the environment from the contaminates—and the modern practice with decontamination is basically you isolate it and you protect the rest of the environment from the contaminated material—if you can do that, once you have excavated for development, you can do that and leave the cliff line, its mass and its appearance as is, without excavating it at all.

**Senator MURPHY**—From a heritage point of view, it is a cliff face visual impact, isn't it?

**Ms McCaffery**—Yes.

**Senator MURPHY**—If you cap it—and I am not an expert in this area—you physically change the nature of—

**Ms McCaffery**—But you do not change the mass. If you see the heritage significance of that cliff line, it is not just its appearance as a sandstone cliff line, it is its mass. By excavating that cliff line—and that is what the Heritage Commission talks about—you significantly change the mass from the harbour, and that is part of its heritage significance.

**Senator MURPHY**—But the Heritage Commission has agreed to its excavation if it is for contamination—

**Ms McCaffery**—Only—

**Mr Massey**—If it is for contamination.

**Senator MURPHY**—Yes. I understand that. On my understanding of the Defence evidence, they would excavate it to the extent that they need to remove the contamination. That is an issue that we will take back up—

**Ms McCaffery**—I thought we heard this morning that they were doing it for development as well.

**Senator MURPHY**—No. We will take that issue back up with them when they come back before the committee.

**Ms McCaffery**—Can I just bring up another issue that relates to this?

**Senator MURPHY**—What is your understanding of the CLM Act as it relates to the Iora development and what discussions have you—that is the council—had with the EPA with regard to the matters that you are raising? I am not just talking about the cliff face; I am also talking about all of the environmental noise and dust related issues. Have you corresponded or spoken with the department or the EPA? Have you written to Defence and raised any of these matters?

**Mr Massey**—This is in terms of the remediation of the proposal that is in front of us now?

**Senator MURPHY**—Yes, just the remediation because they were some issues that you raised in your submission.

**Mr Massey**—Sure. I have made a personal representation to the contaminated site branch of the EPA and, in particular, Cathy Dyer, about what the potential effects are going to be and have tried to run through them because I do not consider myself to be a technical expert in this thing and have tried to get alternatives to what they are proposing, how they would be best done, what the amenity effects are and all of that.

**Senator MURPHY**—What was their response to you?

**Mr Massey**—They indicated that how they are doing it will have significant amenity effects on the residents around it. They did not come up with any alternatives; they just said that there would be significant residential effects on the amenities of the neighbours around it. It could be done in terms of best practice—like a previous witness talked about—by undertaking the more odorous components of the contaminates in winter months rather than the summer months, and that would reduce it. It would not eliminate it, but it would reduce the odour problems associated with it.

**Senator MURPHY**—What assessment have the EPA made of the proposed remediation program? Were they aware of how it was going to be done?

**Mr Massey**—I do not know; I am not sure.

**Ms McCaffery**—Surely that is the defence department's responsibility?

**Senator MURPHY**—Right, that is their responsibility. But what I am asking is that, when you went to the EPA and asked them what the effects would be, I assume you asked them if they

had any ideas about how we might control them, how we might monitor them and how we might better put suggestions for additional controls that could be put in place to minimise the residential effects, which would be a good thing for the council to do. What I am trying to understand is that, when you spoke to the EPA—which we will get before this committee as far as I am concerned anyway, and I am sure the rest of the committee also, given some of these issues that are now coming out—what did the EPA tell you their knowledge was of what is proposed for this remediation?

**Mr Massey**—When I spoke to them, they had only recently put in a submission to you.

**Senator MURPHY**—When was that?

**Mr Massey**—Yesterday.

**Senator MURPHY**—Did you ask them whether they had seen the Defence proposal for the remediation?

**Mr Massey**—They had. They put in a submission so that would indicate that they have seen it.

**Ms McCaffery**—If this were to go ahead, can I just emphasise that there was certainly a commitment to both the committee and the council that if this material were to be removed it would be taken by barge, not by road.

**Senator MURPHY**—A commitment by whom?

**Ms McCaffery**—By the Department of Defence.

**Senator MURPHY**—Was it in writing and when?

**Ms McCaffery**—I think there are members of the community who are going to speak a little later, but the Department of Defence had a community liaison committee when it was developing this proposal.

**Senator MURPHY**—This was the 1996 committee, I presume?

**Ms McCaffery**—Yes. There were commitments. When concerns were raised about the impact—we are talking about two years of truck movements—as was raised by Peter, when the northside storage tunnel project was proposed to the council, we gave consent to that only when they agreed to remove all the material by barge. North Sydney is a very densely populated urban area. We have a lot of problems with traffic on our roads anyway, and we certainly do not need this sort of level of truck activity added to all the other problems and the impact on the residents. I really think the cost of barging has to be built in to the cost of the remediation.

**Senator MURPHY**—I can understand the concerns about noise from the trucks; I do not like it myself. You made a comment about a commitment being given—

**Ms McCaffery**—I think there will be members of the community appearing later who were on that committee and who can discuss when and where those commitments were given. I would like to raise one other thing: I would really like the committee to consider whether the cost of remediation for this level of development is an effective use of federal money when, perhaps, we could get a lower-scale development that would produce just as great a return for the defence department, with less impact on the community and less cost for remediation. Your committee provides the opportunity for these issues to be discussed. We have attempted at many levels to get them discussed and for the defence department to consider them, with little response. Both the council and the community would urge you to look at those issues, and we might produce a result that the community is both happy with and supportive of, that produces the same yield for the defence department in terms of value for the land, that has much less environmental impact and, maybe, that preserves a heritage item of national significance.

**Senator MURPHY**—I am sure we will go through all of the issues. I think Defence know that. If at the end of the day the remediation proceeds and it can be demonstrated that it can proceed, whether it is by barge or truck—I think that is a reasonable issue—with minimum community impact, and there is always going to be some because anything like that always creates some impact, what is the council's view? Does it support the remediation?

**Ms McCaffery**—Unfortunately, I think that, realistically, you could not say. Just reading in the contamination report the fact that it goes for two years and the amount of material we are talking about removing from the site, I think to talk about minimum impact is probably completely unrealistic. So, from the council's point of view in protecting our residents, I do not believe the council can possibly support what is being proposed to impose on this community for a two-year period, and then there is the construction as well. I think the defence department, as a federal instrumentality, has some responsibility to care for communities around it. That is why I urge you again to look at an alternative approach to this.

**Senator MURPHY**—Where do you draw the line in the sand in terms of the volume of material to be removed?

**Ms McCaffery**—Surely the remediation proposed in this remediation plan is an extraordinarily expensive process, and there may be a way of—

**Senator MURPHY**—Not as expensive as some.

**Ms McCaffery**—not undertaking this remediation process if you have a lower scale development proposed on the site.

**Senator MURPHY**—I understand that, but where is your line in the sand?

**Ms McCaffery**—The council accepts that there will need to be some development on the site. The council has never opposed development on the site. What we are asking for is for the Department of Defence, as a federal instrumentality, to respect federal laws, and that covers issues of heritage significance in particular and its responsibility to the community that surrounds it.

**Senator MURPHY**—You made a point about the period of time—two years—and you made a point about the volume of material that might have to be removed. They are essentially the two principal concerns. What would be acceptable: one year and half the volume?

**Ms McCaffery**—With all due respect, I do not think that is a reasonable question because you would have to look at what the alternatives were. I do not think you could ask me to say half a year. Obviously I think two months would be better than two years, but it would depend on the things you are balancing up.

**Senator MURPHY**—I am trying to understand what ideally—

**Ms McCaffery**—Obviously if you can remove the material by barge you are reducing the impact on residents. If you reduce the amount of material you remove from the site, you are reducing the impact on residents because there is less jack-hammering in terms of removal of the material, there is less noise, there is less dust, there is less of an odour problem. If we can reduce the amount of remediation required we are obviously reducing the impact significantly on the community, and that is what we would like you to look at—whether the activities that are being carried out on the site justify, in terms of return to the federal government, the impacts on the community.

**Mr Massey**—I think it would probably be easier to answer the question if we had a series of proposals in front of us to say, ‘Look, this is what the site is going to be used for and this is what the remediation will be doing and this is what is involved.’ Then we could maybe pick the best of a bad bunch.

**Senator MURPHY**—I assume you are aware that there are three possibilities as it stands right now. Do I assume your opposition to the amount of material to be removed is at the lower end?

**Ms McCaffery**—I will just take you to the BP site which is being remediated right now. It is a state government site in Waverton. The EPA has raised pretty strict guidelines. There is hardly any material being taken off that site. It is best environmental practice now. It said, ‘If you have contaminated material, you deal with it and keep it on site and you cap it.’ It is what happened at Wondakiah. Basically I think it is what Michael Rolfe said: you deal with your own waste in your own backyard; do not transport it to somebody else’s backyard. I think also the Department of Defence as a federal instrumentality has some responsibility to comply with what is regarded now as best environmental practice.

**Senator MURPHY**—I agree.

**Mr LINDSAY**—Is your refuse disposal facility, whatever it is, in your shire or city?

**Ms McCaffery**—We do not have refuse disposal.

**Mr LINDSAY**—How do you deal with the rubbish that you collect?

**Ms McCaffery**—Of course we use it for landfill, but the council has been very—



**Mr LINDSAY**—So it does not stay in your backyard; is that your evidence?

**Ms McCaffery**—No.

**Mr LINDSAY**—Thank you.

**Ms McCaffery**—But I think that is a really unreasonable question because what North Sydney gives to the rest of the community is massive development which we deal with, and stops development elsewhere. So it is a trade-off.

**Mr LINDSAY**—I just heard your evidence that you should keep your own waste in your own backyard, and your evidence has been that it is not.

**Ms McCaffery**—Contaminated material I was referring to.

**Mr LINDSAY**—Senator Murphy asked you whether you wanted to see any remediation and initially you responded effectively no, but I want to make sure what your position is. You are happy for some remediation of the site; is that right?

**Ms McCaffery**—What the council would like to see is best environmental practice—we can go and have a look at Wondakiah and at BP—and that is that the remediation is done on the material on-site and capped on-site. That is a long process because you have to farm materials. That is what the council would like to see. We would like as much as possible for the bulk and massing on that heritage item, the cliff, to remain. As I said before, once it has been excavated back to under Iora, you can cap it where it is now.

**Mr LINDSAY**—Taking that up, I am puzzled and I cannot reconcile this. We talked about the heritage value of the sandstone cliff and whether or not capping changes it. But there is another issue. This proposal is to build a fairly large development smack bang in front of the cliff. It is just metres from the cliff. You will never see the cliff from the harbour. Is that right?

**Ms McCaffery**—But it stays there.

**Mr LINDSAY**—I know. Does that diminish the heritage value?

**Ms McCaffery**—It does diminish it, obviously, but at least you do not remove it. At least it is still there for future generations, and maybe that development at some stage would be removed and you still keep the heritage; it is not gone.

**Mr Massey**—Not only that, you would have to have a different development, because if that cliff site were not shifted back you would have to have had a different development proposal.

**Mr LINDSAY**—I agree. Mr Massey, you said in response to a question from the committee that you had made personal representations, I think your words were, to the EPA.

**Mr Massey**—Phone calls.

**Mr LINDSAY**—Had your council directed you to do anything like this? Ms McCaffery, has this issue come up formally to the council with recommendations from officers?

**Ms McCaffery**—No, it has not come formally up for council. We prepared the submission and councillors are aware of it. No, it has not been a formal resolution of council.

**Mr LINDSAY**—I would have thought that a matter as important as this on which you are giving evidence would have come to a full council meeting, but it has not been discussed by a full council meeting.

**Ms McCaffery**—No, it has not. Could I just emphasise to you the timing. I do not know why you gave so little notice and so little time for us to prepare submissions. Maybe this is the norm. This is the first parliamentary inquiry I have been in front of, and maybe this is how you normally do business, but we normally give much more notice than that. We had only a couple of weeks to prepare things. The Olympics intervened in the middle. If we had more notice and we did not have the Olympics in the middle of it, it would have gone formally to council and been a resolution.

**Mr LINDSAY**—I understand that. If this development goes ahead, what controls can your council lawfully exercise on this development? I am asking that to determine any risk factors there might be to the project which this committee is required to look at so that we know all of the possibilities. What controls would you have?

**Mr Massey**—When you say ‘controls’, what exactly do you mean? Do you mean legislative backing for the whole thing?

**Mr LINDSAY**—When this development comes, does it have to be approved by the council? Can you impose conditions in that approval process? What are the kinds of conditions that might make this project a bit of a risk to the Commonwealth of Australia? Can you control the access, the roadway—I do not know.

**Ms McCaffery**—Initially it would have to come to council, but of course there is always still the Land and Environment Court, where the original approval was given. There is an approval from the Land and Environment Court and, once you have an approval from the Land and Environment Court, the court remains the consent authority for further action. If they put in a different application, it would come back to council and we would start the process again. But if they remain with this particular design, it comes to council for any changes and then it goes back to the court.

**Mr LINDSAY**—So you are saying there is little risk to the project from whatever the council might decide to do because its hands are tied by a court decision.

**Ms McCaffery**—Yes, but we could certainly make submissions to the court if there were issues that the council was concerned about. The whole construction timetable is a bit up in the air, and I do not think there has been a construction certificate issued on the development.

**Mr LINDSAY**—You will find this a puzzling question, and do not be offended. I was a member of a council for 11 years—but I come from hillbilly territory, so we were different

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probably—and my council would never, ever go to a court if we were not absolutely sure that we would win a planning decision. It appears that when you went to court you were comprehensively defeated. Why did you go to court?

**Ms McCaffery**—Are you in New South Wales?

**Mr LINDSAY**—No.

**Ms McCaffery**—You probably do not know this strange animal we have, called the Land and Environment Court, which has been dubbed by various people as the ‘rape and developers court’. It is highly unpopular in the community. We were so confident. The state government was a conjoining applicant in this appeal process, and the minister at the time, Craig Knowles, came out publicly saying what an appalling development it was and it was contrary to all of the state legislation. So we were as surprised as the rest of the community that the court made the decision that it did. There certainly is a shift now—because of the level of community concern about the court—in many of the court’s decisions, and I believe if this development went to the court today it would be refused. It has become much less a developers’ court than it was.

**CHAIR**—Can you just outline how the development is contrary to all of the state regulations?

**Ms McCaffery**—The difficulty for the council in its planning controls is that this is what is called a ‘special uses site’ and it does not require rezoning. In most other council areas if you go from one use which is a special use to a residential use or a commercial use you are required to do rezoning. In North Sydney—and we are about to change this in our controls—if you do a residential development you do not require rezoning.

The state government believed in its new legislation, the SEPP 56 legislation, that the style of development had a significant impact on the appearance of the harbour, and they were trying to convince the defence department to come back with a less dense development, a development that had greater landscaping, that presented better to the harbour. I know there is a fairly dense development above, but if you go into High Street there are many houses that are much less dense. The council was saying, ‘Don’t pick up the developments which are the most extreme; pick up the developments—and there are many around here—that are lower scale.’ Unfortunately, that fell on deaf ears with the defence department. The state government certainly supported the council’s position there.

We wanted a much greater setback and much greater landscape setback, mirroring the reserve at the end of the point here. We could have ended up with a development which was far more sympathetic and environmentally responsible than this development. It is a great pity that a federal government department is imposing a development like this on the community, and that is why you have the level of anger that you do in this community.

**Senator MURPHY**—You said the state government conjoined you in the appeal, and you say that the state government proposed a lower density development.

**Ms McCaffery**—We attempted to have discussions, which the department of planning organised, with the defence department about producing a lower scale development which fitted

more with the guidelines set out in SEPP 56 sites. This is actually a SEPP 56 site, and remains one.

**Senator MURPHY**—Low density housing?

**Ms McCaffery**—It allows some high density housing, but it requires much greater setbacks so that you present to the harbour a landscaped edge.

**Senator MURPHY**—Yes, I understand that. But what does that do in terms of the remediation requirements to allow such a development to proceed?

**Ms McCaffery**—You certainly would not need to excavate the whole cliff behind, for instance—

**Senator MURPHY**—I am just asking you—

**Ms McCaffery**—which I think would reduce the cost to the defence department significantly.

**Mr Massey**—It could be that if you had a fairly significant strip of landscaped area, you could probably—

**Ms McCaffery**—Less remediation, and then you could cap it.

**Senator MURPHY**—Yes, I understand. But the remediation level requirement would be in terms of this area here, for instance, underneath this building and out to the water. I am not sure whether the cliff is just behind that wall or not. What are the remediation requirements? Is the council aware of what level they have to be done to?

**Mr Massey**—You still have to remediate to the same extent where the development is situated. For example, if it is a high density development covering the whole of the site you have to remediate to a certain level over the whole of the site. That would not necessarily be the case if you had landscaped areas, capped and contained areas. Where you would not be putting residential development you would not have to remediate on those parts of the land.

**Senator MURPHY**—Thank you.

**Proceedings suspended from 3.16 p.m. to 3.27 p.m.**

**LEWIS, Mr Warren, Spokesperson, Platypus Combined Precincts Committee**

**CHAIR**—I now call on the representative from the Platypus Combined Precincts Committee. On behalf of the committee, may I take this opportunity to welcome you.

**Mr Lewis**—If I may I will explain a little bit about the Platypus Combined Precincts Committee, even though that is part of our submission.

**CHAIR**—Thank you. The committee has received the submission dated 12 October 2000. Do you wish to propose any amendments?

**Mr Lewis**—No, but I would in due course like to table a paper that I believe is relevant to some of the issues that are being addressed today.

**CHAIR**—It is proposed that the submission dated 12 October 2000 be received, taken as read and incorporated into the transcript of evidence. Do members have any objection? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—I now invite you to make a short statement in support of your submission.

**Mr Lewis**—Madam Chair, I think it is appropriate that I establish some credibility and identify some competence in the areas in which I am going to speak. To that extent, I would like to point out that I am a civil engineering graduate of some 35 years professional experience, 30 years of which was with the oil and gas industry in major project development. For ten of those years I was the engineering manager for Esso, so I was responsible for all of the front end and engineering planning development for their major projects. For the last six years I was a private practising consultant in the major project and general organisation management areas. I have recently been approached and appointed as the project director of a state government authority dealing with major projects. I would also like to just point out a little about the community group—

**CHAIR**—Would you make that brief, please, and get to the point of your submission. If the committee members have any concerns about the bona fides of your group I am sure they will ask you about it, so if you could make that very brief we can then get into the main part of your evidence.

**Mr Lewis**—I will and, in doing that, I will also answer some of the questions that were posed earlier. The committee members all belong to the local community, they are predominantly professional persons, and we have outlined their names, et cetera, in the submission. What is important is that the community is not a group of extremists. Fundamentally, the community believes that the land is public land and, ideally, should be returned to the public environment. However, it recognises that this has been a developed environment here, so its approach, from the inception of the Community Reference Group, is to ask for just three major issues to be always kept in mind as part of the development. One is that the historic 100-foot harbour foreshore reservation be retained. The second is that the scale and magnitude of the development and, hence, the density—the number of dwellings—be consistent with the harbour foreshore location, the limited infrastructure of the area—we have a single street in which two cars cannot pass if there is one car parked on the side of the road, so it is very difficult—and the general capability of the peninsula.

The third important point is that the development should meet planning and regulatory norms of the North Sydney residential areas, as embodied in the previous LEP of the council. What that means is that it would meet height limitations, setback limitations, overshadowing, open space requirements, all those sorts of things. I am quite happy to expand on that because it may answer some of the questions that you posed to the mayor. The point is that this development does not meet any of those issues. That is significant when we look at the question of what would be, and therefore what is, a responsible way to develop the site and, in turn, the question of how that impacts on what we are here for—remediation.

I would like to touch on a couple of high points of the submission and then dwell particularly on one excavation issue. The first one is a general issue, that the community made the submission because it believed that the proposal put by the Defence Estate Organisation was misleading, both in respect of statements made and omissions. It was misleading to the extent that a parliamentary committee recommendation regarding this remediation proposal that was

based purely on that information would, I believe, be quite different from one that would be made if more information was available to you. I am hoping that our submission has provided some of that; certainly today's discussion has opened up some of those things. In our view, it was a very flimsy presentation. It came as no surprise to the community, because these people involved here have been treating the community with intellectual contempt, and I believe this submission treats you people with intellectual contempt as well. I will be specific about some of the things. It is very obfuscatory in respect of the scope of the works. It is very difficult to even tell from the document that the cliff was being demolished. It took reading other background documents to find that the cliff was being demolished as part of this process.

Bearing in mind that the letter from the Heritage Commission is attached, even some of the statements about the Heritage Commission position were incorrect. I think it is worth exploring those for just a moment now because you asked a variety of questions to several of the prior people. I draw your attention to page 2 of the letter in relation to the cliff line, although the same issues apply to all of the components of heritage. It says:

the modified cliff line is a significant heritage landscape element—

It goes on then to say:

Hence, the proposal to remove substantial amounts of cliff line fabric is likely to have an adverse effect on national estate values.

We heard Mr Moss say, 'You can just take this cliff away and it won't hurt the values.' Clearly that is not correct. It also mentions the heritage bunker and is even more extreme about that, in saying that:

demolition of the former Coal Bunker will, nevertheless, have an extreme adverse effect on the national estate values of the place, even though the place has been recorded.

That means that they go ahead and do recording and photographing et cetera. That is a hell of a lot different to the flavour that was given to you by the defence department people. The caveat that the Heritage Council gives here is that it accepts that:

removal of the fabric is the only prudent and feasible alternative, if decontamination of the site is necessary.

I want to get it on the record again that Mr Blackley has come out openly—although it is very heavily obfuscated in the documents submitted by them—and said that, 'We're only demolishing the cliff because we need to do that for future redevelopment.' That is the sort of obfuscation that I think is extremely misleading in this submission to you.

The process proposed as consultation is ludicrous. What people want here is a process that will resolve problems should they occur. Corrective action process is what is required, not some consultation process. I propose to tell you a little bit about the consultation process being mindful of the time, I know, but it is a very important fundamental that I think you need to be aware of in the way in which you deal with the information you have been provided. The sketch of the proposed development shows beautification landscaping works on the wharf although it takes a keen eye to see that. The significance of that is it shows a much wider space of open area in front of the houses proposed within that 100-foot building line. That wharf proposal

disappeared because the defence department did not have owner's consent when they applied for a DA to the council. The significance of that is that part of that application to the council included a rather spurious economic assessment that even a first-year university economics graduate would say was inadequate, but it looked pretty good. What it omitted was the fact that at whatever the horizon year of the assessment was, there was a responsibility to remove that wharf and there were millions of dollars involved in that.

I think that is also significant because it is another one of the little gems that have been very conveniently omitted here. The Defence people want to talk to you about the development on one hand but then they want to say, 'No, we're really only dealing with remediation.' Let us have it both ways; let us deal with it all. If you are going to look at the true cost of this exercise, then you have also got to deal with the fact that that wharf has to be removed. The council does not want it, it does not work for recreational purposes and it has to be removed. Those costs are not allowed for as far as we are aware. We are not privy to the costs, so we find it very difficult to comment professionally on those but, nevertheless, it does look like those costs are certainly understated in many respects.

We just make a couple of points about that. The draft report of the environmental consultant, Egis Consulting Australia, indicates a whole variety of uncertainties. I do not think I need to actually quote those, but you will find on pages 4 and 5 that it does indicate that there are a lot of uncertainties here. We also see that on page 27 of the Egis report dated 14 August 2000 where it says, 'There is limited data available at this time to estimate what proportion of the rock associated with the cliff and the bedrock underlying the site is contaminated or malodorous and as such will require remediation,' meaning what therefore would really require remediation, because in a previous sentence it says, 'In total, an estimated volume of approximately 30,000 cubic metres of rock.' We are dealing with a major quarrying exercise here. That is in excess of 70,000 tonnes of material. It says, 'Approximately 30,000 cubic metres of rock is to be removed during the works to create the required site levels. A proportion of this rock may be contaminated.' It is going to be excavated for the site levels. I want to get that on record because I certainly do not want the Defence people going back and saying, 'We did not say that is really what it was for.' Even their own documents in this arena, given to the council, show that that is the case. This is not for remediation, and I thought we were here to deal with remediation. We set out to show you that we do not believe that what is going on here is remediation.

While I am on that point, and I am sorry if I am jumping around a little here, I am trying to condense things because of the time—

**CHAIR**—We are going to have to ask you to conclude in about 2½ minutes.

**Mr Lewis**—Madam Chair, I probably more than other person in the room here have the continuity of contact with this process and the ability to get this information to you, and I think that is reasonably—

**CHAIR**—We have your submission and the committee's job is to ask you some questions. We also have other witnesses to come before us, so we do have limited time.

**Mr Lewis**—I am aware of that.



**CHAIR**—Ms Baker informs me that you can have some of the time allocated to her as a witness. Therefore, you have got about eight minutes.

**Mr Lewis**—We have talked a little about the underestimated cost, but notwithstanding having had only limited access to this report, it appears that to include a contingency as they say only for ‘construction’ would be totally inadequate to account for the levels of risk associated with the statements made in these documents, just totally inadequate.

The noise and unacceptable unnecessary disturbance and disruption has been dealt with quite a bit, but I think we at least need to point out that the answers you are being given here are just answers on the run. It is clear that there is no effort in any of this documentation to put down a proper noise abatement and amelioration plan, none whatsoever. As I said a moment ago, this is an enormous quarrying exercise, and the worst part of it pertains to the removal of the rock—30,000 cubic metres of the rock face. Therefore, all of this extensive effort of dust, odour, noise, vibration, all will be carried out for an activity which really could not be condoned as remediation.

Let me make the point here that if you read the documents provided to the council—in this case the PPK report, pages 4 and 5 of the summary to which I inadvertently referred before—they point out that fill samples collected from the upper car park area were dry. What they are saying is that it is unlikely that the upper car park has a problem. Further down, in respect of residual contamination within the rock, it says: ‘However, from inspection of the bedding plains, fractures and joints in the recovered rock cores removed during site investigations there is no evidence of gross residual contamination.’

This is saying is that the contamination problem is the leachate—that is, the water passing through the rock—and it is not leaving any significant contamination in its wake. That is very important because the rock of itself is not contaminated. The problem is the water flowing through it. It goes on to say: ‘Although contaminated ground water appears to be flowing from beneath the Iora property, the concentrations of contaminants are generally less than those present in the ground water currently beneath HMAS *Platypus*. This is due to the concentrated nature of contamination sources on HMAS *Platypus*.’ In other words, it is saying that yes, you can talk about all of these problems of the obvious blue cyanic materials but, despite all of that, the water beneath HMAS *Platypus* itself is worse, so why are we talking about removing the cliff? It then goes on to say: ‘With remediation pending, the future impact of contaminated ground water flowing from beneath Iora is of concern.’ In other words, we are going to go in and remove all of the cliff and we are still going to have the problem, if not exacerbate the problem by removing the cliff. They are very significant issues because they do relate to the size of the development.

We have talked a little about the use of trucks. The fact was that the community in the CRG process did not accept that road haulage was necessary and was led to believe that the removal of such materials via barge was an appropriate alternative, the cost of which, if allowed for, would increase the cost of the project very significantly. We were never given any numbers. One of the big problems with the CRG was that there was very little quantitative information given. Quantitative information was given only in those cases where there was so much of it that it would obscure the truth, and the traffic issues are an example of the information that was provided. The point there is that the whole process obscured any of these really difficult issues

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because the environmental and heritage issues were generally fobbed off. Even though there was some work done on the environmental issues originally, the whole issue got lost in the process so it was never addressed further down the track. Other issues became more pressing.

The point of our submission is very strong—that the need for remediation of the cliff does not exist. If that does not exist then you are no longer able to fall back on that as an argument to overturn the fundamental heritage issues. The Heritage Commission is very clear: its caveat for removal only applies if the cliff needs to be remediated. And we heard Mr Blackley admit that that is not the case—‘No, we only need it to develop the face.’ It is very convenient that these people fall back on state issues when it suits them and hide behind federal issues when it suits them, and the reason for that is it allows for a variety of things, including control over environmental issues, to fall into the crack.

There is at the moment a case to be heard, I understand, in the Land and Environment Court about issues of jurisdiction in respect of Randwick. I wish to table a paper entitled ‘Planning decisions by councils’, which was part of a Environment and Planning Law Association annual conference. The paper was given on 12 October by David R. Parry, a barrister, and he addresses some of these issues. I think it is really worth while for the parliamentary committee to have a look at this because it addresses the way in which the Defence Estate Organisation has picked and chosen which jurisdictions it might like to work under at any given time.

You ask the council what options they have. Had this been done by any other human being in this country, any responsible person, they would have been controlled by a whole variety of acts. The council’s alternatives now are basically injunctive. I do not think anybody wants that to happen; certainly we the ratepayers do not want it to happen. In fact, we are caught in a cleft stick both ways: we pay for it through our taxes and we pay for it through our rates. We do not want to happen. The community is pretty responsible about this issue. But what we can see is that—

**CHAIR**—Just on that, do committee members wish that paper to be tabled and recorded in the transcript of evidence?

**Mr Lewis**—Can I get a copy of it first? It is the only one I have as this has all been very quick.

**CHAIR**—Yes. And I am sorry but I have to remind you of the time again.

**Mr Lewis**—There are many issues in the submission we have made, which I trust you will read because they do expand on some of these things we are talking about here. In particular, we believe that this whole process has been one of deliberate obfuscation, so that these works could be carried out, particularly the cliff, for development purposes, and of pretending that they are required for Defence purposes so that they no long come under any control process. The significance is that, by not having to remove the cliff, we can start to look at a smaller and more valuable development. The cost of that cliff demolition is not, therefore, something that has to be borne. It is possible, as you have heard, with open areas that it may be capped, certainly in providing the 100 feet back to the community. By reducing the size and magnitude of the development, we believe it can be reduced very significantly in cost.

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**CHAIR**—I am sorry, I will have to stop you here as we have gone another five minutes over. You have given us a very comprehensive submission, which the committee members do read and take seriously. Do you have a quick winding-up statement before we see whether any questions are to be asked?

**Mr Lewis**—Yes. The CRG process and the subsequent community processes that we have been saddled with here show that the people we are dealing with—and we have specific examples—have been blatantly lying to the community about, for example, having Heritage Commission approval to come in and do their equivalent to a midnight bulldozer exercise on the bunker and about having EPA approval for that as well. This is consistent with the way they do business. What we are commending to you is that you have independent, third-party, arms-length expert professional advice on some of these issues. I am not suggesting that the consultants are lying. What I am pointing out is that you can constrain briefs to the extent that you get the answers you want, and it is a very brave consultant who says ‘up yours’ to the client.

**CHAIR**—Thank you very much. Senator Murphy, you have a question.

**Senator MURPHY**—I do. I understand you said you were not opposed to any development, to a different, maybe more open space development. If it is the case that the EPA and the CLM Act require remediation of the cliff face before any residential development—open space or otherwise—is required, what would you propose Defence do then?

**Mr Lewis**—Firstly, that is a hypothesis with which I do not concur at all. I cannot concur with the hypothesis that they require that.

**Senator MURPHY**—I am not talking about a hypothesis here; that is their evidence to us, and we will test the evidence. Whether I accept your arguments or not, we have to deal with the facts at the end of the day. The committee has now got evidence that says remediation of that cliff face is necessary for a development approval of any type to proceed—that is, that would allow residential development. I do not know whether that is true, but we will find out. I am just asking you whether you know—if you do not know, that is okay. I just thought you may have had different evidence to what we have already been told.

**Mr Lewis**—Do I know that it is not needed?

**Senator MURPHY**—Yes. Do you know whether or not it is necessary?

**Mr Lewis**—Yes, I do. It is in the very reports that these people have provided.

**Senator MURPHY**—That is what I am trying to get to.

**Mr Lewis**—I do. It states right here, if you read these documents, that the problem is the leachate, not the rock itself. That therefore means the rock is not contaminated. It also says in another document here that the volume of 30,000 is to be removed for the required site levels, not for remediation. A proportion of this rock may be contaminated.

**Senator MURPHY**—I am just dealing with one particular piece of evidence: that the remediation of the cliff had to occur to allow for residential development, whether it be high density, low density, or very low density.

**Mr Lewis**—I am sorry, I have missed the point.

**Senator MURPHY**—I am just wondering whether you have had any evidence that would suggest the contrary to that—that is, that the CLM Act requires full remediation of the site, including the cliff face.

**Mr Lewis**—Only the evidence that they have tabled themselves, because their evidence refutes that.

**Senator MURPHY**—As I said, we will test that.

**Mr Lewis**—It is in writing right there; it refutes it. If you read the draft report that they have provided to the council, it clearly talks about the problem being the ground water—the leachate—not the rock. So that is in there. I do not propose to be a geotechnical expert, but I know enough about it, having conducted a variety of geotechnical projects, to know there is sufficient information in there to warrant very serious questioning of the proposal that the cliff has to be remedied.

**Senator MURPHY**—We will find that out.

**Mr Lewis**—I hope that is the question you were asking me, not what size I thought the development ought to be.

**Senator MURPHY**—I thought you may have had some specific evidence. I have never read the CLM Act, and I am not an expert either. But we will get to the bottom of it.

**Mr Lewis**—It is in the documents themselves.

**Senator MURPHY**—That it may be, in your opinion.

**Mr LINDSAY**—We will ask Defence about that when we recall them. Mr Lewis, I was impressed with your evidence. You started off by saying that you are not an extremist sort of group. Your evidence indicated that, and I compliment you on what you have said. So I bravely ask—everybody down the back, don't listen—this question: is this value for money for the Commonwealth of Australia?

**Mr Lewis**—Absolutely.

**Mr LINDSAY**—What will people say who do not live in Sydney if we dispose of this site? Where is the value for the taxpayer? Because it is not related to them and they do not understand the local issues and the impacts it will have when the development is done, if it is done, they will say, 'We should recover the best benefit from the site that we can for the taxpayers of Australia. We would then use that money for the benefit of the taxpayers of

Australia.’ How do I reconcile that duty of this committee with what you are putting forward: that we need a lower-scale development and, therefore, attract less return for the site?

**Mr Lewis**—That is a very valid question. Let me point out that Mr Blackley himself said, ‘Our role’—that is, the Defence people—‘was to optimise the return.’ Not that I believe Mr Blackley truly believes that. I think he believes it is to ‘maximise’, which used to be the word they had on the wall. But if it is to optimise, then there is a whole variety of issues that need to be taken into account. And I certainly cannot reasonably condone disruption to any community, whether it is my community or any other community. Nevertheless, we believe it is possible that less is more. A smaller development here can be properly tested. We may be talking about something even less than half. We know certain land values here. We have done some back-of-the-envelope calculations ourselves. We believe that, provided you do not get clouded by the great promises of real estate agents who tell you that you can always sell something for more than you really can, if you have ever been to auction and got \$100,000 less than they promised you, it is possible that lesser density, higher quality development that meets the general surrounds of the community, that fits within the constraints of the street—because nobody wants to live in a place that you cannot get in and out of; not only us, but those who would buy it—will not only give a greater return but also cost less because, to do that, the cliff does not need to be removed.

**CHAIR**—Thank you very much, Mr Lewis, for a very comprehensive briefing. We have scheduled today to try to give the maximum number of people the opportunity to speak, and we do have time restrictions. We have Hansard and secretariat staff who have flights, so we have to stick to a schedule. Everyone who is appearing has a schedule. You have five minutes to speak, and then we will have questions. We have comprehensive submissions from everyone who wanted to appear, and the committee has had an opportunity to read those. In fact, even now it is probably unlikely that we will be able to recall Defence today. We will have to schedule that for another time. I am sorry, but I have to ask you to keep to the schedule and stick to the five-minute speech to your submission.

[4.03 p.m.]

**McLELLAND, Mr Christopher (Private capacity)**

**CHAIR**—Welcome, Mr McLelland.

**Mr McLelland**—I am a local resident and deputy chair of our local precinct. I was an elected member to the CRG which dealt with the HMAS *Platypus* issue. Subsequent to that, I have maintained a continuing interest in it. In my professional role, I have always had an interest in foreshore matters.

**CHAIR**—Thank you very much, Mr McLelland. The committee has received a submission from you dated 11 October. Do you propose any amendments?

**Mr McLelland**—No.

**CHAIR**—It is proposed that the submission dated 11 October 2000 be received, taken as read and incorporated in the transcript of evidence. Do members have any objections? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—I now invite you to make your five-minute statement in support of your submission.

**Mr McLelland**—Being aware of the time, I am going to concentrate on two key issues in my submission. One is the wharf, which has not been touched on before. It is a major remedial expense item that is addressed nowhere in the Defence submission. The other is the cliff face. There has been a lot of discussion about its national heritage value, its social and economic values and so forth, but these have not been properly addressed in the submissions that we have seen to date.

I will first look at the wharf. The wharf is a major, integral component of this project, both physically and in terms of remediation. This was recognised by Defence in their community newsletter No. 2, which was circulated early in 1997. I can demonstrate a copy of that, if you want to see that affirmation. Sediments in Neutral Bay have been identified as containing a variety of contaminants. Defence's consultants, PPK Rust, suggested these are better left undisturbed because of the difficulty of remediating the bay itself, because there is no containment for the bay.

There are two immediate options for the wharf. One is demolition, the other is retention. Both carry significant economic and environmental implications that need to be factored into any financial evaluation of the remediation of the *Platypus* site. I would like to draw the committee's attention to the following points. One, Bernard Blackley told Milson Precinct on 12 November 1996 that, under the leasehold agreement with the maritime authorities, the department was responsible for the removal of the wharf and that the costs of doing this were likely to be in excess of \$2 million. Two, the officer also told the precinct that the major repair costs were imminent and that there would be significant ongoing maintenance costs. It was intimated that the department hoped someone might take this problem off their hands—but frankly such a gift is quite literally a poisoned chalice.

Even if an appropriate use could be found to justify the retention of the wharf, at some point the wharf will need to be demolished or substantially rebuilt. At this point, remediation will have to be fully addressed. In other words, if you have to replace the piling or whatever, you will be disturbing the base sediments, and therefore you will be faced with the entire remediation problem. No potential leaseholder is likely to take up this commitment without seeking suitable compensation or indemnification from government for the ongoing maintenance and remediation of the structure and surrounds. This multimillion dollar cost therefore has to be accounted for somewhere in any evaluation.

Turning to the cliff face, the Department of Defence submission is unclear on a number of key issues with regard to the extent of the proposed destruction of this heritage listed cliff face, and I think a number of people have made this point. The department fails to identify what is actually required for the purposes of remediation. The key questions include: what is the actual contamination to be dealt with—the rock itself or the leachate passing through it? That question was raised by Warren, just before me.

**Senator MURPHY**—I think we have done all that we can do.

**Mr McLelland**—Not quite, and I will come to this. Everything is focused on the fact that we have accepted that it is a contaminated site. But what are the risks and hazards actually posed by the contaminants? When you address it from that point of view, it becomes much more interesting to evaluate what your options are. So there is an issue of what is the true extent of contamination, therefore, if any of it requires remediation and, hence, what are the actual purposes of removing the cliff? And that has been touched on. Will this actually address the problem of recontamination? I do not think that that has been adequately addressed anywhere.

Again, I am not an expert on contamination, so I am going to rely on information that was presented to the CRG by Defence's consultants PPK Rust during the process of our consultation. One, regarding the contamination source, PPK Rust told us that the ground water from up gradient was the source of potential contamination. They presented three remedial options. One was to allow continued flow after demonstrating insignificant environmental risk, two was to collect the ground water and treat it on site, and three was to divert the problem. If the cliff face is to be cut back to the boundary, as proposed, diversion becomes the de facto option chosen. So they are saying, 'We'll cut it back; it's somebody else's problem; we'll divert it around the site.'

The effect of this is that the contaminants are going to be diverted onto neighbouring properties—some of it public land, some of it private land—and then ultimately back into Sydney Harbour. In so doing, this could introduce contaminants onto hitherto uncontaminated sites. This presents an interesting issue of: where does the government stand legally if, by this action, it is creating a condition that hitherto did not exist? Therefore, there is a serious risk factor here that has to be addressed.

About the actual contamination risk itself, PPK Rust told the CRG, 'Health risk is negligible for dermal contact and very low for ingestion.' We were also told that the risk is manageable. Somebody had suggested that you could lick that blue spot on the cliff for 40 years and you still would not suffer any undue ill effects. This is presumably why in the proposed scope of works the entrance cutting through the cliff, and the area of the cliff underneath and around the Exhauster House, is not to be treated at all. It is a case of, 'We'll treat it where we want to get excavation for development purposes, but we don't have to treat it elsewhere.'

To do with the extent of remediation, we have discussed the coincidence of the levels of remediation actually relating to the development levels, but I just wanted to draw attention very quickly to a quote from the Thiess report which said, 'Continued excavation and treatment of material would present a large cost and would pose a significant geotechnical risk to other areas of the site, including the heritage significant ashlar sandstone seawall.' So what they are effectively saying is underneath where we are sitting now we will go down, we will do a certain amount of remediation and if it gets too difficult we are going to cap it in order to protect the heritage item of the seawall. You might equally say why don't we adopt a similar process for the upper portion of the site which ostensibly is far less contaminated because as has been pointed out, the leachates are passing through that rock surface and are not sitting down in a great puddle at the bottom of the site. One might well ask: if it is good enough for the bottom of the site, why can't it be applied to a major heritage item at the back of the site?

The other thing to do with the cliff face is: why remove the cliff face at all? We have heard that approximately 30,000 cubic metres of rock is to be removed during the works to create the

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required site levels. This suggests that the taxpayer is being asked to finance works and carry the additional risk that normally would be the responsibility of the developer who purchases this site. I do not see quite why the government has to carry that risk and that financial burden. Furthermore, a proportion of this excavated rock is being used to provide clean fill. Is this an appropriate use for a heritage item registered on the national estate?

The CRG had stressed at the outset the outcome of any contamination assessment should play an integral role in determining the most appropriate use for the site. In the event the assessment was only belatedly made available, which was some seven months into the planning process. By that time the planning was near conclusion and the remediation could not play any effective part in the determination of the physical outcome. Currently, we have a capped site with no present health risks according to the contamination experts. There is a potential environmental problem which those experts have said could be adequately dealt with by containment. Huge social disruption, economic cost and environmental risk is being created by the massive remediation works proposed in order to achieve the sought after development potential for the site. Can this possibly be a prudent and sensible use of government resources? Could not the low intervention alternative of containment and consideration of a lower level of potential use, as Sydney Harbour Foreshore mentioned in their matrix idea, be a far more economically and rational approach?

**CHAIR**—Thank you very much for a very thorough presentation.

**Mr LINDSAY**—Mr McLelland, thank you. Do you have any suggestion or evidence about access to the site? Have you looked at that, the road access?

**Mr McLelland**—I am not an immediate resident of the High Street peninsula. I know it is a problem because I know the access is extremely narrow. There was a lot of discussion about the status of that road in terms of its traffic bearing capacity. It was acknowledged as something that had to be addressed, even in terms of the ultimate use of the site.

**Mr LINDSAY**—Your evidence to the committee is that you think there should be basically capping on the site, that there should be a much lower intensity development, whatever that is. How would you propose that Defence gets over the problem that if they want an environmental clearance on the site they have to demolish the sandstone cliff? How would they get over that?

**Mr McLelland**—My concern is that in doing that they do not actually solve the environmental problem because the contamination reappears. The only way to avoid that is to divert it and make it somebody else's problem. I think that therefore there has to be a proper assessment of all those risks before making any such decision. I also think, from the evidence that was provided by PPK Rust, that the contamination in that cliff face was not that major an issue anyway. I think the committee should be very assured that it is really necessary for remediation to do anything with that cliff face. I am suggesting that if you could inspect a broader spectrum of solutions because, as I say, in the CRG process we went down we looked only at the maximum usage of the site which was high density residential which appears to have driven the contamination solution we have. We should have had the contamination report and we should have looked at all the issues in the context of the contamination report. That should happen now as it did not happen then.

**CHAIR**—Thank you very much. I would just like to remind everyone here today that despite time restrictions on the hearing you are welcome to put in writing any concerns you have or to give further information to the committee secretariat and it will come to members of the committee.

[4.17 p.m.]

**McELROY, Mr Robert Lloyd, Chairperson, Iora Owners Corporation**

**CHAIR**—Welcome to the hearing, Mr McElroy. The committee has received a submission from you dated 11 October 2000. Do you wish to propose any amendments?

**Mr McElroy**—No.

**CHAIR**—It is proposed that the submission be received, taken as read and incorporated in the transcript of evidence. Do members have any objections? There being no objection, it is so ordered.

*The document read as follows—*



**CHAIR**—I now invite you to make a short statement in support of your submission.

**Mr McElroy**—I would like some of my time to go to Mr Linker but I wish to raise the issue concerning access to the upper car park. Hopefully there will be no demolition of the cliff after today's talk, but if there is to be demolition of any of the cliff and it is to take place from the upper level, or if the coal bunker is demolished from the upper level there are going to be a lot of truck movements coming in from what is known as the upper Hipwood gate.

I would like to raise the issue of alternatives to taking the spoil out by road. I would like the committee to consider it being lowered by crane, chute or hoist or something along those lines. The roadway to the upper Hipwood gate is on Iora property. It is a right of way that was granted to the Navy and I would like it very clearly defined as to who will be responsible for the repair of the roadway in the event of a lot of truck movements. I will just say very briefly that we are not very keen on a full-scale development. We would like less and therefore less spoils to be taken off the property. I can finish off there because I know Mr Linker will cover what I need to say.

**CHAIR**—Thank you very much for your brief statement.

**Mr McElroy**—Are there any questions?

**CHAIR**—Are there any questions by committee members?

**Mr LINDSAY**—You called removing rock from the cliff face 'a non-transparent reason'. What did you mean by that?

**Mr McElroy**—We questioned the need to demolish the cliff face. We were asked to make a submission and we did. We feel that the cliff face does not have to be demolished along the lines of what most people have spoken about today.

**Mr LINDSAY**—We would like this non-transparent reason.

**Mr McElroy**—There are fewer houses.

**Mr LINDSAY**—Were Defence not transparent to you?

**Mr McElroy**—We cannot see the need—that is what we are trying to say.

**CHAIR**—Can I just ask you one question before you go. Do you support a remediation of the former HMAS *Platypus* site?

**Mr McElroy**—Controlled and not necessarily full scale, and to an extent that would allow a smaller number of dwellings to be built instead of more.

**CHAIR**—Thank you very much.

[4.21 p.m.]

**LINKER, Mr Denny (Private capacity)**

**BAKER, Ms Carole (Private capacity)**

**CHAIR**—I welcome both of you. I am sorry that you are not in a good state to give evidence today, Ms Baker. The committee has received a submission from you, dated 11 October 2000. Do you wish to propose any amendment?

**Mr Linker**—Not at this stage, no.

**CHAIR**—It is proposed that the submission, dated 11 October 2000, be received, taken as read and incorporated in the transcript of evidence. Do members have any objections? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—You have a little more time than Mr McElroy to make a statement in support of your submission, and then we will perhaps have some questions.

**Mr Linker**—Madam Chair and gentlemen, I have given you a submission and I hope that you have all read it. However, there is one point that I want to make very strongly, and I will make this briefly. One point only is that Defence has been misinformed and has misinformed you about the legal status and the consent to the works. The works fall into three categories: firstly, the removal of all Defence improvements and activity, pollution and whatever Defence has introduced to the site since its purchase in 1942; secondly, the remediation of the site and; thirdly, as Defence has put it in the court—and I have brought this to your attention in my report—there is the reconfiguration of the site, which is the bulk excavation. I am pleased to hear today, not once, not twice, but several times, Mr Blackley and others from Defence have admitted to this committee that the excavation is to enable the lowering of the cliff face to meet the approved levels of the court, as in the court submission.

I will go to the court submission and I will show it to you. I would submit that a copy of that should be made available to you, and I am sure that it is a public record. There is no approval in the court submission to the excavation because there was no application before the court for the excavation. The court was told, and the judge in his paragraph 4 says, that it is ‘the statutory right of the applicant to say what are the works’. The applicant had stated to the court that the excavation is a ‘Defence purpose work’ and therefore they do not need consent and it is a given. The judge accepted that. I challenge that and I say to you now—and it has been proven and underlined by statements that have been made by Defence people—that there is no more need for Defence works on this site: it is surplus to the requirements. Therefore, the only work that you can do constitutionally is to remove those activities that you have introduced—you, the Commonwealth, I do not mean the committee particularly—for Defence purposes.

It is very noble of Defence wishing to do the remediation work. The excavation is particularly for that development. Everyone now agrees with that. Your own legal advice—and you have asked on several occasions of others what would happen if we did this that or the other—is that the legal liability to the Commonwealth will be lessened if sold without remediation. So why are we doing remediation? If you are trying to protect your legal protection do it with that. Mr Blackley does not agree with that. Why have legal advice? Does he have other legal advice—under evidence I think he said that to you—and if so, have you seen it and has anyone seen it?

It is my understanding—and I have stated this in our submission—of the Contaminated Lands Management Act that it is the polluter who is responsible forever. This is now best practice. I am involved on at least four or five sites in a professional capacity as a land surveyor where polluted cells are being kept on the site. The site that was mentioned here earlier, the AGL site, is a site that my company is involved in and I am personally involved in the surveying of that.

We have come up with—and this is a matter that came out of my office on my own initiative—a new form of title where the cell or the land is limited in depth. It is a separate title on the land that will remain forever with the AGL. It is limited in height. The land and the property above it is not contaminated and can be sold to somebody else. This has been done on several sites and it was an initiative that I started. This initiative, this form of remediation,

should and must be carried out here. This is your protection. If you are going to do it—and I do not know why you should, and as a taxpayer of the Commonwealth I really think that the AGL, the gas company, should do it—we should investigate that. I have not seen the legal advice and I highly recommended to you in our report that you should seek this. I think you should seek it from other than Defence people because, regrettably, I have over many years found that the advice and the submissions that Defence people have placed before us have been erroneous.

One point that has been raised on many occasions is with regard to the traffic. If this excavation takes place it requires the removal of about 28,000 cubic metres of soil, and that means 1.6 times that is the amount that will actually come because it expands once it comes out of the ground. That requires approximately 3,000 trucks—that is 6,000 truck movements.

In the traffic report that was submitted many years ago it was stated that High Street can take this number of trucks, and the report was based on plans and surveys that were tabled. The width of High Street outside my place—a registered surveyor of 35 years experience—was shown incorrectly. It was shown wider than it is. I mean, do it to anybody but do not do it to probably one of the most experienced surveyors in this neighbourhood. That is the sort of misrepresentation—inadvertently, I take it—that has happened. However it has happened too often.

You only have to walk down High Street and see a truck with a bogie trying to come down there while someone is parked on the side. It is not an easy task. And what are we going to have? Are we going to have a two-year moratorium when nobody can park in High Street? None of this has been touched on. I have not seen this traffic report—I hope you have—and maybe this question has been answered.

I will briefly touch on some of the issues that were raised previously. The Commonwealth very rightly, as Defence would, hides behind its best legislation. It says it has defence powers to do it. I say it does not. One of the questions you have repeatedly asked of people is: what could go wrong that will delay this? I will tell you what could go wrong. You approve funds for works which do not have legal, valid consent and then you will see what goes wrong. I do not know what the legal consequences are, but they have to be investigated. They could end up in challenges, they could end up anywhere, and it could end up in all sorts of delays. That is the first issue. I repeat: there is no consent for remediation, there is no consent for the excavation, and the Commonwealth does not have the powers under the Constitution. I have checked that with constitutional lawyers and I will try and get you an opinion in my further submission. I will take up your kind invitation, Madam Chair, and put in a further submission because I have made copious notes on matters that were raised.

The other issue—and it is a very important issue—is that the work to comply with the court approval has to be done in accordance with EPA regulations. For this sort of work, especially where there is treatment on the site, the EPA requires that there is an environmental impact statement that would test all those motherhood statements that we have heard: ‘Don’t you worry about that. It will be best practice. There will not be vibration. There will not be dust. There will not be anything.’ Only a full environmental impact statement that has been properly carried out by an independent assessor and put on public exhibition for comment will test those motherhood statements. I was living here at the time Iora was built. Let me tell you that the noise was such that Carole had to go away—she got so crazy that she just had to go away.

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**Ms Baker**—I went to Bali for a fortnight.

**Mr Linker**—The dust! They had all the spray systems, the carts and everything, but the dust was such that for six months everybody in the neighbourhood had the itches. We were all walking around in it and when you went to work you itched because your clothes were full of it; you just could not get out of it. Someone previously asked the council about Iora. I probably know more than all the others about Iora. There was no remediation carried out on Iora. Iora was done prior to the environmental protection that is now needed. However, there was a very stringent regime of environmental protection during the excavation, and that excavation process, the conditions and the regime were part of the development application process. There was actually a council consent for the excavation. We do not have this here. There is no-one who has said, 'We will give you consent for the excavation.' It does not exist because in the court, Defence, through their barrister, said, 'We do not need this consent. We do not need it for remediation and we do not need it for the excavation.' I tell you that you do.

Defence is now hiding behind defence powers but it is saying that it is doing everything that the EPA wants. They are not. There is no impact statement. There is a report that council has. They have to put a final report before they can start, yet the council report says 'draft' right of way. I have taken the view—and others disagree—that the granting of the right of way to the Commonwealth in about 1942 was done by an old instrument of transfer and grant. It is not under a modern instrument; it is under an old instrument of transfer and grant. The terms of that instrument imply that the right of way may be used for Commonwealth purposes because it attaches to the land. It is my view, which I have stated, that the bulk excavation and the remediation work is not a Commonwealth purpose. Therefore, there is a strong question as to whether the right of way can or cannot be used, and that will be tested somewhere else. You have asked, Mr Lindsay, about what could go wrong. That is another one that could.

However, even if the right of way can be used, it is a right of passage only. A truck may not even so much as stop for one second. I also have an interest in that right of way, and I will make sure that if a truck does go up and down there, it will not stop. If it parks there, it is in breach of the right of way, and that opens other issues. Maybe you lose your right of way if you are in breach of it. Furthermore, the right of way is narrower than the carriageway that has been constructed. You have no rights over any other area in the carriageway, other than the right of way. The way that the geometry of the right of way is, it will be not impossible, but highly unlikely, that a truck with a bogie can turn the corner coming up Hipwood Street and do a left-hand turn and stay within the legal bounds of the right of way. So there is another thing that can go wrong and delay you.

What I am suggesting to you is that the Defence submission has been poorly presented to you. They have left out all the things that they cannot answer, because they do not have the answers. They have told you, 'She'll be all right, mate,' but it is not all right. They have treated me and others in the community just like that all the time. They come to us with a blank piece of paper. I remember the first meeting that I had with Mr Blackley. He said, 'I come with a clean sheet. I have not made any decisions to optimise the site. It is a win-win situation.' The minute he said that, I started to fear.

There was one further item that I wanted to close on. We have heard a lot about the contamination, and I will answer the question that you have not asked me yet: I agree the site

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should be contaminated. If the EPA remediate it, I agree that the site should be. I agree that the defence items should go immediately because you have no more use, and you have said so—it is beyond your requirement. However, there is one item—and maybe you are privy to something that I am not aware of—where you have not been shown proof that the way that you are being directed is the best return for the Commonwealth, both in public appreciation and in monetary terms. So the person in Perth or Adelaide will say, ‘So what if Platypus goes in the 95 unit?’ It is my professional view—and I have looked at it because I service some of Australia’s largest residential developers; therefore, I speak from experience not from the back of an envelope—that the development that is proposed now and the method of remediation will not give you the best return for money, and it will not give you even an optimised amount of cash and, most certainly, it will not give you a maximum amount. There are better ways of doing it; there are cheaper ways of doing it; and there are ways that will protect you. If you go ahead with the excavation in accordance with your own legal advice, you open yourself to more legal challenge than you would if you did nothing. If you do nothing and remove only your contaminants, then the problem under the New South Wales legislation reverts back to the polluter—and they are still around and they have money.

**CHAIR**—Perhaps I can start with a question that comes from your closing statement; that is, you say that the site under the proposal Defence is putting before the committee is not optimising its use and profit. Have you looked at what would optimise it?

**Mr Linker**—Yes, I have, Madam Chair. In one of the first CRG committees I tried to provide the information to those who were there. In fact, if my advice had been taken, you already would be spending the money—it would have gone on further Paralympic health.

**CHAIR**—What was essentially your proposal?

**Mr Linker**—In my limited and quick expression, the optimum use of the site is an innovative community land subdivision into about 25 to 30 waterfront reserve housing lots with integrated community facilities like a swimming pool and tennis courts. It would be a land subdivision that allows for luxury housing with some shared facilities and, therefore, a minimal amount of remediation because a lot of the site could be left as an open space, so you would have the cell. There are some things that have to be done. We all accept that. No-one says this is a cheap solution. There would be much less disruption to the neighbourhood and a much greater return to the Commonwealth.

**CHAIR**—Did you work out the return on such a proposal?

**Mr Linker**—I do not know the remediation cost, but I would say that such a proposal would provide 30 housing or duplex lots worth in the vicinity of \$30 million to \$32 million. Take the remediation costs out of that—

**CHAIR**—That is without demolishing the existing cliff face that has been talked about today.

**Mr Linker**—That is without demolishing the existing cliff face. The demolition of the bunker was factored into my assessment. Because I was not aware of some of the heritage issues, I would have to rework it if we were keeping the home.

**CHAIR**—Did you try to factor the best estimate of remediation work into that figure?

**Mr Linker**—At the time, I had a guesstimate that we were remediating this section we are sitting on, and I have allowed about \$5 million to \$9 million.

**CHAIR**—Any remediation work to the cliff face at all?

**Mr Linker**—From the information that is available, the parts of it that I have read—I have not had the opportunity to read the full reports, nor do I have the information of the full reports—especially the extracts that have been read out to you by Mr Lewis, it is ball line whether it needs to be done, and if it needs to be done, it may require some sort of minor excavation, or maybe the first metre of the cliff, but not the 30,000 cubic metres. I do not think anyone in this room can leave here believing that the removal of 30,000 cubic metres of the cliff is for remediation. Fairyland stopped a long time ago and, most certainly, my experience with the federal government is that I do not think you believe fairy stories very easily.

**Mr LINDSAY**—You commented that the Commonwealth does not have the power under the constitution to do this. Could you just explain that please?

**Mr Linker**—That is correct. I am not a constitutional expert. However, as I say in 3.1 of my submission, I am led to believe that the Commonwealth has certain constitutional powers to exercise and do things under section 51(iv) and section 52 of the Constitution. Those sections allow work for Commonwealth purposes or for the benefit of Commonwealth activity and so forth. First of all, it has to be a Commonwealth purpose. If the Navy said, ‘We do not want to go to Western Australia; we want to bring the Collins class here. Therefore, we need to excavate the cliff and go down another 50 metres,’ we would not like it, but you would have the power to do it because it would be for the submarine base. This was one of the questions I asked at the beginning: is this housing going to be for Commonwealth personnel? Are naval people going to live in these houses? I think that would be a good thing.

**Mr LINDSAY**—I understand the point you making, and I will ask Defence to get their advice to me. Were you proposing at the start a different form of land title?

**Mr Linker**—Stratum. The technical jargon is the creator cell, which you rightly said is a big garbage bag. I understand that language because I am not a technical expert on contamination. Basically, that is what it is—a sealed cell. Water is created at a depth and all the yucky stuff is placed into that. It is sealed off and a land subdivision is carried out where that cell is placed on a separate title. It is a title for the yucky stuff, for the pollutant, and the rest of the site is clean.

**Mr LINDSAY**—And you are saying that that should be the responsibility of AGL?

**Mr Linker**—Yes. That is what AGL is doing at the site that was prepared at Breakfast Point—the big AGL site of 54 hectares. I am working on that site. I advised them that that is what they have to do. That is what the Wellcome people did on their site. If you wish, I will tell you all the pollutant sites I am working on.

**Mr LINDSAY**—No. You are not a lawyer and I understand that. Neither am I.

**Mr Linker**—That is why I have friends with legal advice.

**Mr LINDSAY**—What happens if AGL disband and go away?

**Mr Linker**—A lot of Australian shareholders will lose a lot of money. That is a good question; I do not know what will happen.

**Mr LINDSAY**—Right; we will get that advice from Defence.

**CHAIR**—Thank you very much for a very succinct submission. If there are no further questions, we will recall the Department of Defence.

[4.51 p.m.]

**BAIN, Mr Ross, Acting Head, Defence Estate Organisation**

**BLACKLEY, Mr Bernard, Director, Sydney Property Disposal Unit, Defence Estate Organisation**

**KELLY, Mr Craig, Partner, Minter Ellison**

**MACKAY, Professor Richard Gordon, Managing Director, Godden Mackay Logan Pty Ltd**

**MOSS, Mr Douglas William, Manager, Operations and Development, Thiess Environmental Services**

**CHAIR**—I welcome a new witness, Professor Mackay. Professor, do you wish to make a statement on the capacity in which you appear before the committee today?

**Prof. Mackay**—I am appearing as heritage consultant to the Department of Defence.

**CHAIR**—The committee agrees that there are far too many questions to be answered within the time constraints we have this evening, but we thought that there were some key issues you might be able to clear up for us. You have heard a lot of discussion today about the cost benefit of the proposal you have put to the committee. What have you done to look at other options, particularly, the option of our last witness, whereby you could maximise the profit of the development with less remediation work, less cost and a better outcome in the community's view?

**Mr Blackley**—We finalised our submission in 1997, and we considered just about everything on this site: small boutique hotels, high-rise apartments and high-rise towers in part of it to leave a lot more open space.

**CHAIR**—Did you look at a strata title land development? Was that part of it?

**Mr Blackley**—Yes, we did. You are really going back in time now. Mr Linker talked about 25 to 30 luxury houses and, as well as that, a number—he did not quantify—of waterfront housing lots plus a swimming pool and a tennis court, but my memory just does not go back to that. I would rather get someone to independently have a look at that and put it into the context that we have talked about. I would rather just take that on notice. I will specifically look at that proposal.

**CHAIR**—That is fine. In earlier questioning we talked about the barge versus the road method of transporting soil from the site. You indicated that you had done some figures there but that you did not have them with you. Could you make those available to the committee?

**Mr Moss**—Yes, I could.

**Mr LINDSAY**—Professor Mackay, I would like to get this in while you are here and available and, after I have dealt with heritage issues, I would like to deal with the legal issues because, if we recall you in Canberra, legal advice might not be available. You heard the evidence of the mayor from the North Sydney Council. There was quite extensive evidence about the heritage values and the need to preserve them. I will not go back over that; you heard all that. Would you please respond to the committee and give us your view on those comments.

**Prof. Mackay**—I would like to respond procedurally and substantively. I think it is important that the committee understands that the elements nominated are not currently on the Register of the National Estate. They are so nominated but they are not currently listed. Indeed, Defence objected to their listing at the time. I think it is also not correct to construe the fact that they appear on the Register of the National Estate as equating national significance as the Register of the National Estate is a very broadly drawn register that includes items of local, state and national significance. So that connection is not made. With respect to the—

**Senator MURPHY**—Has the cliff been nominated?

**Prof. Mackay**—The cliff is included. The five items that have been talked about today as the heritage items are the five elements that are nominated to the Register of the National Estate.

**Senator MURPHY**—When were they nominated?

**Prof. Mackay**—I would have to take that on notice but my recollection would be circa 1998. My recollection is that it was subsequent to the court hearing but before judgment was delivered.

**Mr Blackley**—Before October 1998.

**Prof. Mackay**—The status of the place at the moment is they are on what is called the interim list, which is an interim step. With respect to the commission's comments, we have been advising Defence for some time and we have been liaising with the commission. We have been through a formal section 30 referral process. It is Defence's advice through us to the commission in fact that the removal of the fabric of the cliff face has a substantive adverse heritage impact. We agree with that. It is no surprise that the commission finds that it has that impact. What is significant is that, in accordance with section 30, the commission has determined that it acknowledges that, if decontamination has to occur, there is no prudent and feasible alternative. The bottom line in their formal response to the section 30 referral and, indeed, in their much more succinct two-page submission to this committee is that they acknowledge that that removal may proceed.

Dealing with the heritage issue itself, I think it is useful to draw a distinction between the two aspects of significance of the cliff. The first is the cliff face itself and its ability to demonstrate parts and aspects of the history of the site through the quarrying, through the retaining walls and through the industrial relics that are there. The second aspect is the topographic contribution that the cutting itself, the existence of the cliff, makes to this part of the harbour foreshore and to the site. In order to undertake the decontamination activities, it is necessary to remove the

fabric that constitutes the current face of the cliff. The removal of that face takes away the first of those two heritage aspects, so we are then left with the second.

**Senator MURPHY**—Could you say that again?

**Prof. Mackay**—If you are cutting away the tar and cyanide contaminated elements of the cliff, the blue and the tar that we have seen on site today, you are removing the visible edge of the cliff face, which is the part that has the ability to demonstrate the site history. It is the part that has the relics, the part that has the quarry marks and the part with the built retaining wall. So that aspect of the value of the cliff face goes and what is left is its topographic contribution in presenting a cut and fill, hard-edge industrial contribution to this precinct and harbour. To my mind that value is not diminished by going back further or cutting down deeper in that you have already done the damage to the ability to demonstrate. I am aware that Mr Blackley gave evidence this morning that there is part of the cliff removal that is contamination and there is a further part that is simply to take the place to the levels consistent with the court's judgment. My evidence is that the difference between those two things has no substantive difference in terms of heritage impact.

**Mr LINDSAY**—Just before Professor Mackay goes on, are there any other questions about heritage?

**Senator MURPHY**—If you say 'to decontaminate', I would like to pursue the question of that and whether or not that is absolutely necessary in view of what other submissions have been made with regard to a lower density different style of development of the site. Mr Blackley, I know you took that on notice before. If you might also—

**Mr Blackley**—A number of the witnesses today were saying that they are contesting the fact that there is contamination and they have suggested—and Doug Moss can talk to this—that there is, in fact, not residual contamination there, but it is leachate that is going through the rock. So within the rock itself there is not contamination. I think we probably should get to that point first.

**Mr Moss**—I think what has led to some confusion here is that it appears that some of the community have access only to earlier investigation reports. As I said to the committee earlier this morning—

**Senator MURPHY**—That might not be their fault.

**Mr Moss**—Of course, that is not their fault at all. It just simply leads to the confusion. Since Thiess was engaged by Defence we pointed out the areas where we felt, from a cost point of view, the greatest risk could occur. We set about investigating those areas. That included the drilling of a number of boreholes down from the upper car park levels through that rock mass. In fact, we did confirm in both those boreholes tar in significant quantities, between six and nine metres depth, and in one location, in fact, tar was identified at up to 18 metres depth.

As I have explained before, the nature of this rock mass is such that it is very difficult to identify the contamination from boreholes. One borehole might find it; the next might, in fact, miss it. But there certainly is tar present in the face, and our advice to Defence is that for that

material to remain in situ would potentially represent a human health risk which may be borne by Defence. So it is our advice that the material be chased out and removed.

**Senator MURPHY**—I know Iora, the development upstairs, was done before the CLM Act came into being. Having it now in place—and this is something which I am interested in—what is the legal responsibility of the Iora owners, whoever they might be, with regard to that car park area in terms of it now being a contaminated site if the contamination is of a level that is sufficient to cause, or be of casual harm, or possible harm, to humans?

**Mr Moss**—There are probably two questions here. Firstly, did the tar migrate, or was it there from activities that occurred on Defence's parcel of the land? We do not know the answer to that. We do not know whether the tar is, in fact, migrating from the Iora site. That is something that would have to be proven. It is possible that the tar exists in that cutting because of activities that occurred on this site.

**Senator MURPHY**—But are you saying that the tar in the cliff or underneath the car park is of a sufficient quantity and of a contaminating level to pose a threat to human beings?

**Mr Moss**—We suggest that it is, yes, and to warrant the removal of it.

**Senator MURPHY**—Is it in breach of the CLM Act requirements if there are requirements within the act?

**Mr Moss**—From a contamination point of view the tar would be at concentrations well above the prescribed levels.

**Senator MURPHY**—Have you got reports to that effect?

**Mr Moss**—I have got the bore logs here which I can show you pointing out where the tar is within the rock mass—yes, certainly.

**Senator MURPHY**—Can you make those available to the committee?

**Mr Moss**—We certainly can, yes. In fact, I think they may have already been made available in our previous submissions to the committee. The EPA submission, I understand, also makes reference to the tars being at many thousands of times the relevant criteria for contamination, and that is because it is the pure form of the contamination.

**Senator MURPHY**—I am curious about the EPA, about how they know these things when they have not necessarily done any tests.

**Mr Moss**—Tar is tar. Tar is 100 per cent hydrocarbon; you cannot have any more hydrocarbon than tar. From a criteria point of view, it is certainly well above the criteria.

**Senator MURPHY**—I will have to accept that statement at face value.

**Mr Blackley**—As I tabled this morning, they have the information.



**Senator MURPHY**—Yes.

**Mr Blackley**—We have given them the information. We have not received any feedback but we have given them that information.

**Mr Moss**—To get back to your question, the other aspect is the seepage water which comes through the face, which carries the Prussian blue staining with it. Some of that may originate from the fill and the rock which is on Defence's site and some may come from Iora. Again, it will need further study, as was suggested previously, to categorically determine where that material comes from.

**Senator MURPHY**—It is possible for you to angle drill back in underneath Iora?

**Mr Moss**—With their permission, I think yes. It is their property. I do not know that we can go drilling under their property but—

**Senator MURPHY**—It may be a matter for the EPA.

**Mr Moss**—It certainly should be, yes.

**Mr LINDSAY**—Have you received advice that you will not get environmental clearance on the site if you leave the existing cliff face in place?

**Mr Moss**—We have not sought that advice. We have not asked that question.

**Mr Blackley**—We have provided Environment Australia with the suggestion that what we are doing is, in fact, managing the leachate that is coming through.

**Mr LINDSAY**—While we have the benefit of having Mr Kelly here, I would like to clear up a couple of legal matters, which you may have to refer to him. They were raised in evidence this afternoon. The first one is: does the Commonwealth have the power under the Constitution to proceed with this project?

**Mr Blackley**—I would be more comfortable if Mr Kelly answered that.

**Mr Kelly**—Could I have the question again, Mr Lindsay?

**Mr LINDSAY**—An earlier witness claimed the Commonwealth did not have power under the Constitution to proceed with this development. Did you hear the reason that he gave?

**Mr Kelly**—Yes.

**Mr LINDSAY**—How do you respond?

**Mr Kelly**—He referred to the defence power. The Commonwealth, in undertaking this work, does not rely on the defence power alone; it relies upon all of the powers that it has under the Constitution, and the management of its estate, and dealings with it, is clearly wide enough for

that purpose. But even if it were to rely only on the defence power, that would be perfectly adequate to remediate this site. That is my opinion. But it so happens that, before we undertook the litigation on the *Platypus* site, we briefed one of the foremost constitutional lawyers in the country, the late Sir Maurice Byers, about those issues. The written advice we received from Sir Maurice actually went to other issues related to the litigation, but I did ask him that question in conference and he was in no doubt whatever that the constitutional powers of the Commonwealth extended to the remediation, and extended well beyond that, in fact, to development of the site.

**Mr LINDSAY**—Thank you. You heard the evidence in relation to the right of way on the roadway. Have you looked at that issue? Is that a prejudice to this project that you can see?

**Mr Kelly**—No, there is no prejudice arising out of the terms of that right of way. It is perfectly adequate to permit the passage and repassage of traffic along it. Mr Linker is correct insofar as he makes the point that it does not permit traffic to cross into land outside the site—the site of the right of way, that is—and it does not permit traffic to obstruct it. However, his reference to not permitting traffic to stop for a second is a gross exaggeration of the position.

**Mr LINDSAY**—In relation to his claim that AGL should pay for the remediation, what is your view of the law on that?

**Mr Kelly**—There are two aspects to the possible recovery from AGL. One is under the common law. That has not been explored completely at this stage. However, a major part of this site was recovered from AGL, under compulsory acquisition powers of the Commonwealth, at a time when its use was almost certainly lawful, so there are significant difficulties about enforcement of the common law position against AGL.

I should correct myself—it is not likely to be AGL directly. The relevant company is the North Shore Gas Company. We have not yet completed an examination of the future ownership of the North Shore Gas Company but that is under way. The other clearer issue relates to enforcement of cost recovery powers under the Contaminated Land Management Act. That will depend on, firstly, the constitutional question as to whether the act relates to this site and, secondly, as to the operation of the number of issues arising under the act. Those questions are under consideration but we have not arrived at a final position.

**Mr LINDSAY**—Finally, with regard to the roadway that is on the Iora property, should Defence accept responsibility to repair that road if it is damaged by trucking movements?

**Mr Kelly**—The question as to whether it should or not is not a legal question—

**Mr LINDSAY**—Hold it there, and Mr Blackley can answer. Will Defence accept responsibility?

**Mr Blackley**—To repair it to its present condition, yes, we will do a due diligence dilapidation survey of the road and will return it to its present condition.

**CHAIR**—One of the witnesses—and I think this may be a question for you, Mr Kelly—said that there was a plan to divert contaminants which might come off another property and that that could affect other property in the vicinity. Whose legal liability would that be?

**Mr Kelly**—I do not understand how such a plan could operate. However it is inconceivable that Defence would participate in any plan which involved the alteration and ongoing continuance of offsite migration.

**CHAIR**—I think the question arose today during our inspection. If you excavate the cliff face then the contaminant is dispensed with on Defence land but the cliff face further back still remains possibly contaminated—I think that was the proposition. There were going to have to be some arrangements for drainage, for any leaching or water seeping out of that wall once it has been excavated. So if there has to be drainage and, indeed, as the witness put it, diverting of contaminated product or water from that wall which may affect other properties, who is legally liable for that?

**Mr Kelly**—The project as designed provides for a structure which does not amount to capping of the wall as suggested but enables the leachate that comes out of it to be collected. The intention is to test the concentrations present in that water to determine what can be done with it. If it is sufficiently contaminated then it will be removed offsite and treated. If it can be discharged to sewer then that will be arranged also.

**CHAIR**—Yes, but we are talking about the cliff face that is left and what comes out of that cliff face and its impact on the Defence site. If it is not diverted away from the Defence site where is it diverted? How does that impact on the properties, and whose legal responsibility is that?

**Mr Kelly**—To that extent that contaminated material passes across the boundary in an easterly direction from the Iora to the Defence site, the owners of Iora will have a responsibility at common law and may or may not, depending upon the application of the Contaminated Land Management Act, have a responsibility under the act.

**CHAIR**—Responsibility for what?

**Mr Kelly**—If the Contaminated Land Management Act applies to our site and to the Defence site and enables Defence to take advantage of it, and if the passage of that water across the boundary represents a significant risk of harm, then the EPA will have power to serve investigation orders and remediation orders on the owners of that site. If no more satisfactory arrangement can be arrived at by negotiation and agreement, then ultimately one would expect that that will happen. However it may be that cooperative arrangements can be made whereby the owners of the Iora site retain responsibility for that contamination and the continuing impact on the Defence site is eliminated.

**Senator MURPHY**—If you proceed with the development, you excavate the cliff. I understood the excavation incorporated a drain at the cliff face. The leaching and the run-off water from that will have to go somewhere before we even get to worry about settling the legal responsibility. It is not going to wait around for some court to settle the dispute; it is going to want to go somewhere.

**Mr Moss**—What is priced into the job is for the drain to—

**Senator MURPHY**—So where is it going to go?

**Mr Moss**—Based on the data we have, it will go to sewer, under licence with Sydney Water. If that is not the case, it will need to be taken off site. There is a pumping station which is allowed to be constructed as part of remediation work. It will in fact drain to a pumping station. That can then be tested and go to sewer.

**Senator MURPHY**—The pumping station being a tank in the—

**Mr Moss**—Just a small sump basically. I understand that the Iora development has a similar sort of process in operation now where they pump water from the basement of their development to sewer.

**Senator MURPHY**—I have one question with regard to the wharf. Concern was raised about the wharf. As I understand it there is an arrangement with Sydney Water that, at the end of Defence's term here if you sell the property as it currently stands you are required to remove the wharf. What I would like to get is a report on the condition of the wharf and some more finite information with regard to what is intended from Defence in conjunction with Sydney Water.

**Mr Blackley**—Do you mean the New South Wales Waterways Authority?

**Senator MURPHY**—Sorry, the New South Wales Waterways Authority—my apologies.

**Mr Blackley**—Certainly. I have an exchange of correspondence at the tail end of another issue which says that there are ongoing discussions to be held with regard to the future of the wharf. All I can say at this stage is that it has not been included as part of the remediation project. As far as Defence goes, it is looking at the wharf on a month-to-month basis. The state government, particularly during the Olympics, expressed a very strong desire for it to remain, even though it does not at this point in time have a future use. We have proposed a number of alternatives as to how that could exist under the New South Wales Waterways Authority. It is not something that Defence wants to maintain. It wants to get out of owning wharves around Sydney Harbour against properties it will not own. It is very similar to the capping of environmental remediation. It does not want to be there for another 50 years monitoring a capped, hazardous site.

**Senator MURPHY**—I understand that, but I think it would be useful and very helpful to the committee if we were to be informed of what the final proposal might be and when that might occur. I do not think you would want to have a disruptive process either. You are proceeding on the one hand with the development of one site and you have not finalised the removal or the maintenance of one aspect of it. It would be very important, certainly from my point of view as a committee member, to understand that, because it is also a cost aspect that may fall on Defence's head or it may not. We do not know that and I think it would be useful for us if we did.

**Mr Blackley**—Again, our information on the wharf is a little dated. We do have a structural report on the wharf which is a couple of years old now. We have an estimate in the order of

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\$750,000 of the cost of doing it up to a condition where you could pass it on to someone. It may interest the committee to know that, at the time we were in court with council, we in fact proposed a refurbishment of the wharf to bring it up to the current day's standards and then to establish a sinking fund over 20 years where the maintenance of it was something like \$50,000 a year over that time. Defence was going to set up the sinking fund, but we were asked to withdraw the application from the North Sydney Council. They did not want the long-term liability of it.

The position ended pretty much there until we recently initiated discussions with New South Wales Waterways Authority, more in the context of wharfage available for the visiting boats during the Olympics. That is inconclusive. I would suggest to you that that is probably not going to be resolved for many months yet. It is not an item that they are actively considering. I can raise it again, and I will before we see you again.

**Senator MURPHY**—It might well be that we raise it.

**Mr Blackley**—Certainly.

**CHAIR**—To go back to the issue of contaminated water and its disposal, you said that at present Iora is pumping water from its basement. Do you know the level of contamination of the water that is coming out of that?

**Mr Moss**—No, I do not. I only know that from advice from the EPA. If that is not correct, it is simply what the EPA advised us.

**CHAIR**—Do you have a copy of that letter from the EPA?

**Mr Moss**—I can get it for you.

**CHAIR**—Could the committee have that and could it be incorporated into the evidence? If we could have the letter from the EPA confirming that, that will clear that up for the committee because it goes back to the previous question about the responsibility for the disposal of that water.

**Senator MURPHY**—What was the setback that was proposed for the development with the removal of the cliff face?

**Mr Blackley**—It ranges. Excluding the wharf, so from the end of the wharf at the northern end, at the administration building end—the carpet end, if you like—it was 10 metres. Closer down to the cutting, it is about 30 metres.

**Senator MURPHY**—What is the normal development proposal requirement under the Local Government Act?

**Mr Kelly**—There is no general requirement of that kind. Various councils establish foreshore building lines at varying distances.

**Senator MURPHY**—What is it here?

**Mr Blackley**—I do not think there is a specific distance. I might also add that the discussions the mayor was telling you about, that Defence was not at all receptive to, were actually initiated by Defence. They were independently brokered by the now Executive Director of the New South Wales Department of Urban Affairs and Planning to see if a solution could be negotiated between the council and Defence. As it turned out, along the front of the development there are 10 waterfront houses. During those discussions, Defence eliminated quite a number of those houses as a means of solving the impasse, but it was not taken up by the council. Those meetings actually went on—there were three or four meetings—but they did not go anywhere.

**CHAIR**—Mr Blackley, do you have the other letter in relation to EPA? I think you had two.

**Mr Blackley**—I have given one already, but there are a number of others that I would like to now collate and send to you.

**CHAIR**—Is the committee happy to receive the other letters?

**Mr Blackley**—I will just give them to the secretariat, if you like.

**CHAIR**—Yes. In relation to the other letter—from Mr Blackley to the New South Wales Environmental Protection Authority—is it the wish of the committee that it be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The letter read as follows—*



**CHAIR**—I would like to thank the community and the witnesses who have appeared here today for very thorough submissions and presentations and, of course, the committee and Hansard and the secretariat for their assistance today.

Resolved (on motion by **Senator Murphy**, seconded by **Mr Lindsay**):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it at public hearing this day.

**Committee adjourned at 5.25 p.m.**