



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON PLANNING, PUBLIC WORKS  
AND TERRITORY AND MUNICIPAL SERVICES**

(Reference: [Annual and financial reports 2009-2010](#))

**Members:**

**MS M PORTER (The Chair)**  
**MS C LE COUTEUR (The Deputy Chair)**  
**MR A COE**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 9 FEBRUARY 2011**

**Secretary to the committee:**  
**Mrs N Kosseck (Ph: 6205 0435)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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*Amended 21 January 2009*

## **The committee met at 2 pm.**

Appearances:

Barr, Mr Andrew, Minister for Education and Training, Minister for Planning, Minister for Tourism, Sport and Recreation and Minister for Gaming and Racing

ACT Planning and Land Authority

Savery, Mr Neil, Chief Planning Executive

Meyer, Mr John, Chief Operating Officer Client Services Branch

Ponton, Mr Ben, Director Development Services Branch

Simmons, Mr Craig, Director Construction Services Branch

Haslam, Mr Rohan, Chief Financial Officer Corporate and Human Resources Client Services Branch

**THE CHAIR:** Good afternoon everyone, and welcome to this public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services inquiry into annual and financial reports for 2009-10. Yes, we are still doing that! This time we are looking at the ACT Planning and Land Authority. Welcome, minister, Mr Savery and all the officials to this meeting. Thank you very much for coming along this afternoon. I am sure that you are all familiar with the privilege card. Could you indicate that you are comfortable with the contents of that? Thank you. Minister, do you want to make an opening statement?

**Mr Barr:** No thanks, Madam Chair.

**THE CHAIR:** I will ask the deputy chair of the committee to ask the first question.

**MS LE COUTEUR:** Thank you, Madam Chair. On pages 8 and 137 you state there has been a large increase in the number of DAs submitted in May and June, at the end of the financial year. I am interested in finding out why. There are two possible obvious explanations, one of which is the change of use charge and the other being the six-star energy efficiency rating. There might be a third obvious one that has not occurred to me. I would be interested in your views and in whether you have done any work to identify why.

**Mr Savery:** The main reason is the reduction in change of use charge from 50 per cent back to 75 per cent. That occurred at the end of the last financial year and a lot of people raced to get their development applications in before that change so that they qualified for the reduced figure. We also anticipate that there may have been some anticipation of what rectification might have meant. But that was the main reason. That had been introduced by the government as one of its initiatives in response to the global financial crisis.

**MS LE COUTEUR:** Yes, the 50 to 75 per cent. I thought rectification started from the budget; am I wrong about that? So we are now on rectification and 75 per cent?

**Mr Savery:** No, we had already initiated rectification in April. I had issued an instruction to the AVO, the Australian Valuation Office, to change the methodology

that they were using. As I say, that accounts for some of the increase but the main one is the one that I have mentioned.

**MS LE COUTEUR:** Have numbers gone up?

**Mr Savery:** No, they have declined now.

**MS LE COUTEUR:** They have declined?

**Mr Savery:** They have stabilised and declined. We are averaging about 200 DAs a month now, in the system.

**MS LE COUTEUR:** Given that everything we read reckons there is a housing shortage in Canberra, why do you think that DA numbers have actually stabilised and then declined?

**Mr Savery:** I do not think you can necessarily draw a nexus between the number of DAs and housing, because most of the housing is exempt development.

**MS LE COUTEUR:** That is only single resident.

**Mr Barr:** Yes, that is where most of the housing—

**Mr Savery:** Most of the DAs we deal with are multi-unit developments and commercial.

**MS LE COUTEUR:** Okay, I will rephrase my question. Why have the numbers of multi-units and commercial decreased? That is effectively what you are saying.

**Mr Savery:** I think they have gone back to a more stable level, the sort of long-term average that we were seeing before the spike, and we have got a reason for the spike, so I would say we are actually back to where we were. We are back in a stable environment. I was saying to the minister in the last week that over the last six or so weeks we have approved close to 1,000 residential apartment units.

**MS LE COUTEUR:** Also, a fair conclusion from this would be that the move to six stars has not impacted negatively on the building and construction industry.

**Mr Savery:** Again, the six-star is primarily exempt development. It relates primarily to detached residential dwellings.

**MS LE COUTEUR:** Multi-units will also—

**Mr Savery:** It is not six-star.

**MS LE COUTEUR:** No, okay.

**Mr Savery:** The energy efficiency—

**MS LE COUTEUR:** The energy efficiency change for multi-units has not impacted

on them?

**Mr Savery:** It does not appear to have had an adverse impact, no.

**MS LE COUTEUR:** While you do not have the numbers in quite the same way for single residences, you still know how they are tracking. Have they been impacted by six-star?

**Mr Savery:** No, not as far as we are aware.

**MS LE COUTEUR:** Good.

**THE CHAIR:** My question is around that area of sustainability and the environment that we are in at the moment, talking about climate change and all of those things that we face. On page 15 of the annual report, it notes that we have a collaborative partnership between ACTPLA and CSIRO to develop an Australian showcase sustainability project. How is the community expected to benefit from that particular project? Whilst we are talking about that, page 17 mentions the first phase of the sustainable future program having been completed with the release of a discussion paper. How have Canberrans responded to the discussion paper? Could you talk about those two items?

**Mr Barr:** Sure. The committee would be aware that that partnership with CSIRO relates to the East Lake project, a major piece of urban infill and a site identified for medium density residential. It has been an important project for the ACT and an opportunity to set a benchmark around environmental sustainability for a large brownfield site. I will ask Mr Savery to go to the detail of how that project is progressing. Also, on sustainable future, that work, together with the Canberra 2030 “time to talk” conversation, will, of course, feed into the update of the Canberra spatial plan. That work proceeds this year.

**Mr Savery:** Obviously, I need to put in perspective that this report goes back some time now.

**THE CHAIR:** Yes, I understand that some of this might be a little bit old, so I apologise.

**Mr Savery:** The reason for putting that caveat on it is that, particularly with the CSIRO relationship, quite a bit has changed since this report was compiled. We have actually transitioned into another phase of that project. CSIRO has moved from, if you like, a research and design development relationship to more of a peer review relationship, because we are getting closer and closer to the point of going to government to recommend the actual parameters of the project, the key performance indicators, the things that we are going to measure the project against when it is delivered. So the CSIRO, having contributed to that, is now taking more of a backseat role and will oversight as an expert peer review agency for us as the project progresses into the next phase.

In terms of the sustainable future project, as the minister has indicated, we ran a series of workshops. We produced a discussion paper that was released back in March, or

maybe even earlier, last year. As a prelude to the commencement this year of the release of the evaluated or revised Canberra spatial plan, what has happened as part of that has been the “time to talk” process which the government has been engaged in. So you could say that for the better part of 18 months, through sustainable future and “time to talk”, we have been actively consulting and engaging with the community on issues around urban development, planning, design, infill development and greenfield development, as a prelude to the government, in the not-too-distant future, releasing a new version of the Canberra spatial plan, to take on board all of those issues. That will all form part of the background information as we move through that process.

Just to pick up on your point about sustainability, obviously the key focus has been around how the urban form and the structure of Canberra as a city can better respond to the principles of sustainable design and also have regard to potential climate changes in the future.

**THE CHAIR:** My next question was going to be about our vulnerability and what we are doing about that. We are all vulnerable right across Australia but it is our job to address our vulnerability here in the ACT.

**Mr Savery:** We are working very closely with the department of the environment, DECCEW, who have responsibility for the weathering the change strategy and the action plans that arise out of that. More than one of the action plans have a direct relationship to the future development and spatial pattern of development of Canberra. We have also undertaken what we call a risk vulnerability analysis as a prelude to the development of the revised Canberra spatial plan. That is premised on a two-degree rise in temperature by 2050. Therefore it looks at what are the appropriate responses and how do we make the community and the city more resilient and capable of adaptation to some of the threats that a two-degree rise in temperature creates. All of that work is being pulled together and will be taken to government in the not-too-distant future.

**THE CHAIR:** We look forward to that.

**MR COE:** Going back to Ms Le Couteur’s issue of change of use, the Property Council described the changes to the change of use as anti infill and anti housing affordability. Is that view backed up in terms of revenue received through the change of use charge? How much money has been received since 1 July through the change of use and how does that compare with previous periods?

**Mr Savery:** We would not agree with the commentary that is being made by the property sector in relation to rectification. Just so we are all clear, making the distinction between rectification and codification, rectification was the process we instituted in April of last year which resulted in the change to methodology used by the AVO in calculating what we can describe as a flat fee for residential units; that is crudely putting it. It resulted in a more exact valuation based on the geographic differences and the socio-demographic differences of different parts of Canberra as opposed to a flat fee.

Everything that we are dealing with at the moment would suggest that that has had relatively little impact. I did mention that we attribute some of that to perhaps the

spike in development applications that we received, but we are still seeing a significant volume of multi-unit development applications coming through the system. There has clearly been an increase in the revenue derived as a result of that because the flat fee was at a very low level because it was a figure that had originally been calculated back in 2003 and not changed since then. There is no indication that that has made any significant difference.

In terms of unit development, as I mentioned before, we have significant volumes of unit developments going through the system at the moment.

**MR SESELJA:** So how much revenue has been—

**Mr Savery:** I do not know that I can be precise. Do we have the figures here?

**Mr Meyer:** To 31 December the revenue was just over \$6 million.

**MR COE:** And what was the total revenue you received for the 12 months prior to 1 July?

**Mr Haslam:** For the 2009-10 year it was \$8.988 million.

**MR COE:** So we have got pretty much two-thirds.

**Mr Meyer:** The indications are that we are going to—

**MR COE:** So what would have been received perhaps in eight months under the old arrangement has been received in six months, and I guess in addition to that that may well take into account that some developments or some proponents may have held off—

**Mr Savery:** Could I make another observation just while we are going through this. I think it is very difficult to compare two years. I would rather take a long-term average.

**MR COE:** It is very hard to take a long-term average when it has only been in effect for six months.

**Mr Savery:** But you have so many external influences on what happens in developments. For instance, the GFC had major impacts on things in terms of the nature of development that might occur at any point in time. For instance, changes to planning laws in Braddon facilitated a significant increase in interest in development in Braddon. The change of use is not necessarily calculated the same way, because the commercial component of development is part of that.

**Mr Ponton:** Another factor to consider in relation to this particular issue is the government initiative to reduce the change of use charge for the 2009-10 financial year. That did generate a significant amount of development activity in terms of DAs lodged, and those change of use charges, say for larger commercial developments, are now just starting to come through this financial year. So, as Mr Savery said, to get a real indication you do need to look beyond just two years because there are these factors.

**MR COE:** So how does that \$8.9 million compare with the trend over the last five years or so?

**Mr Savery:** I would have to take that on notice.

**MR COE:** Please do so. To formalise that question, perhaps you could give the last five financial years and the total received from that charge. That would be good.

**Mr Barr:** I presume it is reported in the annual report.

**MR SESELJA:** How much has been budgeted to receive in this financial year? What were you expecting at budget time? From memory, it was about \$22 million a year that you were expecting to bring in, although I do not know that there was a complete breakdown.

**Mr Haslam:** The change of use charge for this financial year is about \$15 million.

**Mr Ponton:** Another figure may be useful to assist in understanding the extra revenue as a result of rectification. The value per unit prior to rectification was in the order of two and a half thousand dollars per unit. What we are seeing since rectification is that figure settling at just under \$7,000 per unit.

**MR SESELJA:** How does that then compare both with what the Treasurer has had to say about this and what is in the draft codification tables? The Treasurer said that it would be roughly comparable, yet in the tables we are looking at much higher values in terms of the change of use that would apply under codification. If \$7,000 is the average, and that average goes up—I think in the tables \$30,000, \$40,000, \$50,000 is the norm—even at 75 per cent or 50 per cent, surely that will have a significant impact? Surely then codification will be significantly different in practice under the current proposal, then rectification is working in practice and has worked over the last six months.

**Mr Savery:** We have not got codification.

**MR SESELJA:** I understand that. That is the point I am making.

**Mr Savery:** And codification has not been settled yet in terms of the schedules.

**MR SESELJA:** I understand that, but we have a pretty significant report on the table, which is a third iteration, and what is being proposed is significantly more than what Mr Ponton has told us has been coming in per unit. Is it your view then that, even if we go from an average of \$7,000 per unit to the kind of values that are in the tables, that will not have a significant impact on infill development?

**Mr Savery:** I would be speculating. I am not sure where those figures are going to be settled.

**MR SESELJA:** I am dealing with a proposal that is on the table from the government at the moment.

**Mr Savery:** Yes, but it is not our proposal.

**MR SESELJA:** Sure, but I am asking for your expert view.

**MR COE:** We do have a government minister.

**THE CHAIR:** Members, can we just talk one at a time, and please allow the witness to answer the question. We are having this backwards and forwards and it is getting a little bit unclear, I think, for Hansard. Please allow Mr Savery to answer the question.

**Mr Savery:** My opinion would be that there is always a threshold. There is a point you reach which will have an influence on the market. I do not know what that point is. I think the figures we are reflecting here tend to indicate that, if the flat fee had not been allowed to continue for the period it did, from 2003 to early 2010, and you had adjusted it for CPI, let us say, you would probably have come up with a figure not too dissimilar to this. What you have also had is the ability to test this through ACAT processes, private valuation, AVO valuation. So you have actually had the machinery of the process resolve what is considered to be a reasonable figure. That is the average; in some cases, of course, it is a higher figure depending on the geographic location.

**Mr Ponton:** That is right. And the average at one point towards late last year was up around the \$12,000 mark, so, as payments are being made, this average is changing. So I guess we do need to look at a longer period before we get a really good understanding of where that figure will rest.

**Mr Barr:** And have a view as to the impact on price paid for land, because obviously the nature of the taxation arrangements will impact on the price that developers will pay for land, and that is another factor that in the economic analysis needs to be considered. I note to date that, although the economists and the people who understand these issues are bothering to incorporate that into their analysis and to look at the implications the tax settings have on land speculation as well, and the impact that that has in terms of the secondary effect on the market when it comes to the actual price of properties that will emerge, I know that most of the commentary and most of the analysis, because it is simplistic and it is all some people can get their heads around, has been around the tax component.

People who follow this issue and might want to contemplate the broader impacts on the market would also want to look at the speculative nature of the land price at the moment given the current set of arrangements—noting of course that in a system that indicates some blocks of land are available for that sort of redevelopment that will increase the value of the land and other blocks are not because we have a planning system that zones different pieces of land in that way, and the obvious implications of the supply of that on the price paid for land, all needs to be factored in in the context of this debate. It might be interesting to see this evolve beyond this sort of discussion to look at that broader impact on the market.

**MR SESELJA:** Coming back to that question, Mr Ponton said that the \$7,000 had come about through a process where a number of valuers had been involved.

Presumably ACTPLA and government have been involved in terms of being comfortable now that what was deemed unacceptable before is now acceptable in terms of rectification. Is it ACTPLA's view that the \$7,000 average or the process that is now in place for rectification brings about a fair price in terms of the change of use charge, a fair return for taxpayers?

**Mr Savery:** I am still an advocate for codification. I do not know if that is going to answer your question. I say that because I still think there are opportunities for the change of use charge process not to be abused in a conspiracy sense, but taken advantage of. There is the capacity for there to be uncertainty and creativity as a result of the various methodologies used.

By having a codification process, wherever you set the schedule of prices, which as I understand it is going to be reviewed every year, it gives absolute certainty as to what the process is and how we calculate. I do not know if I have used the term here, but the term that is often used is that it is a black art. We do rely on the AVO; we rely on private valuers. We are not valuers ourselves. We have to take the advice of those experts. For instance, if off-site works that are required to be done by the government as part of a development are used to offset against the change of use charge, there are ways in which that can be used that quite significantly change the figures that come out at the end.

It is often very difficult to line two projects up alongside each other and be able to compare the methodologies. So, for me, codification is going to bring certainty and clarity to how you apply a methodology. As to where the figure is set, that is another thing. But I would also make mention of the fact that if it was at some point seen that where the figure has been set was constraining the marketplace, the government always has the ability to reduce or waive the change of use charge as a means of stimulating the marketplace.

**MR SESELJA:** The figures are at the heart of it. Could I take you back to answering that question. We have now got in place a process. The government has identified an issue; it has set about rectification. That has now produced certain results, and Mr Ponton has told us that was \$7,000 on average in the last six months. Are you satisfied that that process is giving a fair return to taxpayers or do you believe we are still being short-changed?

**Mr Savery:** There are two parts. Absolutely it is giving a fairer outcome because before that we were essentially charging a fee that had been calculated in 2002-03 and not adjusting for inflation and CPI. Certainly, we are getting a better deal. The fact is that it is a variable rate. The flat fee was also universal across Canberra. So now the fee is being calculated on whether it is a development in Forrest versus a development in Chapman. I think they are the two suburbs often compared with each other. So you are getting a variable rate as a result of that. We would have to be getting a better return for the community as a result of that. But I still think that getting absolute clarity and certainty into how to calculate and applying that on each occasion will probably extract a better benefit for the community.

**MR SESELJA:** Has Treasury or the consultants doing work for the government in relation to codification sought ACTPLA's views in relation to that fair return and

have the results of what has been coming through in the marketplace been fed into that process?

**Mr Savery:** We have participated in all of the interdepartmental committees which Treasury chairs. It is fair to say that we have been a fairly key player in all of that. We have certainly been providing them with information. Mr Ponton might want to elaborate on that.

**Mr Ponton:** With the information in terms of payments being made, that is fed to Treasury on a weekly basis. We provide that data as payments are made.

**MR SESELJA:** So you are satisfied, having been a close part of that process, that what is on the table at the moment are fair numbers in terms of the proposed codification?

**Mr Savery:** I will defer to Mr Ponton. Mr Ponton has been more involved.

**Mr Ponton:** I have sat on a number of committees that have looked at the issue. When it comes to the actual dollars, the figure for the codification per unit, that has been largely Treasury and a range of valuers. As Mr Savery said, we are not valuers at ACTPLA. Our involvement has been more around providing data on unit developments and trends in terms of development. But in terms of actual numbers, we have not had a direct involvement in setting those.

**MR SESELJA:** But do you support those numbers? Are they reasonable numbers?

**Mr Barr:** Ultimately, this is a policy decision for government, and ACTPLA can—

**MR SESELJA:** I am asking the independent planning authority for their expert opinion.

**Mr Barr:** They have just gone to your question, and I am responding, and ultimately this will be a policy decision for government.

**MR SESELJA:** Are you not sure what Mr Ponton is going to answer or—

**Mr Barr:** No, I have just heard Mr Ponton's answer.

**MR SESELJA:** He has not actually answered whether he supports—

**THE CHAIR:** Mr Seselja!

**Mr Barr:** He has, and I am providing you with—

**MR SESELJA:** You seem a little touchy on this, Andrew.

**Mr Barr:** No, I am providing you with a final comment, Mr Seselja.

**MR SESELJA:** Mr Ponton, do you support the tables in their current form?

**Mr Barr:** I am providing you with a final comment, Mr Seselja, that this is ultimately a policy decision for government.

**MR SESELJA:** It sounds like there is a strong difference of opinion in government. I do not understand why we could not get an answer from ACTPLA as to their view on these tables.

**Mr Savery:** The answer is that we are not experts.

**Mr Barr:** They have just given you an answer.

**MR SESELJA:** But you just said you have contributed significantly to the development—

**Mr Savery:** We have been giving all the figures—

**MR SESELJA:** You oversee it, yet we cannot get an answer.

**THE CHAIR:** Mr Seselja, if you want any kind of answer, I would suggest that you wait until you get one.

**MR SESELJA:** Mr Barr has; if officials want to answer my question, I would love that. If Mr Barr wants to shut them down then I suppose—

**Mr Barr:** No, I am not shutting anyone down. I am just saying that ultimately this will be a policy decision at the time.

**MR SESELJA:** That is fine. I am asking ACTPLA for their opinion.

**Mr Barr:** Fine, and they have given you it.

**Mr Savery:** Our point is that we are not experts but our contribution is that we supply data and we can provide information around methodologies that are used. When we go into, for instance, an ACAT hearing where there is a contest on what the value is, we do not determine that. We are not experts in that area.

**MR COE:** Going to the methodologies that you have advised Treasury and others on, are you happy that those methodologies are being followed?

**Mr Savery:** We are happy that the methodology that the AVO is now using is the one that we ascribe to, which was contained in my letter of April 2010.

**MR SESELJA:** You support what is in the tables at the moment? You think that is the right way to go and that that will be a good, fair return and a reasonable amount?

**Mr Savery:** I cannot answer on the figures. I can say that I support codification. I support what that whole process involves. As to where the figures get set, they will be Treasury and government decisions.

**MR COE:** So the process and methodology they have used are sound; it is simply

discretionary—

**Mr Savery:** The process for Treasury getting to the point it has got to with its papers has been informed, as you are aware, by a number of experts advising them. We have been party to that process. They have consulted us. They have looked at all of the material. We are a resource, because we administer this. We do not necessarily make the determinations. We administer the whole exercise. So we become a resource whereby they can pull all of this information together and make recommendations. Those recommendations are to government, not to ACTPLA.

**MR COE:** Has there been anything on the way that you have objected to—any issues or processes that you have identified that are problematic or are not exactly as you would have preferred?

**Mr Ponton:** Throughout the process, obviously, as you would expect, there have been issues of an administrative nature that we had identified. But those have since been addressed in the report that was released.

**MR COE:** So now we have got to where we are now, it is sound?

**Mr Ponton:** In terms of the actual figures? I am talking about the process. Again, I do not have a view in relation to the figures because I am not an expert in that field.

**THE CHAIR:** We will move on to Ms Le Couteur's next question.

**MS LE COUTEUR:** Last year you released two draft territory plan variations, 301 and 303, and there was a public discussion which I contributed to, particularly on concerns around solar access provisions, the clarity of the whole documents, the different building zones et cetera. Can you update us on this. You formed a reference group. What is happening with this and when will we see the next iteration?

**Mr Barr:** The reference group has reported to me. I am considering their recommendations and I will have announcements in due course. There will be a new territory plan variation. So 301 and 303 will be withdrawn and combined into a new territory plan variation that I will release in due course.

**MS LE COUTEUR:** Do you have any idea when “due course” might be?

**Mr Barr:** It will be subject to cabinet processes.

**MR COE:** Given you spoke earlier about problems that speculation can cause, do you understand that when you give answers like that that probably does in fact lead to further speculation and further uncertainty in the marketplace?

**Mr Barr:** No, I would not have thought so.

**MR COE:** You don't think?

**Mr Barr:** No. It would not have had a significant impact, no.

**MR COE:** Okay. So a developer or a proponent who just heard that answer, what can they take out of that? What information can they take out when they are planning for the future and in effect planning for the future of Canberra?

**MS LE COUTEUR:** Or a member of the community?

**Mr Barr:** The territory plan variations that were put forward contained elements that were strongly supported and elements that were contested. I will release a new variation in the near future that goes to address the issues that were raised about the initial draft variations and it will then go through a process. Everything in our planning system is uncertain, Mr Coe, because we have a minority government. Any territory—

**MR COE:** I thought we had an independent planning authority. I thought there were no politics in planning.

**Mr Barr:** Any territory plan variation requires the support of at least two of the three political parties in the Assembly, so in order to make any change to the system there is a degree of uncertainty. That is the nature of our political system and the nature of the territory plan variation. Until the point that a new variation is introduced, the existing system remains.

**MR COE:** So you are blaming the fact that there is a minority government—

**Mr Barr:** I am not blaming—

**MR COE:** for why you are not able to tell us when there will be a new draft variation on the table.

**Mr Barr:** I am saying that it is subject to cabinet processes.

**MS LE COUTEUR:** And there are also some things that we should be clear about. The agreement between the Greens and the Labor Party talked about solar access legislation. On some things we are merely waiting for the government to give us the territory plan variation to do it.

**Mr Barr:** That is correct, yes, and that will be forthcoming.

**MS LE COUTEUR:** So using minority government as a reason for things that have not happened is not a good excuse.

**Mr Barr:** That will be forthcoming in the near future, but it is subject to a cabinet process, so I cannot tell you exactly the day I will be announcing it other than to say that there will be a new variation that incorporates the elements of 301 and 303, responds to the issues that have been raised in the consultation on those draft variations—reminding you that they were draft variations put out for comment. So this is one of these instances where if government had chosen to ignore all of the views expressed during the consultation, Mr Coe, you would be grandstanding about government not consulting and government not listening and government not being prepared to respond to issues raised.

I have undertaken that process of consultation through the draft variations. We have established a reference group. It has reported to me. I will be taking a submission to cabinet. Territory plan variations are significant documents that require a cabinet process. I will go through that process and, once it clears that process, I will be in a position to release a new draft variation.

**MR COE:** Do you accept that the uncertainty and speculation does drive up the price of houses?

**Mr Barr:** It would depend on the nature of that speculation and that uncertainty. If I were to indicate, Mr Coe, that a policy change in a particular direction was forthcoming, that may well in fact drive down the prices. So it is probably best not to speculate, isn't it, and just to wait to hear particular announcements.

**MR COE:** It would be very hard not to speculate when you are not giving answers, though, wouldn't it?

**Mr Barr:** That is entirely for you, Mr Coe. If you wish to speculate, you can do so. I will not be.

**THE CHAIR:** Minister, what I hear you saying, if I am correct, is that you have had the reference group, you have had the consultation, which was over quite a period of time?

**Mr Barr:** The reference group met on about half a dozen occasions.

**THE CHAIR:** Yes. So they have met and they have brought back to you a series of recommendations which obviously suggested some changes.

**Mr Barr:** Yes, which will inform a new draft variation, which will then go through the normal process, which will take—it depends a little bit on your committee—about six to 12 months.

**THE CHAIR:** So really the consultation process, which is obviously something that I am sure both of my members here agree with, has brought to the table several issues that need to be addressed—

**Mr Barr:** We have sought to address them and we will then release a new draft variation which—

**THE CHAIR:** and you are now taking those to cabinet for a new variation?

**Mr Barr:** Indeed, and that will then be subject to a further consultation process because I presume people will want to see the outcomes in this new draft variation, and they may or may not be happy with that. Ultimately then the government and the Assembly will have to make a decision. I can say confidently that there is never 100 per cent agreement on any planning issue. There will always be someone who is unhappy. Sometimes it is industry; other times it is a lone member of the community. Sometimes that lone member of the community has a website and calls themselves a

group. That is commonplace in this territory.

**THE CHAIR:** Yes, so there are quite a number of steps to go before this new variation will be—

**Mr Barr:** Indeed, yes, absolutely. It has to go through the formal Assembly process as well, and your committee inquiry. As I say, it will be six to 12 months from the time a draft variation is released to when there would be a final vote in the Assembly to vary the territory plan.

**MR COE:** So with that time frame of six to 12 months in mind, do you think it is likely that it will be before the next election?

**Mr Barr:** Yes, certainly before. The next election is 18 or 19 months away, so yes, definitely—well, subject to the Assembly. I will put it forward for a vote before then. Whether it is successful will depend on your party and the Greens party.

**MR SESELJA:** So it will depend on what is in the variation, presumably.

**Mr Barr:** Indeed, yes, that is right.

**MS LE COUTEUR:** Page 19 talks about strategy for future development, and we could talk about that probably for the rest of the week, but one thing I thought we might start on. You say:

Land use planning must provide a sound policy platform for accommodating at least 50 per cent of that growth within 7.5km of the city centre ...

My understanding is that at present about 90 per cent of our development is in fact outside that 7.5 kilometres. So what strategies are you looking at to change this?

**Mr Barr:** One was the inquiry into RZ3 and RZ4 within that 7½-kilometre radius. I certainly look forward to the committee's response on that. You would be aware through Land and Property Services and the greater city coordination plan that there is a proposal contained within that to double the residential population within the CBD over the next period—obviously, a number of additional dwellings of a multi-unit nature within the CBD context. I am seeking through a number of other policy reviews to increase residential opportunities within group centres and within local centres. Of course we have existing policies and existing zoning within that 7½-kilometre radius, and the question of the 7½-kilometre radius is one that will be tested in the context of the spatial plan evaluation this year. There may be some need to refine that and we will certainly be looking at that in the course of our examination—and I should indicate refine inward, to a smaller circle.

**MS LE COUTEUR:** A smaller circle to the same sort of proportion?

**Mr Barr:** Indeed, yes.

**Mr Savery:** Could I make a couple of points just on the figures you have quoted. I do not believe the figure is as high as 90:10.

**MS LE COUTEUR:** So what is it?

**Mr Savery:** You can never be absolutely certain, but I would suggest it is closer to 70:30—70 greenfield, 30 infill—all within the 7½ kilometres. Those thousand apartments, for instance, that I mentioned that we have approved in the last six or more weeks are all within the 7½ kilometres, mainly in the Woden and Belconnen town centres, but Braddon as well. There is a significant increase in interest in urban development within all of those areas, which has not been there for a period of time. A lot of that is as a result of policy changes that have been instituted.

The other thing that I think is important to mention is that the spatial plan target of 50 per cent of development greenfield, 50 per cent infill is a target for 2030, so it was not that you had to be at the point that, every year from the day that the spatial plan was adopted, 50 per cent of your development is happening within the 7½ kilometres. It is a target for us to get to. Obviously we would like to get to that target sooner than 2030 too, and I am confident that we will, but I think it is important to clarify those two aspects.

**MS LE COUTEUR:** It does not exactly say 2030 in the report.

**Mr Savery:** Not in this, but—

**MS LE COUTEUR:** It would appear that quite a lot of the infill is producing angst. Whilst I agree with the minister appreciably that we are never going to get everyone happy with all planning decisions, is the government doing anything to reduce the level of concern and angst of communities where infill is happening?

**Mr Barr:** I think you can look to DV306, the new one I will release, that is the combination of 301 and 303. Some of those issues obviously came up in the context of that reference group, most particularly around RZ2. I indicated last year a desire to more closely examine RZ2, which appears to be where there is the greatest level of concern, noting that about 85 per cent of suburban Canberra is in the RZ1 zone, and so is not subject to any significant urban infill at all.

The Canberra 2030 process indicated a pretty strong view for the government to very clearly identify exactly where that infill would occur in terms of larger sites. Obviously, East Lake is one; around the Woden town centre is another; the Athllon Drive corridor; Northbourne Avenue—so we are keenly awaiting the outcome of this committee's review of those RZ3 and RZ4 zones. Group centres, local centres and the CBD are all areas that are identified for further intensification. There are a few other transport corridors around the city that have zoning in place now that would enable that, plus the government itself has ownership of a large amount of housing stock that sits on land that could be developed more substantially than it currently is. Minister Burch has announced a particular renewal project adjacent to section 84 in the CBD.

**MS LE COUTEUR:** The ABC flats?

**Mr Barr:** Yes, and there are, of course, further pieces of land held in government

ownership that could facilitate that increased density. They will be the areas that we will focus on. Mr Savery is whispering in my ear that the work we will be undertaking this year in relation to the evaluation of the spatial plan will further identify those areas. If you look at the 2004 work, a number of the areas that I have just outlined were listed there. Some projects are complete. The 2004 spatial plan identified a next phase of development and we will be focusing on those areas as well.

**MS LE COUTEUR:** Given the community angst in different areas, though, is some of your work going to concentrate on better community consultation? I draw to your attention—I am sure you have already had it brought to your attention—the Assembly motion about major planning. This is something that the community wants. How are you working on that?

**Mr Barr:** There are some issues that relate territory-wide. With those residential zones, for example, you do not just change them for one suburb; you change them and it impacts on that zone within each of the suburbs. So the exercise will not be about going through each suburb and rezoning the land within that. That exercise took place in 2001 through to 2004 and is now complete. So there will not be a mass exercise, suburb by suburb, of rezoning land. There will be, of course, a number of sites identified for urban renewal. A number of those are already out there and that work is underway. There are, I understand, many dozens of sites that sit undeveloped that have zoning that currently applies to them that would enable residential development to occur.

What was clear from the 2030 exercise was that people want those sites identified, so we will go through an exercise this year in relation to the spatial plan evaluation to identify some additional sites, in addition to what has already been discussed and debated, sometimes ad nauseam, over a long period of time. There is an Assembly motion that, as you indicated, relates to a prioritisation process for master plans.

I indicated in the Assembly last year that probably about 90 per cent of the issues are common across each group centre—local centres, even. It is not as if you have to go through a separate exercise for every different centre. They all have issues in common, and a series of policy changes could be made that would have a universal impact. That would indeed be a more efficient way of dealing with the matter because the available resources we have and the time that it takes to undertake that sort of work would mean that we would all be here—or we would not, because we would be dead—in a century, because there are more than 100 suburbs in Canberra and you can probably do one a year.

**MS LE COUTEUR:** Surely ACTPLA is capable of doing a lot more than that.

**Mr Barr:** No, given previous experience, and given the nature of this sort of level of engagement that people are talking about and the nature of this sort of work.

**MS LE COUTEUR:** Back in 2003, how many did you do at the same time? It was a lot more than one. It was most of inner north and inner south.

**Mr Barr:** Seeking also, Ms Le Couteur, to continue our work in a variety of other areas. I am not going to stop everything else in order to divert all resources to a

suburb by suburb, street by street exercise, going through a neighbourhood planning exercise again, for suburbs that were done only six years ago.

**MS LE COUTEUR:** I am not saying that. I am just saying that one a year seems inadequate, given the level of angst in the community. I very much hope that when you have employed the priority list, it will be a lot more ambitious than that. I think it is pretty clear that is what the Assembly—

**Mr Barr:** I think we need to draw a distinction between master plans for group centres, for commercial precincts, and what I understand you to mean by neighbourhood planning, as in street by street rezoning, which is what is being called for by some.

**Mr Savery:** That is the critical point—how you define it. There are certain individuals within the community who are asking for a street by street analysis to determine which blocks should and should not be developed. That is a very significant undertaking. A master plan of a group centre is a completely different proposition, which is where you can start to prioritise and focus, because that is where the majority of the development is going to take place.

**MS LE COUTEUR:** Neighbourhood and master planning are both locality-based planning.

**Mr Savery:** With neighbourhood planning, having regard to the experience we had back in the early part of the last decade, and to answer your question, we did 16 in about three years. It also involved the acquisition of about 10 additional staff, over and above what we have got now. So it was a significant resource imposition. The neighbourhood plans go well beyond land use planning. They raise a huge variety of community expectations that sit well outside what we can deliver as a planning agency. So our main task is to do the planning for the city to identify land use planning outcomes. That is why master plans are a far more effective and direct tool in achieving that outcome, and relatively quick compared to a neighbourhood plan.

**MS LE COUTEUR:** With land use planning, I notice with Tuggeranong and Erindale you are doing transport planning as well. That would seem like a good approach to involve transport as well. Is that what you would do with the others?

**Mr Savery:** We always do transport planning. We always do integrated planning. Whatever the definition and the boundary of a master plan is, transport is a fundamental part of it. Infrastructure capacity analysis is a key part of it. Demographic analysis, heritage analysis, tree surveys—they all go into the mix.

**Mr Barr:** I think there has been some confusion and perhaps there is a need for further clarification around terminology. When people bandy about the term “master plan”, it seems to mean a variety of different things to different people. In some instances what has been talked about as a master plan is in fact a development plan. In other instances it is a piece of land use planning that the planning authority does. Some other people are confusing neighbourhood planning, as per its iteration from 2001 to 2004, with master planning.

There are some areas that had that neighbourhood planning, that incorporated the land use, but also right down to the detail of where bus stops would go, which you do not put in a territory plan because that is a level of detail way beyond what you would have, but it is still, in the context of a neighbourhood plan, something that was done. But the level of resources and interdepartmental work required for that level of planning is something entirely different from a master plan for a group centre or a development plan to release a site for sale.

**MR SESELJA:** Going back to Ms Le Couteur's questions regarding some of the angst around development and infill, Mr Savery, there has obviously been a lot of angst in various areas, but focusing in on Dickson, where there has been a considerable amount in recent times, have you noticed in ACTPLA's dealings with the Dickson community on various plans in that area that that has lessened? We know the minister has had his stoush, and you do not need to comment on the minister's stoush with the Dickson residents, but I am interested in—

**Mr Barr:** I am a Dickson resident so I am not having a—

**MR SESELJA:** Well, the Dickson residents association. Without asking you to comment on that, I would ask you to comment on whether the level of angst in Dickson has become less, and particularly since we saw a bit of a cooling off with the Chief Minister's intervention. Are things better now? Are you noticing a better relationship and an ability to communicate on some very important issues?

**Mr Savery:** I think we communicate effectively on most occasions. With Dickson, and it is probably true of every suburb, as development comes and goes, of course, the level of community angst moves at the same time. With the Dickson master plan exercise, we undertook a very comprehensive public engagement process. We had a specialist consultant as part of that process. We ran a number of workshops. We had displays in the shopping centre. We had three iterations of reports and, as each stage of the consultation occurred, we would provide that report back to the community to ask: "Have we captured your views? Have we captured your issues?"

My view is that we brought a significant body of the community along with us in that process. There were over 400 participants in all of those workshops, and that is all reported in the master plan document or the draft framework document. What happened at the very end, when we produced the final report, was that there was another body of the community that we had not engaged with, or that had not engaged with us in the earlier process, which, whilst having a view on the master plan, which is the group centre, was more focused on what was happening in individual streets, the infill developments, which was outside the scope of the master plan exercise that we had undertaken. I think, therefore, at that particular point in time, there was a disconnect. We were not ready to deal with that particular issue that they were raising.

Since then, even this morning, I met with a member of the residents group for an hour to talk through the issues, to get a better sense and understanding of exactly what was at the heart of their issue. I would probably be breaking their confidence to go through that discussion in any detail, but to me it is a sign that we are seeing signs of trying to reconcile those issues that arose at that particular point in time.

I can say—and you know this from your own experience; all of you do—that the moment that an infill development occurs in a street that has not had that experience in the past, the community will typically start writing to us, to ministers, to the opposition, to say, “We don’t want this happening in our street; why is it happening in our street?” You can see it played out all across Canberra. It happens in every state and in every city because it is the process of change. Whilst I have no doubt that we can improve how we engage with the community, and taking Ms Le Couteur’s point before about consultation, there is a distinction between our role in notifying that a development is happening and the applicant’s role in consulting on what it is that they are doing.

**MR SESELJA:** Minister, on Dickson, do you acknowledge that you could have handled it better? These are contentious issues but you seem to have really alienated a whole group in the community through your language, through the way you handled it. Do you acknowledge that you could have done things better so that these things do not get as heated and we can have a more reasonable debate?

**Mr Barr:** I disagree with your assessment. I understand there was clearly conflict, largely because I responded in the negative to a request, firstly, for a moratorium on all development in the suburb of Dickson and for a special arrangement to be put in place for the suburb of Dickson. I am conscious, living in that suburb, of how I would respond to any other suburb. “Oh no, there’s a special arrangement for Dickson because I live in the suburb and I’ve been called to a meeting of some concerned residents who want a moratorium on all development in the suburb. Because I live in the suburb and I do not want to offend anyone in the suburb I live in, I’ll agree with all of that.” I can imagine the set of questions that would come from you and from others about why there would be a special deal for Dickson.

**MR SESELJA:** Do you think that is the only problem with the way it transpired?

**Mr Barr:** That was where we reached a particular impasse at a particular public meeting. A resolution was moved to the effect that Dickson residents, broadly defined, supported a moratorium on development. There was an earlier flashpoint in relation to a document that was sent to me purporting to be the goals and aspirations of a residents group that related to and made a statement to the effect of not wanting to see the suburb taken over by transient singles and childless couples that I took particular issue with. That statement was subsequently withdrawn from the stated aims of the residents group, and I acknowledged that had occurred and recognised that that was a good thing. I think there was a statement of regret from the residents group, or at least the convenor of the group, that that statement had ever been part of their goals and aspirations. I accepted that and I am pleased to see that that is no longer part of their goals and aspirations.

I did say that I would not be supporting a moratorium on development in Dickson and I was not supporting a special set of arrangements for the suburb of Dickson that were any different from any other suburb in the ACT. In the context of this sort of conflict, that people forum-shop, go to other ministers and might want to raise issues in the media and might want to undertake a series of personal attacks, that is all by the bye, really.

In the end, there are two processes that are occurring in relation to development in Dickson. One is the group centre master plan process, where there would appear to be a very strong community consensus around a new supermarket for Dickson and strong community consensus around infrastructure renewal in that precinct, combined with more mixed use development. So you already have in Dickson, in Cape Street, for example, some development that has ground floor retail, restaurants et cetera, with people living above. That model was pretty strongly supported in the consultation phase around the group centre. That work is proceeding.

Then there is the question of RZ2, 3 and 4 residential zones that sit within Dickson. Depending on your proximity to Northbourne Avenue, your property could either be in an RZ4, 3 or 2 zone. There is an element of Dickson furthest away from Northbourne Avenue, closer to Hackett and Ainslie, that is zoned RZ1. That is not subject to change. We discussed earlier the question of whether the new draft variation will contain changes to the RZ2 zone. I await with interest the committee's views on RZ3 and RZ4 because there are a series of moratoriums and otherwise that related to development north of Wakefield Avenue and Macarthur Avenue in the inner north that the committee was inquiring into. That will obviously have implications for development in Dickson. But all of these different zones were settled on in the Dickson neighbourhood plan of 2004.

**MR SESELJA:** Going back to this issue around community angst, you acknowledge that Dickson residents have withdrawn some of their statements. But the Chief Minister felt it was enough of a concern that he had to intervene and broker a deal with the Dickson residents.

**Mr Barr:** There is no deal brokered.

**MR SESELJA:** He has had to apologise on your behalf.

**Mr Barr:** No, he has not.

**MR SESELJA:** He has.

**Mr Barr:** No deal brokered with Dickson residents.

**MR SESELJA:** Has he been apologising to constituents for the way you have treated Dickson residents? Has he spoken to you about that, about maybe the desire to treat residents with more respect, perhaps the desire to apologise for the way you have actually treated them in this case?

**Mr Barr:** No, the Chief Minister and I have had no such conversation.

**MR SESELJA:** But he is apologising on your behalf.

**Mr Barr:** He has had a meeting with a resident or with a series of residents in relation to a proposal that they put forward, and undertook to have a whole-of-government examination of the issues they raised. That is where the matter stands at this point.

**MR SESELJA:** I have a letter to a constituent from the Chief Minister saying: "I

regret any offence that may have been caused by the comments made recently by Mr Barr with the Dickson residents group. The government takes its commitment to consultation seriously and I will be disappointed to have members of the community unhappy with the consultation process.” It sounds like an apology.

**Mr Barr:** I have not seen that letter. I would need to see it before I could comment.

**MR SESELJA:** So you are not aware that he has been apologising in relation to your handling of this issue?

**Mr Barr:** He has certainly not raised any issues with me and I have not seen that letter that you refer to.

**MR SESELJA:** So just directly with the community; okay.

**MS LE COUTEUR:** Mr Barr, I was not at the public meeting that you were at with the Dickson residents so of course I have no idea what was said there. If you characterise the residents as wanting a moratorium on all development in Dickson—and I am not speaking for the Dickson residents group; I am not a member, clearly, but I have looked at their website and I have met with them. Their website certainly says that they favour good, high-quality development, which seems to be a different point of view from what you were characterising. I am concerned—

**Mr Barr:** The issues that were put to me were a moratorium on that development until such time as they were satisfied with—and then they had that list of issues. So they were seeking a moratorium, no further development, and I indicated I would not be supporting that, and nor would I be supporting any special deals for the suburb of Dickson.

**MS LE COUTEUR:** But to characterise them as looking for a moratorium—

**Mr Barr:** No, I have not suggested—

**MS LE COUTEUR:** is a bit unfair on them.

**Mr Barr:** There are people within the Dickson residents group who support redevelopment. They are undertaking it themselves. They are updating their houses. So I am not suggesting they are anti any development. Of course not. But they have called for, in their initial approach to me, and it is the reason that there was a disagreement at that meeting in particular, a series of resolutions. They were put at the end of the meeting, following a robust discussion, and I hasten to add that there were about 80 people in the room. Not all of them agreed with the position put by the leadership of the Dickson residents group.

**MR SESELJA:** How many did you bring along?

**Mr Barr:** I live in the suburb, Zed, so it is not surprising that I do know people—

**MR SESELJA:** But were you doing the numbers?

**Mr Barr:** There were a lot of numbers being done by a lot of people.

**MR SESELJA:** I think that is a yes!

**Mr Barr:** I certainly invited my friends in my suburb and broadcast the issue in the media.

**MR COE:** You invited your friends to a public forum?

**Mr Barr:** I invited my friends in the suburb of Dickson—

**MR SESELJA:** You did the numbers to get backing.

**Mr Barr:** I have neighbours and friends in my own suburb. Is that surprising? You don't?

**MR SESELJA:** They were all from Dickson?

**Mr Barr:** Yes, people from Dickson.

**MR COE:** When a political operative such as yourself says that they are bringing friends to a public meeting which you are speaking at—

**Mr Barr:** They live in the suburb.

**MR COE:** do you understand what that actually means?

**Mr Barr:** Yes, that means people who live in the suburb of Dickson, whether they are my friend or not, and I have a number of friends—

**MR SESELJA:** It sounds like a stack.

**Mr Barr:** So I am not entitled, as a resident in the suburb, to have a view?

**MR SESELJA:** Does the minister really have to do the numbers—

**Mr Barr:** No, I don't.

**MR SESELJA:** in order to get the result you want out of a consultation?

**THE CHAIR:** Mr Seselja!

**Mr Barr:** I obviously was not doing numbers, Mr Seselja.

**MR SESELJA:** You didn't do them well enough.

**Mr Barr:** But it is in the context of a meeting that was open to Dickson residents. Indeed, there was a broader invitation because a former president of the Woden Valley Community Council, was sitting in that meeting. There were a number of interested parties from across the territory who decided that this was the meeting to be

at. They may not have had much to do on that Tuesday night.

**THE CHAIR:** Minister, we are going to stop now and go on to a different subject after afternoon tea.

**Meeting adjourned from 3.06 to 3.21 pm.**

**THE CHAIR:** I have a question, minister, on page 124 under the things that will be done during the 2009-10 year by ACTPLA. It says:

Completed Belconnen and Woden Town Centre infrastructure studies which will facilitate future land release at these centres

Could you talk a little bit about how that benefited the development in those particular areas?

**Mr Savery:** Both of those studies have been completed and they are again used as background information for either initiatives that the government might take to release sites for infill development or where redevelopment is occurring within those town centres it gives us an ability to analyse whether or not the infrastructure has the capacity to absorb that development. So we are talking transport, stormwater, sewer, electricity, gas, energy—those sorts of things. Over a period of years the government has incrementally developed a database of infrastructure capacity in the major town centres and we are doing Tuggeranong now as part of the master plan exercise for Tuggeranong-Erindale, so it is literally available for us to use to analyse the potential impact of developments on the established infrastructure or, where it may be necessary in the circumstance that we support a development that the infrastructure cannot cope with, the augmentation that has to happen for that infrastructure.

**THE CHAIR:** So what did you discover in these two?

**Mr Savery:** I think it is fair to say that with all of our town centres the infrastructure that is provided far exceeds—it has much greater capacity than it is being used for at the moment. In summary, town centres have capacity to absorb more development and therefore we should be making greater use of that infrastructure.

**THE CHAIR:** Otherwise there is opportunity cost, I suppose.

**Mr Savery:** Absolutely, and what is happening is that, as you bypass infrastructure that is being underutilised through development further and further afield, you have the opportunity cost and the embedded cost of infrastructure there and you are building new infrastructure somewhere else, which has to be maintained.

**MS LE COUTEUR:** I have a letter from a constituent in Braddon. I understand they have written to ACTPLA and there is a copy of a letter they have sent to Mr Stanhope. I do not know if they have sent it to you, Mr Barr, or not. But I will ask it as a more general question. They are next door to a development—I think it is multi-unit, but that is not really the point.

This developer, they say, has trespassed in their backyard to put up fences, there has

been a significant landslide—Mr Simmons may know of this one—and serious erosion along the boundary line. They have said that basically they have not been able to get any help. They have contacted ACTPLA, who told them to go to police and TAMS, police and TAMS said ACTPLA were the people to go to, and it appears that all they can do is take private civil legal action. Is it really the case that if people are adversely impacted by developments near them there is no protection apart from private civil legal action?

**Mr Savery:** If I can make a general observation, because you have described it in the general as opposed to the specific—

**MS LE COUTEUR:** Yes. I think probably as this is a public hearing I should be general rather than totally specific.

**Mr Savery:** Every circumstance will be different, so we would need to examine the facts as they apply to each site. There are documented processes that we have to go through to ensure there are proper procedures and processes followed and then a determination has to be made as to whether or not this is a matter that our legislation and statutes allow us to intervene in and whether or not we have any power to enforce those provisions versus something that we might ultimately advise back is a matter between neighbours and is a civil matter. So we would have to look at the individual circumstances to be able to answer the question as to whether or not we should have a role in this particular matter, but in the broad that is how it works.

**MR COE:** What weapons are in your armoury, though? What is the suite of options that you have open to you?

**Mr Savery:** There is a suite of options and they do not all necessarily reside in one piece of legislation and they do not all necessarily reside within the jurisdiction of the ACT Planning and Land Authority. You may find that some of the powers available to the government, if I can put it that way, on a particular matter—it could be a heritage matter—are better handled through the Heritage Act than they are through the Building Act or the Planning and Development Act, just by way of example. But then you also have to factor in that as we work our way through the legal processes there are opportunities for disputation and the legal processes can be quite lengthy and it can be several years before we are able to achieve an outcome. So even if we have the armoury—whether it is penalty units, demerit points, resumption of leases or whatever the case may be—and you can use the tools at different times, they are all contestable and it can take many years for us to get through.

Our first recourse is to try to negotiate an outcome rather than just enforce the letter of the law, because it can be quicker and more efficient and a better outcome for everyone. But this is Mr Simmons's bread and butter so I will ask him to comment.

**Mr Simmons:** To the question in the broad, one of the things it is important to note is that with the advent of the ACAT we were removed from disputes about boundaries and fences. They are in fact now matters that have to be dealt with by ACAT. We do not have legislative authority in that area any more. A number of these disputes oftentimes happen in and around boundaries and fences. The Common Boundaries Act administrative arrangements used to be with us; they are now with ACAT. During

the year some of my officers actually went to some community forums about that, because there had been quite a widespread belief in the community sector that we were still the relevant body—and we have not been the relevant body since the ACAT was established in 2007—so that cleared up some of the issues around that.

When it comes to whether development is being done in accordance with an approval, we have powers there. There is building work in accordance with an approval and there are licensed people involved. The question then is whether or not it is building activity being undertaken or some other activity being undertaken that can cause issues between neighbours. Without the specifics—and there are a huge number of variations and variabilities in people's perceptions about what is happening—a lot of the time a lot of the complaints we get are about the flow of water when it rains. We have had a lot of that recently.

**MS LE COUTEUR:** No?

**Mr Simmons:** Yes, strangely enough, because we have had the opposite problem for such a long period of time. What happens in that circumstance is that people have a belief—this happens a lot in new areas but also in old areas where development is taking place—that if water flows from one property to another the upstream property is responsible. But they are not. There has always been a natural flow of water downhill; that just tends to happen. It is not your requirement to prevent that, necessarily, from happening. It can happen and it does happen. It is the management of that water. Sometimes people have come to us and said: “Before this happened, no water came across. The water happens now so therefore you must do something about it.” But that is not necessarily going to be the case.

There is a series of Australian standards that apply as to how you treat overland water flows for stormwater in and around buildings and building projects. So it is highly specific to the actual project, to be able to get in and see what is going on, and in a number of cases it is a pretty fine line to be walked around of what has actually been happening. So without the specifics it is pretty difficult for us to say, but there are a number of tools available to us that we do use. The most effective tool is having somebody who has lawful authority to be on a property go and talk to people.

One of the things about the Development Act, though, is that if there is no building approval in place we are not allowed to enter a property without written consent from the lessee of the property. If that is denied to us, there is quite a lengthy process under the act: we have to give formal written notice and seek the right to go on the property, and if that is denied to us a second time we have to go and seek a warrant to get on to a property. So sometimes a neighbour might be complaining but it could take several weeks for us to even enter the property if we are seeking to be there just under the Planning and Development Act and not for another purpose. That is why we have a good relationship with WorkCover, who have a different set of rules that might be in place so people might be undertaking work and their rules are different and allow access.

They are some of the ways we work with our other agencies to make sure that if people have a perception that there is a problem with safety we can deal with that.

**MS LE COUTEUR:** So would you cover off trespass and leaving things on somebody else's property, which, as well as the water, happen quite commonly?

**Mr Simmons:** Trespass is not a matter for us. That is a matter for the Federal Police. We cannot deal with trespass. When it comes to development, there have been issues around some of the developments that have been taking place, with people parking cars and so forth. Parking is with the Office of Regulatory Services and TAMS have on unleased territory land the Roads and Public Places Act, which is a TAMS matter. So we talk to those agencies. If people make a complaint to us, we do not just say, "See you later." We deal with those matters that we can deal with but we also refer to people we know quite well in environment, TAMS and ORS if there are those other issues that need to be dealt with. Sometimes they are coordinated so everybody will be there to sort out a problem around parking, parking on the verge and finding somewhere to park, which is quite an issue in the new areas as well.

There is a lot of work going out there for builders. Our colleagues at TAMS are very worried about damage to infrastructure, kerbs and guttering caused by parking and the pressure to get building done. So a lot of work goes into trying to protect those assets as well as making sure there is an efficient movement of people as they move into a new suburb particularly.

**MS LE COUTEUR:** If fences are demolished—

**Mr Simmons:** That is the Common Boundaries Act; it is a civil matter.

**THE CHAIR:** You were saying that is not dealt with by yourselves.

**Mr Simmons:** You have to go to ACAT.

**THE CHAIR:** So you are saying that has changed since 2007 and you have had an education program to inform people about that?

**Mr Simmons:** The Common Boundaries Act is not one of the highlight things that I get. I know people get nearly as excited as I do about regulatory actions in the territory, but common boundaries is at a pretty low level. There are not a huge number of complaints about it. Over the last few months of 2010, we were starting to get an increasing number of matters coming to us. We were invited to go to a session that one of the community legal groups had, and we realised that was where the drive to push things to come back to us had come from. So there has been a much better level of interest there. We did not do a significant amount of work around common boundaries because the number of complaints around it is not in the top 10, or even in the top 40.

**THE CHAIR:** Even though they are interesting to you—

**Mr Simmons:** Yes, they are deeply fascinating to me. The height of fences changed a couple of years ago and that reduced a number of them.

**THE CHAIR:** The height of fences?

**Mr Simmons:** The height of fences used to be capped at 1.8 metres. If you wanted to go over that, you needed a DA. But we changed it to 2.4 and it took about 90 per cent of complaints away.

**MR COE:** With regard to the Molonglo development, in December last year the *Canberra Times* ran some stories about the asbestos found at the site. In particular, there was a comment by the chief planning executive with regard to the 350 bore tests that were undertaken. Can you give us a little bit of background as to what a bore test actually is, when those were done and the actual spacing of the bores from each other?

**Mr Savery:** Thanks for the opportunity to comment. A bore test is effectively a test pit. It is an excavation. It is a controlled excavation done by expert consultants, oversighted by an environmental auditor in this case. So there was a significant level of analysis undertaken of this site. It was a known potentially contaminated site, so it was on the ACT's contaminated sites register. As to the specific nature of what the contamination was and its distribution in area, we have no knowledge.

In order to better background ourselves, we collated a number of historical reports. We interviewed people who used to work in that area, commonwealth employees. You may recall or you may have noticed that reference is also made to a former sewage treatment works. So it was both a landfill site and a sewage treatment works in that location. It also happens to be where a natural watercourse runs. It is a creek line along there, which is one of the obvious reasons why we picked it as a stormwater retardation basin, which is the proposed activity.

In fact, the number of excavation pits or test pits is closer to 480 than 350, I have been informed since I made those comments. It is done on a grid pattern. Basically, a distance is set between each of those test pits to try and de-risk the potential that you miss a significant piece of the contaminated material. That is all documented in expert reports that I can tell you were prepared to national standards and, as I say, signed off by an environmental auditor. So there was a very rigorous assessment.

One of the key elements of what was discovered through that process—and I should obviously make the point that this is now all subject to an Auditor-General's investigation into the processes and practices that were followed—is that it identified that, yes, there was asbestos material in some of those test pits, but not across, obviously, all 480 of them. Once it came to excavating the surface material by the contractor, it became apparent that there was a significant increase in the material, over and above what had been identified or estimates that had been quantified. Inevitably, you are going to make estimates; you cannot be precise, other than by digging up the material yourself.

It is probably worth saying that the majority of the material is not actually asbestos; it is builders' rubble. After the excavation has occurred, it has become apparent that, whereas in today's practice of landfill you would isolate asbestos and you would isolate other hazardous materials, and you would actually denote them on a plan so that anyone coming along later would know where it is and what it is, we did not have that to work with. What would appear to have happened is that it has been used as a practice area for grader drivers, after the landfill has been closed, to run the graders. So where the asbestos had been potentially located, they had spread it across the

whole site, in relatively small quantities, because it then got distributed and mixed up with the builders' rubbish, as well as material from the former sewage treatment works.

None of that could have been foreseen or calculated through the level of analysis that we had done in the lead-up to designing the retardation basin. So it was a very elaborate process that we undertook. It complied with national standards. It was overlooked by environmental auditors, and I can tell you that they are some of the most cautious people around. Their insurance premiums are extremely high because of the risks associated with this sort of stuff. What was estimated as a result of that is not what was physically found on the site, and what was found on the site did not corroborate the historical material that we had available to us. All of that, obviously, goes into the mix of what the auditor is going to look at.

**MR COE:** When were the bore tests undertaken?

**Mr Savery:** Over a series of years. I cannot be precise but it was over a series of years.

**MR COE:** Not even a ballpark figure?

**Mr Savery:** Probably dating back three years, right up to the time that we went to the design stage, which is in the last year.

**MR SESELJA:** And covering what kind of area?

**Mr Savery:** It covered pretty much the area that has been excavated. If I can call it a pond, the volume of the pond makes it the fourth largest water body in the ACT, after Lake Burley Griffin, Lake Ginninderra and Lake Tuggeranong. So it is a large body of water. It is about 120 gigalitres. The test pits took essentially the borders of that area, because we knew the general area that we wanted to excavate.

**MR SESELJA:** It is still not clear to me from that; if you have covered the whole area, and you said that it was subsequently spread—you found that out later but you did not know that at the time you were drilling the bore holes—wouldn't it have been showing up in virtually all of those bore holes that there was asbestos there?

**Mr Savery:** Not necessarily. For me to try and advise you on this would be wrong because I am not an expert and I have not got the material in front of me. Those test bores, as I say, were done in a very rigid pattern, in accordance with standards. As I understand it, they picked up traces of asbestos material. This is not loose asbestos; it is bound or bundled asbestos. So it is not a loose, fibrous material. And it was random. From that, you then try to make estimates on quantities.

I think what has also happened is that it has been diluted through that process of distributing the material around. So the core thing that was coming up was builders' rubble, as opposed to the asbestos. Builders' rubble is still the main issue in terms of the difference between what the original estimated cost of the works was and what it is now. It is not the asbestos; it is the disposal of the builders' rubble, which is effectively a contaminant of the land, not in the shape of a hazardous contaminant. We cannot use it for the purpose for which we want to put it.

**MR COE:** You said that, based on that, you make estimates as to how much might be there. When did you start making those estimates?

**Mr Savery:** That might be something I have to take on notice. The engineers obviously would be much more capable of responding.

**MR COE:** Please take that on notice.

**Mr Savery:** This work has been going on for at least three or four years—at least 10 different studies, hydrological analysis, contamination analysis, environmental analysis et cetera. You could find that part of the answer to your question dates back to some of those earlier reports.

**MR SESELJA:** Do you have an updated estimate on the cost of remediation?

**Mr Savery:** I understand that TAMS does. This is an important point. Our work finished with the design of the ponds and obviously getting the budget estimate for that and getting the go-ahead to do the works. Once that occurs, we transfer the construction of the projects across to TAMS. So TAMS has then become the project manager and has been working with the contractor on containing costs, determining when works should stop and start, and Procurement Solutions is part of that process as well. So we really do not have a role in managing the ongoing construction and what the cost estimates are.

**MR SESELJA:** When was the minister informed of the extent of the asbestos contamination?

**Mr Savery:** I will not have the exact date of when the minister was informed but it was not about the asbestos per se. The construction of this has unearthed a range of issues, including the asbestos. It would be fair to say—

**Mr Barr:** I can find the date when the brief came in. There was a brief that came up, obviously.

**MR COE:** If you could—

**MR SESELJA:** It looks like Mr Savery has it in front of him.

**Mr Savery:** No, I have not. That is something else. It is on another site. By way of comparison, it relates to your earlier question about why didn't that number of bores pick up the quantity of the issue. Mr Simmons has just conveyed to me that, with the ASIO building site on Parkes Way, the testing showed that 10 per cent of the site was contaminated. In the end, 80 per cent of the site was contaminated.

**MR SESELJA:** Do we know what that cost the commonwealth government?

**Mr Savery:** No. They ended up moving around 40,000 cubic metres of soil.

**MR SESELJA:** Minister, are you satisfied with the planning authority's handling of

this? The Chief Minister has obviously expressed some reservations publicly.

**Mr Savery:** I am.

**MR SESELJA:** Sorry, I am asking the minister the question. I am happy to have your view on it and then I am happy to have the minister's view on it.

**Mr Savery:** Obviously the Auditor-General may have a different view at the end of her—

**MR COE:** I am satisfied with myself!

**Mr Barr:** Yes. Obviously the matters are subject to some further investigation, but these things are not exact sciences. You are testing; you are not undertaking a piece of work that is over every little bit of the site. Some of this work has been going on for some time. It would appear that a lesson to learn from this is not to rely on commonwealth documentation. For not the first or undoubtedly the last time, the old NCDC has let us down, but that is a matter for reflection on the quality of commonwealth record keeping at another date.

In terms of the Planning and Land Authority's management of this I have no basis on which to draw a conclusion that they have not handled the matter appropriately according to the relevant Australian standards. However, the Auditor-General is having a look at it and will be in a better position to make observations on the technical nature of some of these issues than I am. But in terms of briefing me on the issues and their handling of the matter, I have no reason to be concerned about that. It is clearly a matter of regret that the costs associated with the project are now greater as a result of this, but that is life; you have to deal with the issues before you and respond to them accordingly, and we will do so.

**MR SESELJA:** But the government has not made a decision now as to whether it is going to go ahead?

**Mr Barr:** The development is going ahead. It is just that—

**MR SESELJA:** No, in terms of the pond.

**Mr Barr:** the nature of the pond will obviously be subject to some further processes. There will need to be a stormwater treatment, whether what happens now exactly how ACTPLA designed it or whether there need to be modifications as a result of this is not in my hands but undoubtedly I imagine there will need to be some reconfiguration of the particular proposal. But, as Mr Savery has indicated, that is not a matter for ACTPLA. That will be a matter—

**Mr Savery:** We are working on a redesign that will have to go back to government for it to determine if it wishes to proceed with that redesign. The purpose of the redesign is twofold: one, to contain costs and, two, to still deliver on the original objectives of the pond.

**MR SESELJA:** How much re-scoping are we talking about? Are we talking about a

pretty significant body of water?

**Mr Savery:** We have a preferred option. As always, you have any number of options, so you work through the process to identify which is going to be the most effective in terms of both cost control and achieving your objectives. The design that we are leaning in favour of would reduce the water body, but I cannot be precise in how significant that would be. There would still be the outer perimeter shape of the pond but the pond might be split in two, so that where the concentration of the worst material is would be capped and left in situ. What you have running through there is probably the most significant sewer main in the ACT. It runs right through this pond, and that has always been known because that is why the sewage treatment works were there. So we have to work around that particular piece of infrastructure as well in how we design this.

**MR SESELJA:** When are you finalising those options to government?

**Mr Savery:** The aim is to get construction back on site for June. At the moment the contractors have that piece of work suspended, bearing in mind the contract is broader than just the pond; it involves John Gorton Drive and other work. They have shifted their focus onto the other work, so TAMS want to get them back on site by June in order to have the government agree to the alternative design, because they will have to understand what the order of costs is. One would imagine we would have to have that ready for them in late April, early May.

**MR COE:** I have a very important question about the dumps which may be asbestos. How many other sites are there in Canberra?

**Mr Savery:** No-one can be absolutely certain.

**MR COE:** That you are aware of?

**Mr Savery:** That we are aware of. We would have to put that question to the EPA in terms of they hold the contaminated sites register, which I think is a publicly available document which documents the known sites.

**THE CHAIR:** Ms Le Couteur, do you have a question?

**MS LE COUTEUR:** Yes, I have a question on page 19. You said that you were going to build upon the response to the problems of poor construction practices in the ACT. I remember back to the estimates questions last time. We had the pleasure of talking to you when that was the major topic of conversation. I know you have had the building quality forum. What is going to happen now?

**Mr Savery:** Mr Simmons is in the best position to respond to that.

**Mr Simmons:** The minister called the building quality forum. After that, we ran a series of separate workshops where we extracted the four core themes of what were the problems within building quality. We talked about consumer rights, insurance, the products available to us and then basic skills and experience in the industry and supervision. As we have moved through those a number of issues came up and they

were then reported to the Assembly in September. After the acceptance of that report, we continued those groups until we got to a further settling of the key issues we could move forward on.

Later in the first quarter we proposed that the minister reconvene the full building quality forum and take those specific issues around each of those four core themes back to that industry group we met in the first place, to work with them on a process. We think there are some significant issues—and these are all matters for government to decide—around the Building Act and some of the ways that the training systems are interacting at the moment. The industry worked very well together to come to what is generally a very broad consensus of what the issues are.

There is a general concern that the level of skills and getting people to complete apprenticeships has become an issue. We need to do some work on what mechanisms we need to put in place to encourage that, on the levels of site supervision, the paraprofessionals and the professions that work in and around the industry that sit outside of the regulatory regime, to bring in each of those. As a consequence, that will have significant resource implications, so that matter is clearly before government as well.

We are progressing our discussions on a number of issues. We are in the final stages of having one of the key issues addressed. The Owners Corporation Network wanted a survey and that survey is very close to being ready to go out. As of yesterday we were meeting with a representative of the insurance industry about new insurance products because one of the proposals was about looking at some form of insurance that might work for multi-unit developments. So we are continuing to progress those things very actively. Obviously there are quite a few decisions that the government needs to consider out of that over the next few months.

**MS LE COUTEUR:** So it will be a few months before we see any changes on the ground?

**Mr Simmons:** No. There are already changes on the ground. We have already changed some of our auditing regimes, how we audit and what we are looking at. We have also restructured internally the way investigations and auditing take place so that we now have a team that specialises in audits and another one that specialises in taking the work of that audit team and placing it into investigations. We have a breach management unit.

In terms of using all the options available to us within the act, there were some triggers around what started the building quality and some of those matters are now before the courts. We have some very important prosecutions now where pleadings have already been made and we are awaiting the outcome of sentencing, and then some further actions that we intend to take which are exploring the limits of where the Building Act and the licensing act sit and some new elements inside some of the legal processes available to us.

**Mr Savery:** An important point for us there is the establishment of legal precedent. Once you get legal precedent, particularly if it is in your favour, you tend to be able to use it quite effectively to minimise the potential for other similar situations arising.

**MS LE COUTEUR:** Presumably only if it is in your favour.

**Mr Barr:** I will report back to the Assembly later in the year and the Assembly will potentially have to consider a range of issues as well if there is a requirement for some further changes that involve legislation. Clearly that will be a matter for the Assembly to consider in due course. I undertake to report back later in the year.

**MS LE COUTEUR:** Good. You talked about auditing, a subject dear to my heart.

**Mr Simmons:** As it is to mine.

**MS LE COUTEUR:** Am I correct in saying that about 10 per cent of building approvals are audited?

**Mr Simmons:** Ten per cent of every certifier's work is audited, so that can end up with a result that is higher than 10 per cent of the total. Every certifier who works has a minimum of 10 per cent of their work audited. Depending on the outcome of those audits, they may or may not then encourage further auditing or investigation of their work.

**MS LE COUTEUR:** Does that first lot of auditing involve physical inspection or is it purely a desk audit?

**Mr Simmons:** It is both. It depends. The paper-based audits are where you go to look for two things. The first is systemic issues across the industry, so what you are looking for in that case is: is there something that every certifier is doing and as a consequence every builder is doing? We have a particular issue with that over this last year where that has been brought to the fore, a systemic issue. Then you are also looking for things that an individual certifier might be doing repeatedly which need corrective action, and we have found some of that as well. There is a cluster of those things taking place and they are being investigated.

**MS LE COUTEUR:** Is any of your work going to capture things like whether insulation was actually put into ceilings. I am aware anecdotally of quite a number of people who did not get it. Clearly that is required if your energy efficiency rating was based on the installation being there. What are you doing around that?

**Mr Simmons:** One of the changes being brought in is that we assume the licensing responsibility. We will license from 1 March those people doing an energy rating for the purpose of the building code but also for the purposes of civil law. One of the things we have put into that is the purchase of specific equipment that will allow for non-invasive testing that will identify whether the insulation is or is not where it is supposed to be.

**MS LE COUTEUR:** That could be thermal imaging?

**Mr Simmons:** Yes.

**THE CHAIR:** It is four o'clock so that concludes this hearing. Thank you very much, minister, Mr Savery and officials. Members have five days if they want to put any questions on notice. We will get those to you as soon as possible. We obviously took some questions on notice during the hearing. Thank you very much to all of you.

**The committee adjourned at 3.59 pm.**