



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

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

**Reference: [Draft variation to the territory plan  
No 307 Griffith—change of zoning](#)**

**Members:**

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

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 25 NOVEMBER 2011**

**Secretary to the committee:  
Ms V Strkalj (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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## **Privilege statement**

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*Amended 9 August 2011*

**The committee met at 9.04 am.**

**POWELL, MR TONY**, Private citizen

**THE CHAIR:** Welcome to the third public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services inquiry into draft variation to the territory plan 307, change of zone. Previously we have heard, obviously, from the Brumbies Rugby club, the Southern Canberra Community Council and the Planning Institute of Australia. Today we are hearing from Mr Powell until 10 am. After that we are hearing from the minister. Mr Powell, have you read the privilege card?

**Mr Powell:** I have.

**THE CHAIR:** Do you understand the implications of it?

**Mr Powell:** Yes.

**THE CHAIR:** And you are happy with that?

**Mr Powell:** I am, yes.

**THE CHAIR:** Thank you very much. Have you got anything you would like to say by way of introductory remarks?

**Mr Powell:** What I thought I would do and what I would like to do is make a presentation to you particularly about the environmental aspects of the site and why it is important and so on and to do so by issuing you with a series of images as I go through. As I do each step, that will allow you the opportunity to then raise questions. I would like to spend the hour doing that, rather than my saying to you, "Do you have any questions?" If we try that and it works and that is acceptable to everybody, I would like to do it that way.

**THE CHAIR:** Yes. Have you got sufficient copies for each member?

**Mr Powell:** I have. I have got three.

**THE CHAIR:** Could you hand them to the secretary as you go along.

**Mr Powell:** I will. I have got them numbered. There are 11 of them. When I get to each one, I would like to give the secretary the three, and he gives them to you, and I will talk about that.

**THE CHAIR:** We will go that way.

**Mr Powell:** It is a little clumsy.

**THE CHAIR:** Members will ask questions as we go along. We will get moving.

**Mr Powell:** The only other thing I have to tell you is that I am half deaf. I can only

hear out of one ear. I have to ask you to talk loudly. Otherwise, I have difficulty hearing you.

**THE CHAIR:** That is all right. You can signal if any of us are fading away. Ms Le Couteur has trouble sometimes.

**MS LE COUTEUR:** I have a soft voice, I am afraid.

**Mr Powell:** By way of opening remarks, my submission to you is in three parts. The first is what I call the intrinsic value of the site. That is important because, as I have said in my submission, ACTPLA, in all of its deliberations on this topic, never refers to the land as a physical entity. It talks all the time about what its zoning is or what its zoning should be. I thought it was very important for me to convey to members some visual images of what the land is like, because it has some remarkable qualities which are important.

The second part of my submission was about the whole issue of justification. In my view, ACTPLA's reports on the consultation do not establish that the proposed rezoning is justified. I am not going to be able to get into that today inside the hour, but at the end I will make some reference to why I think it is important and why I think it should be important from the point of view of the committee.

My final section is about ACTPLA's consultation report. I am not going to have time to go into that today.

The second point I would like to make is that it is interesting to note that when Jon Stanhope was the Chief Minister he frequently took the opportunity to talk about the beauty of Canberra, Canberra as a beautiful city. I noticed the other day, when we were having all these important visitors, including the Queen, the Chief Minister, Katy Gallagher, made the same point, that it was a great pleasure and a privilege to be able to present the Queen and all the other important visitors, including the President of the United States, this beautiful city. This idea of the city beautiful is going to underpin a lot of what I am going to say to you this morning.

The third point I want to make is that much of the thinking of this committee is influenced by the broader picture about the spatial plan as the strategic instrument, which is a non-statutory document. Now we have got a new version of that which is out for public consultation.

I just want to say something about that. The key issue in that strategy is public transport. Looking at the latest version of the spatial plan that is up for consultation, I look at that as an engineer and as a town planner and I say to myself, "If this strategy requires a particular specification of public transport as described in those documents, my estimation is that that will require an investment of the order of \$3 billion to \$5 billion over the next 20 years."

There is no way in God's world that this territory is going to access that level of capital under the present arrangements between the federal government and the territory government. It has no possibility of establishing that amount of capital for investment in public transport through its own resources. Any reliance that the

committee places on a high level of public transport being introduced into this territory over the next 20 years is not going to happen.

I noticed that when this committee was looking at the issue of extending medium density development in the northern suburbs of Canberra public transport was talked about a lot. The committee, and the Assembly, finally decided that medium density development would be extended into northern Canberra, but you all must have known that over the next 10 years the level of public transport in northern Canberra would not match the increase in density that you are allowing. You know that from experience.

I noticed that when Mr Corbell was talking the other day about increased improved public transport services they were talking about the lift starting in 2016 or 2014. They are not able to commit now to anything of any substance over the next few years. You, as a committee, need to understand that many of the assumptions you make about public transport being made available—when you look at the numbers and the mechanics of it—are not going to happen. On its record, no territory government has been able to make significant gains in relation to public transport.

The other aspect of public transport that you also must know is that you cannot get a modern public transport system in this city until you privatise it. It is only private enterprise that can establish the technology, run the technology of timetabling buses, keep track of where buses are and provide information to consumers over the website about how long they have got to wait for the next bus. That is the sort of modern bus system that this city needs—and it needs it now; it needs it already.

It will not be enough to corporatise the public transport system, because public transport is not profitable. You can corporatise water, ActewAGL—that sort of stuff—because it is a profitable enterprise. It can do its work and fund it but, with public transport, you will have to privatise it. You must all know that. Sooner or later you have to step up to the plate on that. All political parties in this territory have to come to that conclusion. Otherwise there is definitely not going to be any further improvement in public transport. All of the increased density that you are allowing now will not be well served by public transport.

The third point that I want to make is that in the new strategy there is a proposition that intensification will be concentrated in the centres and will be built up along the line of transport corridors. The problem with that is that the Y plan has that principle underlying it. In other words, the idea was that all of the employment activity would be concentrated in the town centres and to a lesser extent in the group centres, and the town centres would be connected by a high capacity line haul system, which in the NCDC era was envisaged as being a bus network, and stepping up to some kind of rail network in the longer term.

That transport corridor depends for its effectiveness on having low intensity development along the line of the route, because the more you start to build up activity within the transport corridor, with increased numbers of people and increased commercial activity of various kinds, the people living in all these hay stall buildings, when they step outside, have all sorts of reasons for moving around and wanting to cross the line of the transport corridor. To the extent that you do not keep the level of

development in the corridor relatively low then the activities of people will begin to suffocate it.

The other thing about transport corridors, from an environmental point of view, is that they are air pollution corridors. In other words, the atmosphere is poor. They are noisy et cetera. It is fine to say we can intensify residential development and commercial development in the centres, but you cannot extend that along the line of the corridor because you are trying to avoid outward expansion throughout the territory.

The final point I want to make is that there has been a lot of discussion about the Y plan being a form of urban sprawl. That is nonsense. The territory, under the Y plan, has a population capacity of the order of 600,000—easy. If you get more intensive residential development in the centres then of course the capacity, the 600,000, will take a lot longer to get to. The Y plan is based on the idea that a system of centres and transport corridors and lineal urban corridors is the most efficient and the most environmentally effective way of housing a large number of people—in this case 600,000.

The idea that you can fill up the existing urban area so that 50 per cent of additional residential development will take place in existing suburbs cannot happen. It just cannot happen because what exists exists, firstly, as the built environment and, secondly, as a social system. The social system is extremely complex. As soon as you start wanting to change its physical character by replacing houses with four-storey buildings and then going up to eight-storey buildings it becomes enormously difficult. Your clientele do not want to do it because it has an adverse effect on their daily living circumstances.

What I am saying to you from my point of view as a town planner and my advice to you is that sooner or later you will have to go back to the Y plan system, because if you have a good enough transport system then you will enable people to be lined up along urban corridors and maintain significant areas of open space. It is better environmentally and it is better sociologically. This is a city of 300,000 people in the middle of Australia. It is not Melbourne or Sydney or whatever. I just wanted to set the scene because I hope to persuade you that much of what has gone on about urban sprawl is, I think, propaganda. It is not inevitable. There are better ways of doing what we are doing right at this very moment.

The first point is this. [Exhibit 1] I just want you to look at this. This is what block 15 looks like. There is no question that, when you look at it, it is not commercial activity. It is obviously recreational activity. To the ordinary person, this is recreational activity in the form of a football club, it is recreational activity that is consistent with what is happening generally on section 42 and it is all coherent district open space, district recreational space. It is not commercial.

The second point I would make about that image is that you have a football club and a clubhouse. You also have a gymnasium. That facility being utilised by the Brumbies has cost the taxpayers of the ACT roughly \$10 million. The government, starting with the Carnell government, gave the Brumbies effectively \$5 million to gradually acquire the business of the south Canberra bowling club. It then provided another \$5 million to build a gymnasium, to a very high standard. And if the rezoning is permitted, that

\$10 million of public money invested in that facility will be trashed into the ground.

If we get to a stage where the Brumbies need to leave this site or want to leave this site, there is no reason why those facilities cannot be turned to a valuable community use, because there is a need, and a growing need, for all forms of recreational activity. Why can't the ACT government take over that facility, run the gymnasium and make it available to people who cannot afford to go to commercial gymnasia throughout the territory? In other words, there are positive advantages if the Brumbies go. And nobody knows that they will go; it may well be that this application to rezone the land is to establish a value for the property, but they may not intend to leave it.

That is the first thing. I just want you to note that what is there on the ground is public recreation.

The second thing is that you will note that the site is intimately connected to the vegetation systems and the drainage systems that occupy the remainder of section 42. My second point is to show you this. [Exhibit 2] I just want you to look at this image, which is oval No 1. We are now on the ground looking at what this environment looks like. There is no public open space in the ACT that is better than this from an aesthetic point of view. This is a very beautiful place.

**THE CHAIR:** Just to let you know—we actually have been to the site and inspected it so we do know what it looks like.

**Mr Powell:** Yes, but I want to remind you. I want to impress upon you what a wonderful place it is. If this application goes ahead, all of that will be destroyed.

**THE CHAIR:** Mr Powell, this ground is not subject to development. This oval will remain.

**Mr Powell:** I know. I am going to show you, but I have a point to make. When you look across at the background, that stand of trees is on the boundary.

**THE CHAIR:** And will remain.

**Mr Powell:** That whole system is going to be adversely affected if the development goes ahead because a large amount of those trees will go.

**THE CHAIR:** I do not think so.

**Mr Powell:** I know you do not think so, but they will. All of those trees are on the boundary so it is difficult to know how many of them are on the oval side and how many are on the other side. I am sure you understand that when you look at the crowns of the trees, how big they are and how extended they are, that is what the root system is like underground; that is how far it goes.

When that issue was raised, the Conservator of Flora and Fauna was not able to say what the extent of damage or disturbance to those trees might be. He does not have the staff to go out and do the examinations that he—or she—should be doing, so he turned himself into a town planner and said, “What should happen is that with the

development on the Brumbies site there should be an ample setback.”

But when you get to the next stage and there is a development application, ACTPLA will look at the development application and say, “It doesn’t really matter what the conservator says about having an ample setback.” There is no way in the territory plan that you can make that happen. The territory plan will say that on that kind of boundary there will be a required setback of four metres or whatever it is. I do not know what it is, but it is something of the order of four metres. ACTPLA will be forced to recognise that the developer is entitled to build right up to within four metres of that boundary. There is no provision in the territory plan for ACTPLA to say, “You must set back not four metres from the boundary but 14 metres.”

**MS LE COUTEUR:** I believe that the precinct codes would enable that to happen, Mr Powell.

**THE CHAIR:** Yes. I think we can see your evidence afterwards. We will not get through all your evidence if we keep interrupting you. We need to go on to the next photo; otherwise we will not finish.

**Mr Powell:** Okay; I will speed up. This is another image. [Exhibit 3] This is the pathway system that runs between the Brumbies side and basically the main channel of the creek.

**THE CHAIR:** Yes; we have been out and had a look at that as well.

**Mr Powell:** This will be severely disturbed. It will be severely disturbed in terms of tree cover and severely disturbed in terms of groundwater retention and restoration. This is a thicket of trees that has grown up accidentally because there has been no maintenance. For 20 years or more there has been no maintenance. It is a very special environment and it is not amenable to disturbance. Once you start to disturb it, you are starting to destroy it.

**THE CHAIR:** Next photo.

**Mr Powell:** You can see that I am speeding up here. [Exhibit 4] This is Griffin’s report explanatory. If you look in the bottom right-hand corner, you will see the line of Telopea Park. To the south of that, you will see the phrase “initial city”. This is the initial settlement of the city of Canberra. It is amazing really that in the early years of the advisory committee under Sir John Sulman that did the first planning, followed by the Federal Capital Commission, they stuck to Griffin’s street pattern literally. If you walk from East Basin along the line of Telopea Park and up through to the subject land, all of the development on both sides of you is as Griffin saw it except for the development on the southern side of Captain Cook Crescent. What I am emphasising there is that in this district of which the subject site is part we are dealing with the initial settlement of Canberra.

I want to look at the first version of the statutory plan of Canberra, which was gazetted in 1925. [Exhibit 5] It is, again, a version of Griffin’s plan that was drawn up in 1918, with the subdivision designed by Marion Mahony Griffin. When you look to the southern end of Telopea Park, you can see the curvature of what is now Captain

Cook Crescent, which Griffin called Oceanic Drive. The Federal Capital Commission changed it to Captain Cook Crescent. You will see that on the east of Oceanic Drive the subdivision of Griffith is pretty much as it is, but on the western side it is different because the line of what is now Flinders Way was straightened out more and you have got Blandfordia on the western side.

What I am saying here is that there is a continuity between Griffin's plan, Marion Mahony Griffin's subdivision designs and the street pattern of which section 42 is part. And section 42 was not developed because, along the line of the creek, the land to the east, which is where the district open space is, was swampy land. They were the flood terraces of the creek. The eastern side, where Blandfordia was built, was higher ground. That is why the open space exists today, largely undeveloped, for those reasons.

This is a 1930 aerial photograph of the site. [Exhibit 6] Straight ahead you can see the circle, which is now Manuka oval, and off to the left you can see the first outline of oval No 1, because of the tree planting, and beyond that those dark spaces are the swampy land that was prevalent at that time. In other words, what I am trying to present to you is that the original landfall and the drainage system et cetera still exist fairly intact today. If this development goes through then you will start to modify that substantially. You will change all of the groundwater systems and you will certainly destroy a significant part of the flood retention system that was developed as it happened in my early years in the NCDC, in about 1974.

My next image is the first one that you have, which is the first appendix that you have in my report. [Exhibit 7] It highlights section 42 and shows the full extent of the district open space system. It also shows how it is part of a corridor that goes from the Red Hill ridge right down to East Lake on the Molonglo River. You can also see here, again, the way in which the tree systems and the natural drainage systems are all of a piece and the development that is there now connects well with that. But once you change the development on the Brumbies site, which is a fairly large proportion of section 42, and you imagine that site full of a very large apartment building, you are starting to have a dramatic effect on the environment of that site and its appearance, and you will destroy its historical integrity.

If you then look at appendix 2, that shows a drawing of the Griffin heritage trail. In my submission, ACTPLA did not believe this. [Exhibit 8] And because they could not get validation from the National Capital Authority, they simply rejected it. They did not seem to think it was significant and they did not try to understand it. What I am trying to show you in that diagram is that the NCDC, as part of the ongoing work or the renewal of emphasis on Griffin's planning that arose because of the need to set the conditions for a new and permanent Parliament House, brought the commission back to consideration of those aspects of Griffin's planning that were relevant to the time.

The commission identified that Capital Hill should be the site of the permanent Parliament House and gained the approval of the parliament to that effect. That led us to look at the parliamentary triangle—in other words, how the new building would connect to the lake. Because we were always seeking justification for what we were doing in relation to Parliament House—for example, no-one wanted to have a new Parliament House and no-one certainly wanted to spend a billion dollars building it—

we had to construct, if you like, a degree of historical emotion, that Parliament House would be the centrepiece and the realisation of Griffin's design. Having done that, while Parliament House was under construction, it started to be a lot more interested in other aspects of Griffin's plan. Later on, that work was carried on by the National Capital Authority.

Under the Griffin legacy, they also started to look at ways in which other aspects of Griffin's planning was of significance historically and of significance from a tourism standpoint and so on. I had a meeting with Annabelle Pegrum and I showed her the work that the NCDC had done, as shown in this diagram. I made the point that this was something like a 17-kilometre circuit—about a 2½ hour walk. It is a bit steep when you are going up, to get onto the Red Hill ridge, but when you look at it, you go from Parliament House, through the parliamentary triangle, all of it based on Griffin's planning work and all of it now the built environment history of Canberra. You get to the lake; the lake is very much as Griffin envisaged it, except it is less geometrical. You walk along the foreshores of the lake to East Basin. Then, when you walk from Bowen Park up along the line of Telopea Park, around the circle, along the creek alignment up to Red Hill, to the summit of Red Hill and back down, you see represented almost every aspect of Canberra's planning and development, starting with Griffin and ending with Griffin.

From a tourism point of view, that is important. From a cultural point of view, that is important. And integrity is reasonably okay. But once you allow this development to take place, you start to put into it an alien element. There is no way you will be able to develop the Brumbies site in the way that they envisage without doing it in a way that is detrimental to that whole historical fabric that is shown in that paper.

This is taken from the Brumbies report. This shows you what their ideas were about how the site should be developed. [Exhibit 9] The No 1 oval is out of the equation now. That was resolved by the Griffith Narrabundah Community Association doing the work that established the heritage credentials of that oval and that space. So the original application was rejected.

The then Chief Planning Executive, Neil Savery, invited the Brumbies to make another application for block 15. When this material was first exhibited, the local residents took exception to the amount of development that was shown on block 15. As you will see, it is a fairly bulky sort of building. They did not get a positive response from the Brumbies about what was intended there and how it was going to be done. The Brumbies got their architects to provide other versions, because the Brumbies started to say: "Well, look it may not be like that. It might be like something else." Anyway, for what it is worth, that is what they envisaged in the first case, and you will see that it is a very extensive development of block 15.

The third appendix that you have is a picture of a recently completed apartment building in Kingston. This is the sort of building that will go on block 15. This is what a developer will build. [Exhibit 10] This is a very large site; it is a whole block. The first thing they did was dig a deep hole. They excavated the whole of the site down to a level of about 10 metres. Then they constructed all the car parking underneath, then they put four stories of apartment buildings on top of it in a sort of a hollow square.

You will notice that all of the open space here is concrete. It is a concrete roof. It is basically that way to allow a certain amount of light to get to the apartments themselves. When you look at the apartments, you will notice that every one of them has access to natural light on one facade only. So all the rooms inside—the main bedrooms or bedroom, the sitting room and behind that the kitchen-eating area—only have access to light from one face of the building. My estimation is that, in this facility, it probably has well over 200 apartments, and one-third of those will have no meaningful access to sunlight.

Not only that, but outside the building there is no access to any meaningful recreation space. You will see the way that all the plantings are in raised boxes. When you go outside that building, all you have is vast areas of concrete pavement. It adds to heat loading in the summer. It catches all the water and dumps it straight into the stormwater system, so there is no groundwater regeneration or replenishment.

The apartments themselves are mechanically ventilated. This building will probably score highly for energy ratings et cetera, but from an environmental point of view, once the building is mechanically ventilated, it is the worst environmental outcome that you can think of. That mechanical ventilation in this climate operates for 365 days a year. It is either warming people up or it is cooling them down. That is what you will get on the Brumbies site. That is the kind of development—

**THE CHAIR:** Except it cannot be that tall; it cannot be that many storeys.

**Mr Powell:** Yes, four storeys, it is. When you look at ACTPLA's report, you can see that if they put the parking in the basement, then they can effectively go up three storeys. You can call the top one an attic, but it is three storeys.

Then there is an interesting phrase in the report that says that, under certain circumstances, you can go to four storeys. I do not know what that is, but that is what they say in their report—under certain circumstances it could get to four storeys. It does not matter a lot, because there is not a lot of difference environmentally between whether it is a three-storey building or whether it is a four-storey building. It matters an awful lot that they dig a great hole to put all the parking in. We do not really have to debate whether it is three or four storeys; the impact is the same.

The next thing I want you to look at is that there are ways of modifying those impacts. This is a shot of the development on the other side of the street of the building we have just been looking at. [Exhibit 11] That is the previous way of handling development like this, where you required the developer to put the parking under the building but you did not allow excavation, so that you avoided these arid faux gardens where they are all lifted up above ground level and you cannot actually get into them or sit in them; they are just there as decoration.

At least under the previous system the NCDC and even the earlier phases of the territory administration would not have allowed them to have more cars than they could simply get under the buildings so that regulated the amount of cars you had. It did not destroy the groundwater regeneration system and you got reasonable landscape that provided shade, was pleasant to walk through et cetera. But under the territory plan now, you cannot make a developer do this. He has an entitlement to dig

a hole and put all the parking in the basement and have two cars for every unit.

I am down to my last sheet. I know it is not very efficient, but I thought it was a different way of presenting it to you.

**THE CHAIR:** Thank you.

**Mr Powell:** The final thing I want to show you is that there is no need for this development. [Exhibit 12] As it says there, there are 8,000 new units currently in production in Canberra, and a substantial number of those are in south Canberra. I do not know what the population growth rate of Canberra is, but it is probably around 12,000 people a year. So 8,000 new units is about five years supply, at least, for that segment of the market. So you cannot really say we need to rezone the Brumbies land because we need land for unit development because not only is there a very large number of units in the pipeline but south Canberra has enormous capacity in the case of the Kingston foreshore development and the whole suburb of East Lake that is about to come into being. They will provide an almost endless supply of unit development in south Canberra for quite a long time to come.

On the other hand, as more and more people are living in higher density, you need more and more access to open space. You need more open space, which you are not going to get in south Canberra, or you need better use of what is there. The open space is a treasure. It defies common sense to say, “We should take a piece of open space and redevelop it for apartments,” because that is absolutely contrary to all of the strategic directions of the territory plan.

I make the point in my submission to you that there is no strategic direction in the territory plan that mentions urban intensification. There is no urban intensification strategy in the territory plan. That is because the territory plan focuses on the urban area as a whole and on the non-urban parts of the territory as a whole and within the metropolitan area it identifies open space in all its various guises.

In relation to that open space, whether it is restricted or unrestricted or whatever, there are five strategy references to the importance of preserving that open space and making better use of it. There are no strategies that say, “You should take that open space and urbanise it.” That is the first thing.

The second point I want to make is that ACTPLA does not know the need for recreational land. That is its responsibility. It is its job to forecast and say, “How much space do we need for recreational land?” It has not done that. What you can say is that not only is the need for public recreation increasing, but it is becoming increasingly diverse.

I will stop at that point because I wanted to introduce two things to you. One was that there is no justification for this. You are not justified in rezoning open space, recreational land, on the Brumbies’ site because you need that land to produce more and more multi-unit development. There is ample land and the amount of unit development that is in the pipeline is substantial.

**THE CHAIR:** Thank you very much. We have five minutes for questions.

**MS LE COUTEUR:** The obvious question is: what do you think should happen with the site? Clearly it cannot continue as it is right now.

**Mr Powell:** What I think should happen is that you should not rezone the site. That is the first thing. The second thing is that I suggest in my submission that things are changing in the Brumbies right now. Under their new coach, they are saying to their players: “We don’t just want you to stay here for 12 weeks while the super 15 Rugby is on. We want all of you to then play in the local competition, to nurture and restore Rugby as a viable sport in the ACT.” That means that the Brumbies and its relationship with ACT Rugby cover 30 weeks a year and not 12 weeks a year, as it is at the moment.

Notwithstanding what Andrew Fagan has said, there are not any other clubs in super 15 that have better facilities than the Brumbies. Most of them do not have their own clubhouse. Most of them do not have a training facility that is better than this. Andrew Fagan says that the ground is too hard or things like that, that the super 15 Rugby team in Melbourne have access to a new grandstand and that they have access to the dressing rooms et cetera. It is the same in Perth. The Western Force, again, has access to a ground, but it is not its ground, and has access to the dressing rooms. None of it is the setting that the Brumbies have got.

It really does remain to be seen whether or not the Brumbies will start to make more effective use of the facilities they have got on block 15. It is not going to be easy for the government or for them to move to Belconnen, to the University of Canberra site. For the moment, I think that all the signs point to the Brumbies not only staying where they are but they will make more effective use of what they have got. As Andrew Fagan said, their present location, because it is attractive per se, helps them attract players from other places to come to Canberra to play. The whole environment for them—for the players, for their families—is a pleasant experience.

The second point I would make is that if the Brumbies then decide to go, you have on that site facilities that were paid for by the territory. They were paid for by the ratepayers of Canberra. There is \$10 million sunk into that site. What the territory government needs to understand is that the days are gone where private enterprise or private clubs can provide all the recreational facilities in the ACT. They cannot. They cannot afford to pay for the water and so on. It represents an opportunity for the territory to say: “We will take this over as a community facility. We will get volunteer groups to run it. It will provide facilities for those people who cannot afford to pay for commercial gymnasium facilities. We will use the clubhouse for accommodation for all those voluntary organisations who do not have clubhouses, who do not have places to go and places to meet.”

When you look at what is there, positively, it has the capacity, the potential, to achieve important public amenities, services. It has that potential. If you destroy it and you put flats there, then there is a lot of waste. And it is unfair and it is unjustified.

**THE CHAIR:** Mr Coe, with a very quick question.

**MR COE:** Under the current zoning, CZ6 under the territory plan, they would have to

submit a DA for other permissible uses on that site. There are a number of permissible uses which could involve three or four-storey buildings, in effect. They would not be residential buildings. They could be a nursing home, a hotel or something along those lines. How do you tackle issues like that? As it currently stands, they do have, in effect, the right to construct a building. But to construct a building for the use they want, they would have to have it rezoned. How do you tackle that issue?

**Mr Powell:** Under the present zoning, let us say there are 30 categories. When you look at the list there are about 30 categories. About 12 of those are basically recreation of some kind. That sort of activity could take place. There is no question about that. There are other activities like a hotel et cetera where you would have to get the lease purpose changed.

Previously, when the zone was first established, it had a whole lot of qualifications because the territory plan contained statements of objectives and principles. On that particular site, an important principle was that development on the site had to be in scale with the surrounding landscape. That affected the height of buildings and the degree of site coverage et cetera.

A lot of those requirements, I think, have been sifted out. For example, if you wanted to build a hotel on the site, which is in accordance with the present zoning, and you got the minister to agree to change the conditions of the lease, I do not know whether that hotel would be restricted to two storeys or whether it could go up to 10 storeys. I do not know how the territory plan stands now. You need to understand that the system of control of detail in the territory resides in the lease conditions. It does not reside in the zoning.

If the Brumbies wanted to have the site redeveloped, let us say, for a hotel, then the community would be entitled to say to the government, “You shouldn’t change the lease purpose clause because if you allow a hotel, then that, of its own volition, has a whole lot of clearly adverse impacts.” The site is part of a district open space. Block 15 is an intimate part of section 42. The planning entity is section 42. It is not block 15.

**THE CHAIR:** I think that does answer the question for you, Mr Coe, for now, does it? We need to explore that a little more.

**MR COE:** We do.

**THE CHAIR:** Mr Powell, members can put other questions to you. They will get questions to you if they have got some, obviously through the secretary. We will be in touch with you after we consider your evidence you have given today, if we have further questions about that. Thank you very much. The *Hansard* will be sent to you. You will be able to check that for accuracy. We will be considering later whether these documents are published on the website, along with your evidence.

**Mr Powell:** These are not published on the website?

**THE CHAIR:** Not yet. We have to consider that later.

**Mr Powell:** You have to consider whether you will put them on the website?

**THE CHAIR:** That is right.

**Mr Powell:** Is it possible you might not?

**THE CHAIR:** In a private meeting we have to go through that process. I am just letting you know. Thank you very much for appearing before us today. As I said, we will get the *Hansard* to you.

**Mr Powell:** Thank you for listening to me.

**CORBELL, MR SIMON**, Attorney-General, Minister for Police and Emergency Services and Minister for the Environment and Sustainable Development

**PONTON, MR BEN**, Acting Deputy Director-General, Planning Policy, Environment and Sustainable Development Directorate

**CALNAN, MR GARRICK**, Manager, Territory Plan Review and Implementation, Environment and Sustainable Development Directorate

**THE CHAIR:** Good morning, minister, Mr Ponton and Mr Calnan. Thank you for coming in today.

**Mr Corbell:** Good morning.

**THE CHAIR:** This is the third public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services inquiry into draft variation of the territory plan 307. You are all familiar with the privilege card?

**Mr Corbell:** Yes.

**THE CHAIR:** I am sure you understand its implications. Minister, would you like to make some opening remarks before we go to questions from members?

**Mr Corbell:** Good morning, Madam Chair and members. Thank you for the opportunity to appear before you this morning. I do not intend to make an opening statement but I and my officials are available to try to answer your questions.

**THE CHAIR:** Thank you, minister. We will go directly to questions. Ms Le Couteur.

**MS LE COUTEUR:** Thank you, minister, for this statement about money. Could we also explore the more land-related—this is really interesting. It is not at all, in fact, what I expected we were going to get. What I thought we were going to get was the land-related moneys, the amount of moneys that had been paid for deconcessionalisation—what was originally paid and deconcessionalisation to date. We understand that there is still more money required for deconcessionalisation.

If this variation were to go ahead and then presumably some development would happen, my understanding is that there would be a lease variation charge. As you would be aware, one of the substantial issues from public discourse is how much money the Brumbies are going to get out of this and conversely how much money the ACT government is going to get out of this.

So what would be really helpful, I think, would be a clear, concise setting out of what those financial issues are so that people can say, “Yes, so-and-so is going to get this out of it.” I appreciate you cannot do it exactly, but the point is that it is a matter—it has been talked about anyway. We need to have some idea what we are talking about.

**Mr Corbell:** Thank you for the question, Ms Le Couteur. I should make clear that Ms Porter’s letter on behalf of the committee was about financial support provided by the government to the Brumbies sporting team, which is what my letter seeks to address in terms of payments and other financial arrangements in place between sport and recreation services in the Directorate of Economic Development when it comes to

support for major sporting teams in the ACT, including the Brumbies. That is what I have sought to provide to the committee.

In relation to the matters you raise about deconcessionalisation of leases, those are matters which are not yet concluded. There is a process for the deconcessionalisation of a lease. The Brumbies have made application in relation to that matter but that matter has not yet been determined. We are really not in a position to provide any further information about that at this point in time simply because there is an assessment that has to occur that has not yet occurred.

**MS LE COUTEUR:** Could you at least continue—I think it really would be helpful if there was any more information you were able to provide. My understanding is that some moneys have been paid. You must have at least also some idea of the value of the site, at least some sort of quantum idea of it.

The other area where I think it would be very useful if you gave some more information relates to after the deconcessionalisation. Assuming this territory plan variation happens, I think we would have to assume there is likely to be some development on the site. My understanding is that this will also require some payment to the government. My understanding is that there would be a lease variation charge.

Is it possible for you to provide some clear, concise information on this? I know that no-one can expect you to put precise figures. No-one is saying that but I have received literally hundreds of emails on this subject. Many of the people are concerned that this is simply going to be a windfall to some party. I think in terms of having a debate about what we should be doing from a planning point of view, it is also important to put to rest, if it can be put to rest, the belief by some people that this is being done purely for financial reasons.

I think that one of the ways to do this is actually to have some clarity as to what the financial implications are. Unfortunately, we have not got it right now. I know that you do not know the figures precisely, but I would have thought that ACTPLA was in the best position of all the various parties to give some idea of the sort of ranges of figures that could be talked about. If not, who can give guidance?

**Mr Corbell:** Thank you for the question, Ms Le Couteur. I understand that it is an issue of significant interest for a large number of people. I will ask Mr Ponton if he can perhaps give some more context and some more detail.

**Mr Ponton:** I will start at the beginning in relation to the process. You have talked about the existing lease. You may or may not be aware that the current application that relates to deconcessionalisation relates to only part of that lease. I understand that there has been some concern raised in relation to the private valuation that has been given to ESDD in support of the application. As I recall, that figure was in the order of \$280,000 to be paid out of the concession. As I said, it is important to keep in mind that that is only in relation to part of the lease.

Other aspects of the lease related to a number of different blocks historically where the concession has previously been paid out—I do not have that figure before me at the moment, but I can certainly get that for you, Ms Le Couteur—and other parts of

the lease where market value was in fact paid. When the lease was consolidated, there was a small portion of the lease that remained concessional. As I said, the current application relates to that, and so does that figure that has been put to us.

In terms of that value that has been put to ESDD, we do not necessarily accept that. The process for that now is that if the minister were to provide his advice to us that the application is in the best interests and we were to make a decision to support that application, we would seek our own valuation in relation to the payout of the concession. We would do that through the Australian Valuation Office. If there was a difference in the value, and the proponent was unhappy with the determination that we then made, they would have a right of appeal to the tribunal and it would go through that process. The tribunal ultimately would settle the value. As the minister said, that is unresolved at this point in time. Keep in mind also that that value of \$280,000 for the payout of part of the lease relates to a lease that currently has a lease purpose clause for club uses, not residential.

That brings me to the next part of your question. If the lease were deconcessionalised and if the variation were supported by the Assembly, it would be necessary to vary the lease in order to take advantage of the zoning as varied. That would require a process of valuation—or, I suspect, the values would actually be in the schedules now that the residential components of lease variation charges have been codified. It depends on the number of units that the site could support as to the actual value, but if you were to look at the schedules for the codified values that would give you a good indication in that locality of the type of value that we are talking about.

**MS LE COUTEUR:** And that, whatever it is, would not be payable until the DA? There would be a lease variation and then a DA?

**Mr Ponton:** Yes.

**MS LE COUTEUR:** At what point is it payable?

**Mr Ponton:** The proponent could choose to lodge an application to vary a lease only or they could lodge an application to vary the lease and also seek design and siting approval for the actual physical building. In any event, the DA for the lease variation would need to be approved and, before the lease as varied could be registered, they would need to pay the lease variation charge.

**MS LE COUTEUR:** So if they did them separately they would do the lease variation charge, and no money, and then do the DA. And once that was approved but before they started construction, they would pay.

**Mr Ponton:** That is right. It would certainly be before construction, yes.

**MR COE:** When was the last time a payment was made by the Brumbies or the Rugby association towards deconcessionalisation?

**Mr Ponton:** It was some years ago. I do not have the exact date in front of me, but I could certainly get that for you.

**THE CHAIR:** We will take that on notice.

**MR COE:** Yes. Just to clarify what I think Ms Le Couteur is asking for, it is really a schedule on every payment that the Brumbies have made towards deconcessionalisation as far back as your records go.

**Mr Ponton:** If it would assist the committee, what I could do, and I have this already available, is provide you with a quick history of the site in terms of blocks and consolidation and what parts were perceived market value and what parts were concession.

**THE CHAIR:** That would be helpful.

**MS LE COUTEUR:** Just to continue on the timing question—given that the lease variation charge is currently applied at a concessional rate and it is getting more every year, could the Brumbies or whoever is the proponent after the territory plan variation pay the charge any earlier than when they get an approved DA?

**Mr Ponton:** No.

**MS LE COUTEUR:** They have to get an approved DA to actually finalise the charge?

**Mr Ponton:** That is right. They need an approved DA to vary the lease.

**MS LE COUTEUR:** To vary the lease?

**Mr Ponton:** They need a DA.

**MS LE COUTEUR:** I have seen lease variations—I remember Curtin shops not that long ago.

**Mr Corbell:** A lease variation is a development application.

**Mr Ponton:** It is a development application.

**MS LE COUTEUR:** Okay. When you said DA, I was thinking of a DA as in buildings.

**Mr Corbell:** No.

**MS LE COUTEUR:** A lease variation is a DA but it does not require plans for a building so I should not use the term DA because they are both DAs.

**Mr Ponton:** One is a lease variation DA; the other is a design and siting DA. You need the lease variation DA approved, and before the registration of the new lease is the point at which payment is required.

**MS LE COUTEUR:** So they could register a new lease with X number of dwellings and not a lot of work would be required for that once you have done the territory plan

variation without having to do the detailed planning design and siting plan. That could be some time in the future.

**Mr Ponton:** It could be, yes. Certainly, though, in relation to the lease variation DA, there would be work that would be required to demonstrate that the number of units that they are asking for could be accommodated on site.

**MR COE:** Minister, other than what you have said in the chamber, have you made any public remarks about this development?

**Mr Corbell:** I may have. I make many public remarks; I may not be able to remember them all off the top of my head. I think that what I have said in relation to this DA is that this is a matter that needs to go to this committee so that the government and I as the minister have the benefit of the committee's views before determining whether or not the variation should proceed.

**MR COE:** Was there a change of course in terms of the government's will on this proposal when the minister changed?

**Mr Corbell:** I do not think you can read that.

**MR COE:** I am simply asking a question.

**Mr Corbell:** I do not believe so. This variation was initiated during the time of my predecessor, Mr Barr. I have allowed the process to continue to run and then referred it to this committee for your inquiry and your recommendations.

**MR COE:** Are there any other examples of open space, whether it be urban open space in the form of a reserve or open space in the form of what we have here on this block and the Brumbies site, where you have spoken against development?

**Mr Corbell:** This is not an area of urban open space.

**MR COE:** I said an area of open space of sorts, whether it be classed as a reserve or whether it be classed as a recreational facility which the community sees as open space. Are there any other such sites that you have spoken against?

**Mr Corbell:** I am on the record for a considerable period of time as having serious reservations about the use of areas designated as public land urban open space for development. I do not resile from those views whatsoever. But this is not an area of public land used for the purposes of urban open space. It is an area that some residents feel is an area that contributes to the broader amenity of an area because of the nature of its use. I understand those views and I have a good sense of why people raise those issues. Nevertheless, this is not public land; this is privately leased land so it does fall into a very different category from urban open space, which is owned by the community for the use of the community as a whole. I might ask Mr Calnan if he can address the issues around zoning and explain what the issues are in relation to the question you raise.

**Mr Calnan:** As Mr Coe has indicated, the territory plan enshrines a large number of

areas as urban open space. There have been very few variations undertaken that have led to changes to that zoning. There have been a couple, I think. The approach that the planning agency takes to those proposals is: is there a net community benefit associated with the proposal? In some cases some of those concepts are debatable—the notion of net community benefit. I think the Assembly and the committee, representing the Assembly in this sort of forum, are key players in determining what those values are.

I can think of one example—the extension to the St Andrew’s aged-care facility at Hughes. There was an area of open space that was rezoned for community facility use which was subsequently developed as an aged-care facility. That is an example where the view was there was a benefit to the community as a whole and that it was worth considering a proposal to change the zoning from urban open space to community facility in those particular circumstances. The proposal was ultimately supported by the Assembly and that facility is now up and running. Whilst it is relatively unusual, we cannot say that it never occurs.

I will just clarify that the zoning of this particular site is commercial accommodation and leisure, CZ6, which allows for a range of uses, including clubs, hotels and motels. As the name implies, it is an accommodation and leisure zoning. It is a zoning that has applied to that land since the territory plan was first introduced in 1993. It reflected the previous policies that applied under the National Capital Development Commission. It is a longstanding zoning. It is not open space and it is not even a recreation zone; it is a commercial zone.

**MR COE:** Minister, have you ever spoken out against development proposals at golf courses in the ACT?

**Mr Corbell:** Yes, I have.

**MR COE:** Is that not a similar situation whereby that is private land?

**Mr Corbell:** I think the point to be made is that golf courses, because of their very nature and their very use, tend to contribute to the broader landscape amenity of an area. They also tend to be spaces that are broadly accessible to the public as a whole. As Mr Calnan indicates, generally speaking they are on land which is zoned for recreational purposes. So, yes, I have taken that view, and I think it is an important view to take—recognising the broader amenity both in landscape terms and in social, recreation and access terms that those types of facilities provide.

**MR COE:** Do you see a bowling green, such as the one we are looking at, as being similar to a golf course?

**Mr Corbell:** I think I have to make a couple of points here. The first is that I have to be very clear that I have not reached a determined view as to whether or not this variation should proceed. I will be the decision maker on this matter and I have not decided—and it would be inappropriate for me to have decided—what my view is as to whether or not the variation should be made and formally presented to the Assembly, subject to the Assembly’s disallowance. I have an open mind on the matter. But I am aware of a broad variety of views about the proposal. That is one of the

reasons why I have referred the draft variation to this committee for its inquiry and report.

In relation to golf courses vis-a-vis bowling greens, I think there is a distinction. In my mind, there is a distinction first and foremost because of the zoning that applies. This is not land zoned for recreational purposes. This is land zoned and agreed to by the Assembly for commercial purposes. It has different zoning currently. Obviously there is a proposal to vary that zoning and we have to make a judgement as to whether or not that is appropriate, but we are dealing with an existing use which is not recreational. Secondly, I think it is important to be cognisant of whether or not a bowling green which has not operated for four years is still providing that benefit in terms of recreational uses. That is something that obviously has to be kept in mind as well.

**THE CHAIR:** Minister, the previous witness talked about the number of new units that are in the pipeline for the ACT and the fact that quite a lot of these will be on the south side of Canberra. There was an article on it in the newspaper just recently, I think on 19 November. I was just wondering whether you have any information about the spread of those units across Canberra—where they are planned to be established. That is probably a bit of a tall ask and maybe it can be taken on notice.

**Mr Corbell:** I can certainly take it on notice and advise you of where there are live or granted development approvals for multi-unit development. It is important to note that most multi-unit development is driven by private sector development decisions on land that is already leased. In a smaller number of circumstances multi-unit development will be occurring as a result of land sales by the government itself—for example, Kingston foreshore—so it will depend on the sites. But certainly we can seek to provide you with an analysis of that.

**THE CHAIR:** Thank you very much. That would be very helpful. Ms Le Couteur.

**MS LE COUTEUR:** Clearly this variation is one possible use of the land, but clearly it is also not the only possible use of the land. What work does ACTPLA do before it puts forward a variation to say that it is not only a possible use but is actually the best use? We heard evidence earlier from the Planning Institute who suggested that it was ahead of its time in terms of this rezoning. Whilst they did not say it was wrong, they said that they thought it was somewhat out of sequence—

**MR COE:** Not a top priority.

**MS LE COUTEUR:** Certainly it was not the top priority. What work do you do to say, “Of the multitude of possible things that could happen to this, this is the best possible use for it”?

**Mr Calnan:** We consider all the options. At the territory plan stage we are obviously considering the different zoning options that might be feasible for the particular context. In this particular case we are also responding to a proponent’s request. In fact, the initial request from the proponent in this case was for an RZ5 zoning, which would have allowed development up to six storeys in height, subject to more detailed consideration, if that had been accepted.

Our view was that that was not appropriate in this particular context. We looked at other possibilities—for instance, community facility zoning. However, we had to recognise that this was a site that was privately leased. It was not a site that the government could determine through the land release process who might be the developer. There seemed to be no prospect of a use being undertaken under a community facility zoning.

**MS LE COUTEUR:** Did you say there seemed to be no prospect? I am sorry; I just did not quite hear what you said.

**Mr Calnan:** That is right. I think our conclusion was that after looking at that option and the range of possibilities that that would present there seemed to be little prospect that the site would be developed under that option.

**MS LE COUTEUR:** Why did you think there would be no prospect of that? Certainly some of the submissions have suggested that there would be good prospects of that. Was it simply because it was owned privately and the private owners would want to get as much money as they could for it, for obvious reasons?

**Mr Calnan:** Most of the uses that are permissible under community facility zoning do not generate a significant income stream and therefore do not—

**MS LE COUTEUR:** That is why they are community facilities.

**Mr Calnan:** That is why they are community facilities. For those reasons there appeared to be little prospect that such a development would occur, because the capital that was required to undertake those sorts of developments was unlikely to become available.

**MS LE COUTEUR:** Did you say that it was unlikely to become available after talking about this with other parts of the ACT government that provide community facilities and them saying, “No, there’s no need for any more community facility land in this area”?

**Mr Corbell:** That would assume that the territory wished to acquire the lease, and the territory does not wish to acquire the lease.

**MS LE COUTEUR:** Why did the territory make that decision?

**Mr Corbell:** Because the territory believes it has sufficient sites already in that part of the territory to provide the community facilities that it wishes to deliver.

**MS LE COUTEUR:** So ACTPLA has this information without consulting with the parts of ACT government that provide community facilities. So it is the government’s belief that there is no need for additional community facilities land in this area?

**Mr Corbell:** The government has an understanding of what the requirements of its agencies are in relation to sites for government activities such as government owned community facilities, and there is no demand for this site for that purpose.

**MS LE COUTEUR:** Thank you. Continuing on, you have knocked out community facilities. You have said RZ5 is being too intense. Are there any other zonings that you considered? Why is this one the best?

**Mr Calnan:** We considered the other residential zonings. It is already zoned commercial. The possibilities in terms of local impacts under the current zoning are potentially much more significant than this potential zone. So you can in fact consider this as a down zoning in one sense. You could get a much more substantial club, for instance, which could potentially operate late into the night and generate large amounts of traffic. You could potentially get hotels and motels of quite a large scale that might generate more activity than a residential zone under the current zoning. So we are cognisant of that.

We had a proposal seeking to develop the site for residential use. As I said, their initial request was for an RZ5 zoning and part of the argument was that under the current zoning we could do this, that and the other. But our view, after looking at it, was that an RZ4 zoning was appropriate. Partly because of the fact that it is a relatively large site our view is that it is underutilised. As the minister has mentioned, its value as a recreation facility seems to have declined in the sense that it was struggling as a bowling club and that was part of the reason that it was transferred to the Brumbies.

I guess we took the view that an RZ4 zone was the most appropriate use. It was consistent we think broadly with the strategic planning for the ACT as embodied in the statement of strategic directions in the territory plan and also the spatial plan, in that it was a large underutilised site relatively well located to employment and to shopping facilities and other services. It is very close to Parliament House. It is very close to Manuka. Our view is that it is a good location for higher density housing. Also it is not a proposal that affects directly any of the established suburban areas of Griffith. Whilst located adjacent to suburban development in Austin Street it does not impact on them directly in the sense that it is not leading to the redevelopment of any single-dwelling houses. That has been, as you would be aware, a contentious issue in this area around the RZ2 zone.

Just going on, our view is that RZ2 zoning is not appropriate for this location because RZ2 is more about accommodating the redevelopment of what were previously single-dwelling areas around commercial centres to try and provide some level of opportunity for regeneration within those suburbs.

So the two options were really RZ3 and RZ4 in our view. I guess our view was that RZ3 was just an underutilisation of the site; it was too good a site in terms of its location and the opportunities that it presented to limit it to that scale of development.

**MS LE COUTEUR:** And you definitely feel that is better than the current uses?

**Mr Calnan:** That is our conclusion and that is part of the reason when we submitted the variation to the minister that we gave it interim effect, because as the committee is probably also aware the proponent subsequently lodged an application for a lease variation to allow a hotel on the site. The fact that the draft variation now has interim

effect means that that development application had to be refused because it was inconsistent with the draft variation that now operates, that now has effect.

**MS LE COUTEUR:** But if the territory plan variation was refused the proponent would still be free to seek a lease variation for any of the potential uses under commercial leisure?

**Mr Calnan:** Absolutely, and they would have to be assessed on their merits.

**MR COE:** Minister, have you given any undertakings to the Brumbies or the Rugby association about this proposal?

**Mr Corbell:** No.

**MR COE:** So when you spoke, I believe it must have been to the *Canberra Times*, last year in September an article entitled “Corbell, Barr, Gallagher against Griffith Oval plan” relates to the proposal that encompassed the entire block including the oval I presume?

**Mr Corbell:** That is right.

**MR COE:** One of the quotes attributed to you was:

I have met with residents groups, met with the Brumbies, and I have been briefed by the planning authority, and it's quite clear to me and it's quite clear to my colleagues as well, that the current proposal is a step too far.

At that time is it possible that anybody in the government said, “Look, if you just scale it back to include the bowling greens and the current buildings, that will get the green light”?

**Mr Corbell:** I have never said that.

**MR COE:** Are you under much pressure from other community associations that have land to construct similar developments?

**Mr Corbell:** No, and even if I was it would not be a relevant consideration in relation to this proposal. Each proposal should be dealt with on its merits.

**MR COE:** But are there any precedents that either proponents or ACTPLA can point to to suggest why this proposal should or should not be approved?

**Mr Corbell:** There may be, but my view as the minister is that I will deal with the proposal on its merits.

**MR COE:** So what are those other precedents that have been considered?

**Mr Corbell:** I do not know. There may be views amongst others that there are precedents but, as I say, I will deal with this proposal on its merits.

**MR COE:** Would either of the officials with you have any ideas about other precedents which are similar, which have gone through perhaps similar consultation and have either been refused or approved?

**Mr Corbell:** There have certainly been circumstances where land which has been zoned for recreational uses has been converted to residential uses. Some of these occurred in the relatively early days of self-government; for example, proposals to convert parts of golf courses to residential development. That has occurred at Yowani, for example, at west Belconnen. There have been proposals rejected for similar types of developments at Federal. Those are all sites involving recreational land. This is not recreational land. This is not land zoned for recreational purposes. So I think we are dealing with quite different circumstances.

In regard to your question about precedents we are talking about changing a zoning from a commercial use to potentially a multi-unit type residential use. Obviously that involves quite a different set of circumstances from converting recreational land to, say, residential use.

**MR COE:** Sure. In the same article back in September 2010 the following quote is attributed to you:

I think the way that it's currently proposed, it does present a serious compromising of the heritage and landscaping value and that's a view shared within the Government.

**Mr Corbell:** Yes, that is correct, and I stand by those comments. I was referring to the proposal to allow development on public land and on land that had significant heritage value, which is the Griffith oval site. You would be aware that the previous proposal involved the acquisition of public land to provide for quite a large development, including development which, if I recall correctly, proposed the use of clubhouse-type buildings on that public land for basically private rental to third parties to conduct business activities. That, in my view, is inappropriate. I did not support it and I made my views clear on that.

**MR COE:** Sure.

**Mr Corbell:** But that is not the proposal that we are dealing with today.

**MR COE:** A witness earlier today, Mr Powell, presented an image of the oval which included a vista of the trees between the oval and the block that is proposed for development. Some of those trees are on the block in question and I understand that there is some scope to protect those trees through a precinct code. Is that correct?

**Mr Corbell:** A number of trees on the site will be protected by the territory's tree protection legislation because of their significance.

**MR COE:** There are a number of regulated trees; I understand that. But is it possible that a precinct code could actually extend beyond the existing four-metre boundary, which I think is what we heard—the four-metre rule—and perhaps go to six, eight or 10 metres or whatever it may be?

**Mr Ponton:** Yes, it is certainly possible to do it, as we have suggested, through a precinct code.

**MR COE:** Is that something that ACTPLA are pursuing?

**Mr Calnan:** We are not at the moment. That is not a current proposal. There is no precinct code proposed as part of this proposal. That is not to say that there could not be.

**MR COE:** Minister, last week or a couple of weeks ago I asked you, in one of the annual report hearings, about heritage values of houses. I think I pointed to examples in Kingston whereby the heritage value is deemed to be compromised if an out-of-character extension or renovation is placed on a house which is visible from the street. I am paraphrasing but I think that was in effect what I said, and you agreed with that. This image that was presented to us today by Mr Powell would be considerably different if a neighbouring property had a four-storey building next to it. Consistent with the heritage ruling of the streetscape where a renovation or extension should not be visible from the street, can something also be similar for the heritage value of an oval whereby next door you have a construction which impacts upon the visibility from that heritage area such as the oval?

**Mr Corbell:** Heritage considerations are an important consideration because of the proximity of the oval site itself and the significance of that site in heritage terms. I think that it is important to be clear that our discussion was in relation to what was an appropriate level of heritage protection for areas such as Blandfordia 5, which I think we were probably referring to, in the inner south. I made the point then that the government acts on the advice and, to the extent that it is mandated, the mandated requirements of the Heritage Council in relation to the heritage protection that is required of a site. That was the case in relation to the discussion we had earlier and it would be the same here.

I note that the Heritage Council has not objected to the proposed variation but has requested that it be consulted—indeed, it would be a requirement that it would be consulted in any event—on any potential development application to deal with and to ensure that the trees on the boundary between the subject site and the adjoining Griffith oval No 1 be appropriately protected.

**MR COE:** Can I ask something on an administrative issue. Are you still the minister for heritage as of Wednesday?

**Mr Corbell:** Yes, I am. The Heritage Act and the heritage unit are part of the Environment and Sustainable Development Directorate.

**THE CHAIR:** Just going briefly back to the hotel, which is not now part of the plans that the Brumbies have, you explained, minister—and through your officials—that, because of this particular matter that we are dealing with now, this has gone off the agenda. It is not on the agenda any more.

**Mr Corbell:** That is right.

**THE CHAIR:** But it could, as Ms Le Couteur said, we understand, come back on the agenda if this does not go through. Then they could revisit it in a period of time.

**Mr Corbell:** They may wish to revisit it, but the government is not going to agree to the alienation of public land such as land on Griffith oval No 1.

**THE CHAIR:** I mean just the hotel on the actual bowling green.

**Mr Corbell:** Clearly if the zoning is unchanged, yes, as my officials have indicated. The leaseholders have the opportunity to vary their lease in accordance with the zone.

**THE CHAIR:** And they could come back and do that. Is there a time period they would have to wait until they could come back with an additional suggestion?

**Mr Ponton:** No.

**THE CHAIR:** And is there a height restriction, if it is current zoning, with regard to a hotel or motel?

**Mr Calnan:** I do not believe there is.

**THE CHAIR:** So we could be talking of quite a substantially tall building?

**Mr Calnan:** I would need to go and check the territory plan but I do not recall that there is a height restriction in that zoning.

**THE CHAIR:** Okay.

**MS LE COUTEUR:** Gross floor area restriction?

**Mr Calnan:** I would need to check the plan. I can take that on notice.

**Mr Ponton:** I believe there is a criterion that relates to height but there is no applicable rule in terms of height. There is a criterion which gives a degree of flexibility in terms of height. We can certainly check and confirm that for the committee.

**THE CHAIR:** We just made clear that that is not on the agenda at the moment; it is just something that could be revisited by them should this not go ahead. Ms Le Couteur.

**MS LE COUTEUR:** I would like to talk a bit about community consultation. My understanding—correct me if I am wrong—is that when ACTPLA went out and did its community consultation that was on the original proposal—that is, including the oval.

**THE CHAIR:** When you shake your head I am afraid Hansard—

**MS LE COUTEUR:** Hansard are not really brilliant on head shaking.

**Mr Calnan:** The planning authority never consulted on the original proposal. As a planning study had been prepared by the proponent in relation to the original proposal and as part of that process, we asked them to consult with the community so that we would have the benefits of the feedback from that process. As a result of the outcome of that process and the subsequent heritage registration of the oval site, that original proposal did not proceed and the proponent subsequently came back with an amended proposal in relation to block 15 and I think there was subsequent consultation as part of the process of revising the planning study. When it was agreed that we would proceed to prepare a draft territory plan variation it was then that the planning authority undertook the consultation in relation to the proposed rezoning.

**MS LE COUTEUR:** So what differences if any are there between the proposal the planning authority took to public consultation and the proposal that is before us?

**Mr Calnan:** There is no difference really. I think there were a couple of minor technical changes made as a result of some of the issues that arose, but in substance it was precisely the same.

**MS LE COUTEUR:** Continuing on the line of questioning of Mr Coe about the possibility of a precinct code or something of the like, one of the issues that has been raised with us numerous times is flooding and that the reason this happened at the ovals in the first place was because the land had to be reserved for some use similar to that because of flooding issues. A number of people are concerned that the extent of the proposed development would take it down into areas which are flood prone, particularly given the potential for more extreme weather events with climate change. Could you comment on what you have done from a flood point of view and the potential of a precinct code to change where permissible development could be?

**Mr Ponton:** Ms Le Couteur, we do not believe it is necessary for a precinct code to deal with that particular issue. As part of the process in preparing the draft variation we have asked the proponent to undertake a number of studies looking at that issue specifically. We are satisfied that the issues can be addressed through the detailed design and siting development application, particularly in relation to the construction of any basement that might apply to the site.

**MS LE COUTEUR:** Would that apply—that the bottom of the basement would have to be above the one in 100 flood level?

**Mr Ponton:** Not necessarily. There are technical ways to deal with that issue.

**MS LE COUTEUR:** Okay. What level of assurance would you require that the car parks would not be flooded?

**Mr Calnan:** I cannot answer that.

**Mr Ponton:** As I said, it is a technical issue that can be dealt with through the design consulting. So that would be a matter for the architects and their engineers to deal with. It may be that the basement is flooded; it is how you deal with that through the process. So there are ways you can deal with potential flooding issues during

construction.

**Mr Corbell:** My understanding on these issues, Ms Le Couteur, is a general understanding. I am not an expert, but this issue has arisen from time to time before. My understanding is that there are a number of properties, particularly in the Manuka area, that have basements which are subject potentially to flooding. The issue comes down to the design of those basements in terms of both access and egress and how that is managed. In particular, there are also issues around whether there is a requirement for mechanical solutions to flooding, such as pumps and so on.

These are issues that are commonly experienced in this general vicinity, both at Manuka and also at Kingston foreshore. I am advised there are satisfactory engineering and technical responses to deal with the potential for that type of circumstance to occur without needing to ensure that all parts of a building in relation to its basement—which is obviously a non-habitable space—are above the one in 100 year flood level.

**THE CHAIR:** Would potential owners be required to be notified that part of the building they were buying was under the one in 100?

**Mr Ponton:** I do not believe there would be any requirement in relation to conveyancing.

**THE CHAIR:** I lived up north for a long time, and all the light posts had the flood levels on them so you knew precisely what was going on. It made a big difference to property values, as you can imagine.

**Mr Ponton:** I would have thought that that would be part of normal due diligence in terms of conveyancing and I would expect that the vendor would have an obligation, but, again, I am not an expert in conveyancing law. Certainly in terms of the territory plan, there is no obligation through that process to advise.

**Mr Corbell:** That is right. These are issues that would be dealt with in more detail at any design stage, should that be able to occur. In terms of necessary hydraulic studies, geotechnical and other studies for the site, they are not a direct consideration in the change to zoning, given what we know about how these issues have been managed in other parts of the city which have similar circumstances. They are issues that are addressed primarily through technical detail and design consideration. They are not a factor that excludes the consideration of a zoning change.

**Mr Ponton:** I am certainly aware of a development application that was located near a floodway. The application presented with landscaping towards the floodway. The access, though, was well above the one in 100-year flood level. In the event of a flood, essentially it can run off into the floodway, with the landscaping. As the minister said and as I alluded to earlier, we believe there are certainly technical ways to deal with this particular issue.

**MS LE COUTEUR:** What studies have you done to assure yourself that there will not be any significant traffic impacts on the potential development, given that we are all aware of the considerable amount of traffic modification—I do not know whether

it is calming—adjacent to the site?

**Mr Ponton:** As part of the process in preparing the draft variation, the proponent, as I alluded to earlier, was required to undertake a range of studies, including traffic impact studies. We have looked at those. We have also referred those to experts in the Territory and Municipal Services Directorate, and that directorate has supported the findings of that traffic study. On that basis, we are satisfied that the traffic impacts are appropriate in this particular location.

**MS LE COUTEUR:** That would be true even for Austin Street?

**Mr Ponton:** Yes.

**MS LE COUTEUR:** All traffic would be expected to enter and exit via Austin Street?

**Mr Corbell:** Yes.

**MR COE:** We heard earlier from Mr Powell that section 42 plays an important role in the original plans that Griffin had for the city, if not that particular section, in terms of the open space in that area. He presented a number of maps which show how that open space has survived through the different iterations of the plan. Minister, is it a view that you share that section 42 Telopea Park and vacant space in between does form an important part of Griffin's plan?

**Mr Corbell:** These are very significant areas of the city in terms of the original development of the city and the planning undertaken by Griffin and Mahoney. The values, I think, are appropriately protected through the zoning that is in place. The values of Telopea Park and the heritage precinct around Manuka oval and the heritage protections in place in relation to Griffith oval No 1 are all there for a reason.

Any development in this context, whilst it is permissible, potentially, would still have to have regard to the landscape setting. Like any city, it is about development in its context. I think that is the issue that we have to think about carefully here, whether development of this nature is potentially consistent with its context. This is not a compromising of land zoned for open space. There are broader considerations about the broader public realm and the landscape quality of an area. Those are issues that we should have regard to. These are matters for consideration.

**MR COE:** On that topic of open space, Mr Powell said in his submission that in a leasehold system, as distinct from a freehold system, it is the lease that defines land use entitlements, not territory plan zoning. To that end, if this draft variation was to be approved, what can we then expect from ACTPLA with regard to any lease variations and what preservation there may be of open space, whether it is open space in the defined term or open space as expected by the community?

**Mr Corbell:** I understand Mr Powell's argument. He is right; in a purely leasehold system, that is how it operates. But we do not have a purely leasehold system in the ACT. We have a system which is administered by both leases and statutory zoning documents or plans. The two interact with each other. The Assembly consistently has

taken the view that there should be a statutory zoning approach adopted for the management of land in the territory. It has explicitly said it does not want just the use of leases to govern use. That is reflected in our act. That is reflected in the way the Planning and Development Act operates.

I understand the argument about how a leasehold system should operate. Perhaps if some of us had our time over again, 20 years ago or 30 years ago different decisions could have been taken about how the planning system in the territory operates. But that is not the way the planning system in the territory operates. It operates with statutory land use controls as well as lease purpose clauses in leases.

**MR COE:** With that in mind, and given the current application and given that the lease variation would still have to go before ACTPLA to allow for residential development, do you envisage that ACTPLA might put caveats on that lease to restrict development down any part of that corridor as, in effect, designed by Griffin?

**Mr Corbell:** What I would say on that is that it is entirely open for the planning authority to have specific requirements in relation to the site.

**MR COE:** As minister for planning, is that something that you would request ACTPLA to do?

**Mr Corbell:** I do not have a role in determining individual development applications or changes to a lease unless I call the matter in and determine it. I am not permitted to direct the authority in the performance of its functions in that regard unless I remit the matter directly to me and make me the decision maker.

**MR COE:** Is that something that you would be likely to exercise?

**Mr Corbell:** I think that is speculation at this point in time. We are not at that point. We are at a point of deciding whether or not zoning changes should be made.

**MR COE:** I think it is important because in other variations that we have looked at, it got a little murky when you had things that were done at the DA stage and you other things that were done at the variation stage. It would be nice some times, in approving a variation, to say that it would be nice to have these conditions met in the DA and, therefore, act as a consolation for the lease variation. If you were to say that it is your view that a lease variation would only go ahead with these conditions, that may send a clear message to the proponents and to the community—

**Mr Corbell:** If I wanted to do that, I would call it in; but I am not in a position to tell you whether I am going to do that. It is entirely speculative and hypothetical at this point in time. We are not in that situation. Mr Ponton might like to add to that.

**Mr Ponton:** I was going to add to what the minister has said that if the minister, in considering this proposal for a territory plan variation, had a particular view—or, for that matter, if the Assembly, if and when it was brought to the Assembly, had a particularly strong view—it is important to keep in mind that in accessing a development application for a lease variation, we consider the policy. The policy is set in the territory plan. If it was a particularly strong view of the Assembly, I would

expect that there would be provisions incorporated in some way into the territory plan.

It would be difficult for me, in deciding a development application—or the minister, for that matter, who is also bound to consider the territory plan in deciding a development application—to incorporate matters that were not specifically within the policy or the legislation. I think the policy setting is the important point at which to identify those issues and ensure they are adequately addressed by the Assembly through that process.

**MS LE COUTEUR:** That would be commentary that the Assembly would make, potentially, if it approved the proposal. It could say things like, “We believe all buildings there should be purple,” for whatever reason?

**Mr Corbell:** The first step would be that in your report to the Assembly, which I have to consider, if you felt there were significant requirements that needed to be reflected in a territory plan variation—that is assuming that the committee was going to support a variation, if that was the committee’s view—you could certainly make clear that there should be specific requirements as a matter of planning policy. Mr Ponton wanted to clarify another matter.

**Mr Ponton:** Earlier we were talking about heights in CZ6, in response to a question that you asked. I just want to clarify that in fact there is a rule that has a two-storey height limit but there is also a criterion that allows the Planning and Land Authority to consider applications that exceed two storeys in CZ6.

**THE CHAIR:** Thank you for that clarification.

**MS LE COUTEUR:** So if we were so minded, we could make some specific comments? We would not necessarily have to try and work out what a precinct code would be to put them into effect? Are you saying that a precinct code would not necessarily—

**Mr Corbell:** Obviously the way this process operates is that you consider the draft variation and give the Assembly and the government the benefit of your views on that. I do not think it is reasonable for the committee—and the government would not expect it—to specify how, technically, changes to the variation or changes to the territory plan should be made to reflect a particular outcome. But you can make clear what sorts of outcomes you want to see occur in relation to planning policy. If there are concerns about height, colour or whatever it is—I am just using those as examples; I know that colour is not really the issue here—if there are matters of emphasis or matters of specific outcome that the committee wishes to see addressed, it is entirely within the power of the committee to say that. Then the government and I as the minister would have to consider that and decide whether or not they should be reflected in the territory plan. If I agreed, I would obviously ask the authority to prepare a territory plan variation that achieved that outcome in terms of the technical drafting of the document.

**MS LE COUTEUR:** I have a further question around community use. You said that you consulted—amongst the government, in effect—and they said that they did not believe that there was any need for additional community use space. Did you consult

at all amongst the community, remembering that one of the things the Brumbies had in their original proposal was for childcare on the oval site. That is not going to happen, but presumably whatever need there was for childcare has not gone away.

**Mr Corbell:** These are matters where you have to come back to the key point, which is the government wanting to acquire the land. That is the threshold question. The government does not wish to acquire the land.

**Mr Calnan:** Also, you will find that a childcare centre is a permissible use under the RZ4 zoning. It is merit assessable use, so it is possible. If the proponent was seeking to have a childcare centre, they could incorporate that as part of this process. I am not aware that that is what they are proposing, but the zoning does enable that outcome to occur.

**THE CHAIR:** So the current leaseholders could do that if they so wished? Is that what you are saying?

**Mr Calnan:** If this rezoning went ahead, yes.

**THE CHAIR:** I am just letting people know that the reason why this room is so cold is that the boiler is receiving maintenance. We are very sorry for the fact that we are all freezing. I have tried on a number of occasions to get the heating turned up, and I now know the reason why.

**Mr Calnan:** It is not cold on this side.

**MR COE:** Minister, how important were public transport considerations in your thinking to date?

**Mr Calnan:** They were certainly a consideration. They were one of the reasons why we did not support the RZ5 zoning, the initial proposal. There are public transport services on Captain Cook Crescent, as I understand it. Yes, it was a consideration, but that has to be balanced against its general location in the metropolitan context. It is served by public transport, though it is not on one of the major Rapid routes.

**MR COE:** The government has said in the past that one of the benefits of such densification is the ability to be able to serve areas like this with public transport. Do you envisage that however many apartments would be on this site would be well served by public transport to give credence to that argument put forward by the government in the past?

**Mr Corbell:** It would be my view that any residential development at this location would facilitate a broad range of transport choice for people. It is within easy walking and cycling distance of a major centre, a centre which is served by a good frequency of public transport provision. It would give people the choice to cycle or walk, for example, to the shops for a broad range of quality services and facilities. And it is close to a number of public transport routes. In terms of the government's broader strategic objectives about active transport—walking, cycling and public transport usage—this location is well placed. Without passing commentary about whether or not it should proceed, on the facts of it it is well placed in relation to those factors.

**MR COE:** It is not really that well placed given that the bus stop I think you are talking about is at Manuka. If you look at developments in Sydney that have cropped up all around train stations and the like, it is not as though there is a bus stop and a Rapid service right outside the front.

**Mr Corbell:** It is a central location in the context of the city. It is close to a broad range of facilities and services. It is one of the reasons why the inner south is a desirable place to live—because it is central to a broad range of public and private amenity: shops and services. It is well within the area for an easy cycle to Manuka. It is a slightly longer walk, but certainly not a long hike by any means. And it is close to a centre that is served by good public transport. We can make our assessments about whether public transport should be better and so on, and those are all issues that the government continues to devote considerable resources to and does detailed planning work for, but the facts of its physical location are quite clear in terms of proximity to those sorts of transport choices.

**MR COE:** If it is the government's aim to have people, couples or families, living in Canberra without cars, are developments like this really going to make that happen?

**Mr Corbell:** The government's objective is not about making sure that people live without cars; it is about making sure that people have more transport choice and can choose to undertake more of their journeys without having to rely on a car. Intensification of development close to centres along public transport corridors is a very sound strategic planning direction.

**MS LE COUTEUR:** In the consultation, you would have to say that the vast majority of community views were against this development. How important is that consideration in terms of your consideration as to whether or not to support the plan variation?

**Mr Corbell:** These sorts of planning decisions are ultimately political decisions. At this level, planning is inherently a political process. Obviously, elected representatives who have the ultimate responsibility for determining whether or not these types of zoning changes take place have regard to community sentiment. That is just an inherent part of the process, Ms Le Couteur, as you would appreciate.

**MS LE COUTEUR:** Has ACTPLA done any work to try and determine overall views? While there were a lot of representations to ACTPLA, the majority of the suburb of Griffith did not make representations. Have you done any work looking at the views of the people who did not make recommendations?

**Mr Corbell:** The government does know what broader views are in the community about higher density development. The government has undertaken an extensive whole-of-city consultation through the time to talk exercise, which is really designed to lift the discussion about development, change and growth in the city to the strategic level rather than focusing on individual proposals. The feedback from that exercise is quite clear. People on the whole do support a higher level of intensification in the city, but they want it done in a way which respects the landscape amenity, the bush capital amenity, of the city; they want it done in a way that is good quality development; and

they want it done in a way that is sympathetic to the context of individual development sites. But they do support intensification around centres along public transport corridors.

The government has not gone out to everyone in Griffith and said: “We noticed that you did not comment on this draft variation. What is your view?” We do not do that. Obviously people are free to choose whether or not they comment on a matter; it is not the government’s job to go and harass them about it if they do not. We do seek to engage the broader community in getting their views about what the ultimate strategic approach should be for the growth and development of the city. We have done that very extensively through time to talk. That time to talk exercise and the outcomes of it are reflected in the draft planning strategy in terms of how we are seeking to manage development and growth in the city and how we are seeking to focus development in key locations and key corridors. We take that into account as well as taking into account the views of specific individuals who have raised concerns about particular development proposals. These are all part of the consideration of these matters.

**MR COE:** If the community supports densification around centres and on transport corridors, does this site meet that criterion?

**Mr Corbell:** That is one of the reasons why we are having this inquiry.

**MR COE:** You believe that this site is on a transport corridor?

**Mr Corbell:** I did not say that. What I said was that I believe that it is located close to a centre.

**THE CHAIR:** Do you have any more questions?

**MR COE:** Yes. With regard to residents groups or community councils, what communication have you had with such bodies?

**Mr Corbell:** Recently I have not had a lot of contact with residents groups and community councils, but in the last 12 months I have certainly had communication with the Griffith-Narrabundah residents group. I have met with them about these proposals. I think I have also had correspondence from a number of community organisations.

**MR COE:** I am sure you would have. Most of us seem to have had a fair amount of literature, either electronically or in the mail. But in terms of actually meeting people, have you sat down with the inner south community council or other residents groups to hear their concerns so that you can be in the best possible position when putting forward a draft variation or taking on board the committee’s recommendations?

**Mr Corbell:** Unfortunately I have not recently had the opportunity to meet with the inner south community council on the matter. I was scheduled to attend a meeting of the council earlier this week, but regrettably I was unable to attend. However, I have met with the Griffith-Narrabundah residents organisation in relation to the proposals on this site.

**MR COE:** Do you have plans to either reschedule that meeting with the inner south community council or meet with their office bearers privately?

**Mr Corbell:** I would certainly expect to be meeting with those organisations before any final decision is taken on this proposal.

**THE CHAIR:** I think we have exhausted the questions, minister. Thank you very much for coming before us with your officials today. You will receive a copy of the *Hansard* for your information as usual.

**The committee adjourned at 11.27 am.**