LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT AND CITY SERVICES

(Reference: Inquiry into Planning Bill 2022)

Members:

MS J CLAY (Chair)
MS S ORR (Deputy Chair)
MR M PARTON

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 6 DECEMBER 2022

Acting secretary to the committee:
Ms M Ikeda (Ph: 620 50199)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

WITNESSES continued

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Amended 20 May 2013

The committee met at 8.25 am.

PONTON, MR BEN, Director-General, Environment, Planning and Sustainable Development Directorate
TOWNSEND, MS CATHERINE, ACT Government Architect

THE CHAIR: I declare open this public hearing of the Standing Committee on Planning, Transport and City Services for its inquiry into the Planning Bill 2022.

Before we begin, I would like to acknowledge that we are meeting on the lands of the Ngunnawal people, and we respect their continuing culture and the contribution they make to the life of this city and this region.

The Planning Bill 2022 was referred to the committee on 21 September 2022 and the committee decided to inquire on the same day. We have received 63 submissions, which are available on our website. We will be hearing from 30 organisations and individuals today, including ACT government organisations, peak bodies, industry groups, community organisations, community councils, private individuals, the Dhawura Ngunnawal Caring for Country Committee and environmental groups.

Today we are being recorded and transcribed by Hansard and published, as usual. We are also being broadcast and webstreamed live. When taking a question on notice, it would be great if witnesses could say, "I will take that as a question on notice," which lets our secretariat track down the answers in time.

We will now begin with our ACT Government Architect and National Capital Design Review Panel witnesses thank you for coming. We have Ms Christine Townsend, the ACT Government Architect, and Mr Ben Ponton, representing the National Capital Design Review Panel. On behalf of the committee, thank you for coming. Have you both had a chance to read the privilege statement and do you both understand and agree with the privileges and responsibilities contained in that?

Mr Ponton: Yes.

Ms Townsend: Yes, I have.

THE CHAIR: We will not be starting with opening statements because we do not have a lot of time. We are simply tabling those. I will proceed straight to questions. Ms Townsend, in your submission, you actually mentioned that there has been cause to include a senior landscape architect into the Government Architect's office. Can you tell me a little bit about that?

Ms Townsend: I did not make a submission, and I do not think I have called for a senior landscape architect.

THE CHAIR: That is okay. Sorry; we have a lot of things going on. My notes are that we have heard calls that a senior landscape architect should be incorporated into the Government Architect's office. Have you ever thought about that idea?

Ms Townsend: I have thought about it. Canberra is a planned city and a landscaped city, and I think that principle is a good one. The practicality of it and exactly the roles and responsibilities of a principal landscape architect would be something that would need to be developed.

THE CHAIR: Do you think there is a particular role for it, given that we are the bush capital and we do not currently have that role?

Ms Townsend: As I said, Canberra is a landscaped city. It is important to understand that the relationship between the architecture of Canberra and the landscape of Canberra is clearly identified in our primary planning instruments. That relationship is fundamentally that our human interventions are always subservient to the natural landscape. That is through the preservation of our hills and ridges and through the primacy of our water courses. So those landscape elements are already protected and preserved within our primary planning instruments.

Mr Ponton: Ms Clay, perhaps I could just add to that. In relation to specifically having a landscape architect within the office of the Government Architect, I would just note that the organisation as a whole has a number of senior landscape architects, and those resources, as other resources, are available to the Government Architect to draw on as necessary. Also, in relation to the National Capital Design Review Panel, we also have expertise in landscape architecture for Ms Townsend as the chair of the panel to draw upon.

THE CHAIR: If those skillsets are already available, do you feel that they are being utilised at the moment to make sure that we are implementing our landscape vision for Canberra and the bush capital? If we have the planning infrastructure there, is it being elevated up to the right levels?

Ms Townsend: I do believe they are, yes.

MR PARTON: Can I say, straight up, that it sort of seems weird, Mr Ponton, that we are speaking to you in this context, in that, essentially, you are the architect of the bill. So to ask you in the context as a member of the National Capital Design Review Panel what your thoughts are on your own bill seems a little strange.

Mr Ponton: If I could respond to that, Mr Parton. First of all, I am not here as a member of the National Capital Design Review Panel. But I am responsible within the portfolio administrative arrangements for the design review panel. It was through my recommendation to Minister Gentleman that the panel was first established. I have responsibility and I also provide the secretariat support to the National Capital Design Review Panel.

In addition to that, if you review the administrative arrangements, the Government Architect sits within Minister Gentleman's portfolio of responsibilities, and the relevant admin unit for that is the Environment, Planning and Sustainable Development Directorate, and I am the agency head for that administrative unit.

So it is completely appropriate, I would suggest, that I attend, as Minister Gentleman has asked me to do, to support the Government Architect, given that it does sit within

my portfolio responsibilities, and to support any questions in relation to the National Capital Design Review Panel, given that, as I said, I have portfolio responsibility for that and provide the secretariat support and the procurement processes for the procurement of the panel itself.

MR PARTON: Fair enough. Ms Townsend, there are so many submissions that we have waded through on these changes, with such a massive range of views. There are some who are of the belief that, if this bill has set about to restore trust in the planning process in the ACT, that is not what it has actually achieved. What are your thoughts? Do you believe that this bill, if implemented the way that it stands, will or can restore trust in planning in the ACT?

Ms Townsend: Mr Parton, I think that is a good question. I believe that the bill does fundamentally support the re-establishment of trust in the planning instruments. That is because it is very clear and transparent and it is an outcomes focused bill. I am particularly pleased that, right at the very beginning of the legislative instrument, the primary principles and outcomes are articulated—for example, that we must have an equitable city and that we must have a sustainable city. And there can be a line drawn through all the more detailed attachments to that primary planning bill that will enable and support those good outcomes that we talk about that are not able to be had at the moment.

The operation of the National Capital Design Review Panel is a vehicle for transparency. In a way, the design review panel is a voice for the people of the city. I strongly believe that, through the operation of the design review panel, working within the parameters of the new bill, we will be able to demonstrate to the people of Canberra that they can have trust in the processes and the details of the bill.

MR PARTON: I have an additional and rather broad question. How would you view the outcomes of the design review panel since its inception? Are you of the belief that it has achieved what it was intended to achieve?

Ms Townsend: There are many expectations on a vehicle such as a design review panel—noting that design review panels are used nationally and internationally as a demonstrated and proven methodology for achieving better outcomes. Sorry; I have just forgotten the core of your question.

MR PARTON: The core of the question was: Do you believe that, since its inception, the National Capital Design Review Panel has delivered on what it was intended to do?

Ms Townsend: Thank you, Mr Parton. We have seen incremental improvements in submissions that come through. I do recognise that the current planning regime provides some limitations to the breadth and the scope of those improvements that we can see. So I am keen and looking forward to a new bill that actually enables and supports the recommendations made or the advice given by the design review panel. A design review panel is an adjunct to a number of mechanisms, a number of planning tools, that we have to achieve a better outcome. It is a very important adjunct to the achievement of good outcomes.

THE CHAIR: In the bill, does the Chief Planner have to consider the advice of the design review panel and the Government Architect?

Ms Townsend: That is part of the Chief Planner's terms of reference of the job.

THE CHAIR: So it is mandatory to consider that? We have heard a few submissions stating that it looks like the Chief Planner does not have to consider that advice.

Ms Townsend: I would defer to Mr Ponton.

Mr Ponton: Section 183(k) lists a range of considerations that need to be considered when deciding a development application, and specifically that, if the design review panel gave advice on the development proposal, the panel's advice and the applicant's response to the panel's advice are key considerations.

There is also another provision that notes that in terms of the specific reasons to not approve a DA—and I would need to get that reference for you—the design review panel's advice, and not satisfactorily responding to that advice, is also a key consideration.

In addition to that, we have also drawn out the design review panel advice separate to entity advice, that actually stands on its own to enforce the importance of that. So there are those three different elements in relation to that. But, importantly, section 183(k) is a key consideration for the territory planning authority.

THE CHAIR: Does "a key consideration" mean that it must be taken into account?

Mr Ponton: It absolutely must be considered. However, I think where you are heading with this is that the territory planning authority is able to depart from advice—but, keeping in mind, that is because we receive advice from a range of entities, including the Heritage Council, the Conservator of Flora and Fauna, the design review panel, Transport Canberra and City Services, Icon Water and I could go on.

Ms Townsend may have a view on this, but ultimately you need a person who can consider all of those inputs and make a decision considering that in the broader policy context. An example that I use—and it is not specific to design review, but it could be—is that the design review panel might say that an extension to a building is a fantastic outcome and should proceed. But we might have the Heritage Council saying that it has some concerns in relation to that extension to a heritage building and then you might have the conservator also saying. "While you are looking at that, we think a tree that is damaging the heritage building should state that the Heritage Council wants it to be removed because of the impact it is having on the building." So you have those three elements in conflict and you need to have someone who can then weigh all of those considerations, as the territory planning authority does now. But Ms Townsend may have a view on that as Government Architect.

THE CHAIR: I might actually jump into a different question if that is okay. We have had a lot of positive feedback about the design review panel and a lot of comments that it is a bit of a missed opportunity that we have not broadened the scope and that it

is not a greater voice for people to feed into. People feel that they cannot really engage with the design review panel, and that is seen to be a missed opportunity. Do you see any missed opportunities in the role of the design review panel in the bill as it is currently constructed?

Ms Townsend: I will refer to my pervious comment that design review panels are manifest in all jurisdictions of Australia and internationally. Whilst there are operational differences between different jurisdictions, the broad intention is that it is generally commercial in confidence, for fairly obvious reasons, because the design review panel happens prior to any development approval application being submitted.

We have a pool of 30 or 35 independent experts across a number of fields and panels are constituted particular to the project. If it is a healthcare project it will have a certain constitution and if it is an engineering project it will have a different constitution. I feel that the operation of the design review panel is very well formed. I am firmly of the opinion that I do not want the design review panel to be an approval body in itself and that that approval process must rest with the territory, with the government.

I have heard a number of people posit that maybe the design review panel could be a public hearing. I know that that is done in some parts of America. It changes the characteristics of the panel enormously and it would be an entirely different set-up then what we have now. I often say the fundamental characteristic of a design review panel is its risk management, in that you have a group of independent professionals who are providing external eyes onto a proposition, and those external eyes, that risk management process, benefits the community, benefits the proponent and benefits the government. It is a form of peer review.

I do not have any changes that I wish to see in the formulation of the design review panel as it stands. I do understand that a design review panel cannot solve all of the problems everywhere and that there is a level of industry education in how to productively engage with a design review panel. I believe that you ramp up the engagement and effectiveness of such a thing as a design review panel. It is very clear in the ACT, from experienced proponents who have high-quality consultants, that there is a very good level of engagement.

THE CHAIR: Should it include significant developments and territory priority projects?

Ms Townsend: Yes.

THE CHAIR: Does it, at the moment, in the bill?

Ms Townsend: Yes.

THE CHAIR: Great.

MR PARTON: I know we are drifting a little off topic here, but you mentioned that rather extreme American model but you also suggested that there were some differences in the operation between our design review panel model and others that

exist in other jurisdictions, I am assuming in Australia. What are those differences, and do they potentially lead to different outcomes?

Ms Townsend: I do not believe that they lead to different outcomes; they are really operational differences. For instance, with New South Wales the State Design Review Panel, a proponent gives a presentation to the panel and then they are excused from the room while the panel discusses the proposal amongst themselves. I believe that that that is a huge opportunity lost and that there is enormous benefit in the proponent team, the developer and their design team, to hear the panel discussions so they can understand the panel's thought processes and why they think what they do. I believe that the transparency in being witness to the conversation amongst the panel is essential in actually achieving better outcomes.

THE CHAIR: We have had a lot of discomfort where the Chief Planner departs from entity advice, and I would say that discomfort has come from all entity advice, not just from the Government Architect or the design review panel. There are a number of entities that feed in and I do understand the issue where different entities provide different and conflicting opinions. A lot of people think very highly of the design review panel, and I think it is doing what it is intended to do, given the role. There have been a lot of submissions calling for the design review panel to have a greater function and for it to be harder to depart from what the design review panel says is a good planning outcome. Do you have any views on that?

Ms Townsend: I think the issues with the advice being wholeheartedly reflected in proponent submissions currently is to do with a structure of our existing act. It is to do with what the planning officers are beholden to work within. I believe that, with our new planning instruments, the design review panel will have the appropriate influence on a project outcome.

At the moment, the design review panel advice may go in a certain direction that is not explicitly supported in the Territory Plan and so it is not something that the approval body can push beyond a certain point. That has probably been one of the fundamental areas of my concern and advice to government about the construct of the new planning instrument, and I believe that that has been reflected in the new legislation.

THE CHAIR: So the design review panel will explicitly be making recommendations that back up the Territory Plan?

Ms Townsend: The Territory Plan will be explicit in requiring sustainable building solutions. For instance, when a proposal comes through the design review panel and it does not have external shading, there can be a line drawn through all of our planning instruments to those fundamental articulated principles in the bill.

Mr Ponton: Just to be clear, I think what the Government Architect is saying here is that the current system is quite constrained, and therefore, the things that the Government Architect and the design review panel are trying to achieve cannot be because of the very restrictive nature of the current plan. By shifting the focus to the outcomes and being more flexible, the territory planning authority is able then to better reflect the advice of the design review panel in the new system.

THE CHAIR: Do you see that the views of the design review panel are a core part? We have had a lot of concern in many submissions about what the actual definition of a good outcome is. Do you feel that the design review panel's advice is inherently part of what a good outcome is?

Ms Townsend: Definitely. The Government Architect and the Government Architect document articulate what is good design. Every aspect of design review panel advice is formulated cognisant of those good design elements.

THE CHAIR: Where the territory planning authority will depart from the advice given by the design review panel, will there be reasons given as to why that departure has been made and why the territory planning authority thinks a better outcome is achieved by not following that advice? Is that part of the new system? Will there be reasons given where—

Ms Townsend: Are you talking in the future with the new planning bill?

THE CHAIR: With the new planning bill, yes. If the design review panel advice is part of what a good outcome is, where that advice is not followed, will the community see reasons as to why it was not followed?

Ms Townsend: I think I would need to defer to Mr Ponton.

Mr Ponton: Yes, as is the case now and is practice. As we do now, and will continue to do so, we will provide reasons if there were a departure from any entity advice or the advice of the design review panel. Given that it is a consideration under section 183 that must be considered, having considered that and we do not apply all of that advice, there needs to be reasons for that.

THE CHAIR: And section 183 sets that out?

Mr Ponton: It sets out that we must consider. But, in terms of the notice of decision, that is administrative law, and we need to provide reasons for our decision. I think it is actually in the Legislation Act, but I can get that.

THE CHAIR: We have certainly read a number of submissions that indicated people did not feel they were given reasons at the moment. If the new system will be the same as the current system, I am not sure that will meet people's requirements.

Mr Ponton: There is currently a section in the notice of decision called "Reasons for decision".

THE CHAIR: Yes, okay.

Mr Ponton: If the advice is not separate to the bill itself but, if the advice is through the administrative implementation processes that we can improve that, then certainly we could look at that as the territory planning authority.

MR PARTON: But you must have had that feedback as well.

Mr Ponton: There are reasons for decision in the notices of decision. Likewise, with submissions that are received from the community, we will summarise those issues and address how they are being addressed.

MR PARTON: But why is it then that there are multiple individuals who feel that they have been left in the dark on that?

Mr Ponton: I would need to review those submissions, Mr Parton. I am sure that they have articulated why they believe that is the case. If you think about territory priority projects, if you look at decisions for the comparable matters, which have been ministerial call-ins, they are quite comprehensive, and I would be surprised if you looked at any of those ministerial call-in decisions and felt as though there were no reasons outlined for those decisions in those. I would encourage you to have a look at those.

MR PARTON: All right; okay.

THE CHAIR: I will just check the questions on notice before we run out of time. I think you were going to check the three sections that say where the Chief Planner must consider DRP advice. Also, could you take on notice to tell us the sections where it specifies that design review panel advice is required for significant developments and territory priority projects? Are you able to take those on notice?

Mr Ponton: Yes; I can refer you to the particular sections. I do not have those in front of me.

THE CHAIR: On notice is fine; thank you. Along with community concern about outcomes focused planning, there has been a lot of feedback that pre-DA consultation should be reinstated. This is not your field, but there were a lot of views that pre-DA consultation should be run at the same time as design review panel processes. Have you had any thoughts about whether those two processes can run at the same time and whether there is any ability to not add time to the consideration of a matter by running both of those? Is there any reason that those processes could not run at the same time?

Ms Townsend: It is not my jurisdiction, but I suppose the element that does occur to me is that we are very aware that the particular iteration of a proposal, when it comes to design and review panel, may be changed in response to design review panel advice—and usually does change in response to design review panel advice. The difficulty with, I suppose, overlapping consultation processes would be that the community has been consulted with not the latest most responsive development proposal.

THE CHAIR: Sure. Except at the moment, under the current act, there is pre-DA consultation and then there is subsequent DA consultation, and the bill has removed pre-DA consultation. So there is two with the community, and the pre-DA consultation often is on an earlier draft that then changes based on these processes. We have had a number of submitters who want pre-DA consultation back, and many of them have said that it could run at the same time as design review panel. It strikes me that both of these processes are consultation on the first draft. They are

consultation on an early view, where they are genuinely trying to get expert and community views to shape the project. So it does seem logical that they might run at the same time. Does that—

Ms Townsend: As I say, it is not my particular area of jurisdiction. But I cannot see that it would be a hazard or an impost on the function of the design review panel. Maybe Mr Ponton would have an opinion on that.

Mr Ponton: It might be a question best directed to the minister at the session tomorrow.

THE CHAIR: Yes; we might do. I just wanted to check that there was not any incompatibility in the processes. There is obviously none there—

Ms Townsend: Not from my point of view.

THE CHAIR: So it obviously has not come up. So that is not a problem.

Ms Townsend: No.

THE CHAIR: Excellent. Thank you very much for your time this morning and thank you for coming in so early.

Ms Townsend: Thank you.

Mr Ponton: Thank you.

Short suspension.

FITZPATRICK, MR TREVOR, President, Planning Institute of Australia ACT
JOHNS, MR PETER, Committee Member, Planning Institute of Australia ACT
CASSIDY, MS JANE, ACT Chapter President, Australian Institute of Architects
FLANNERY, MS CIA, ACT President, Australian Institute of Landscape Architects, ACT Chapter

THE CHAIR: Thank you very much for joining us on a busy couple of days. We move to our next witnesses—

MS ORR: I will declare I am a member of the Planning Institute of Australia, but I did not participate in the formation of their submission.

THE CHAIR: Thank you for joining us and for your detailed submission, which was very helpful. I will start by reminding everyone of the protections and responsibilities in the privilege statement. Has everyone had a chance to read that, and do you agree with it and understand it?

Ms Cassidy: Yes.

Mr Fitzpatrick: Yes.

Mr Johns: Yes.

THE CHAIR: Great. We have a very limited amount of time, so we are not taking opening statements. We are proceeding directly to questions, but we have received some tabled opening statements, and we will be happy to receive any statements that you have.

I will begin with the first question to our Planning Institute. Your submission opened by really expressing a desire that we have the planning principles apply to the preparation and assessment of DAs and proponent-initiated Territory Plan variations, and that these be embedded and implemented, particularly for larger projects that have an outcomes-focused matter. Do you think the bill is getting this right at the moment?

Mr Fitzpatrick: From our point of view, we support those statements at the start that talk about what good principles are, and we think they are all fine. But in the day-to-day working application of the legislation and the various components that follow from the legislation, such as the Territory Plan, those introductory principles and objects are often forgotten.

We have been working with the statement of strategic directions in the current Territory Plan, which are embedded right at the start of it, but—as a practising planner over the last 10 or 15 years—they do not really have any application in the day-to-day implementation and outcomes that appear on the ground.

So what we are saying here is that what we have is a good starting point. If we can then follow them through, either in their entirety or in the relevant parts of them being expressed again in the various sections, like the Territory Plan or the development assessment process, it would make a stronger end result—that those outcomes we are

achieving on the ground are achieving those good planning principles and they have not been forgotten through that development process.

THE CHAIR: So those principles are not actually being applied in the assessment of DAs in the way the bill is structured at the moment?

Mr Fitzpatrick: Not to the extent, I think, that they could be.

THE CHAIR: Yes, sure.

Mr Fitzpatrick: There is a general reference in the matters for consideration in the development assessment process, but they are not as explicit as what they, potentially, could be, in our view.

THE CHAIR: Sure. Is it the same issue with major projects and significant developments? Do we have the planning principles actually embedded and implemented in the way that they will be run?

Mr Fitzpatrick: At the moment, we do not have a major projects or significant development process.

THE CHAIR: Yes. Sure, in the bill—

Mr Fitzpatrick: In the EIS, some of those sorts of current principles are embedded. In a scoping document for an EIS, you may be required to pick up some of that, but, again, that is coincidence more than being an explicit requirement. We think that, in embedding them in, they do not need to be repeated five times in the act, but in some of those specific things that are relevant to that particular section of the act, we think they could be repeated and emphasised in those sections.

THE CHAIR: Sure, thank you.

MS ORR: Can you give us an example of one of the bits you are talking about? Can you also give the committee an example of how the legislation would interact? Because there is quite a lengthy system that happens after that, and sometimes I think we do not necessarily appreciate all the different points within the planning system.

Mr Fitzpatrick, you have said that you would like to see this embedded, and you would like to see this flow through. I am trying to get a better understanding of how you think it does or does not flow through the process in the way it is now.

Mr Fitzpatrick: From the legislation, the next part in flowing through the process, if a privately-initiated Territory Plan variation, would be to seek initial feedback from the planning authority. They would give you a scoping document of matters to consider as part of a planning report, or a planning study, to support that proposed rezoning.

There are a range of considerations there: the context of the local area and the interaction and compatibility, if you like, of that land use. All of those factors are part of that scoping document—to do a planning report that then concludes whether the

rezoning is an appropriate course of action. In that document the explicit, planned principles are not listed, so if I am the person preparing that planning report on behalf of a developer, I do not have to address those statements individually; I address them in a broader manner.

So, there is one area where they could be explicit at that point and say, "If you are going to proceed with a Territory Plan, or privately-initiated Territory Plan, variation you must say to the community through that planning report exactly how this outcome, that will be the end result of that Territory Plan variation, will achieve each and every one of those good planning principles."

MS ORR: With those principles in the legislation, though, is it a case that the legislation needs to be amended, or is it a case that the documents, as it goes down through the process, need to make sure they are reflective of the legislation?

Mr Fitzpatrick: It can occur either way. You can embed it in the legislation or you can choose to ask the planning authority to say, as a matter of protocol, "Would you mind imposing this on applicants for significant developments or applicants for territory planning variations." So, it can be a practise activity, or it can be a legislative one. The outcomes are the same.

MS ORR: Yes; because, if the principles are already in the legislation, they are there. The point I am getting to is: if the problem is the legislation, that is one thing, but if the problem is just making sure it goes through the process, that is a slightly different thing. What I am trying to get at is: is it a case of embedding it the legislation or is it a case of making sure we enliven the legislation?

Mr Fitzpatrick: Either way, you are quite right, we are not advocating that we grab all of those principles and just keep repeating them through. What we are saying is—a simple clause in the Territory Plan section saying, "The Territory Plan variation shall consider section X", which replays "a DA for significant development shall consider the good planning principle section." There might just be a subclause in the section, and that is it. That then requires the territory planning authority to impose it on an applicant.

MS ORR: This is quite a lengthy submission, and I understand you put in quite a lengthy submission to the bill while it was being drafted as well. I wanted to get an idea from you as to how your feedback had been taken on board in shaping the process and how it has been reflected in the bill.

Mr Fitzpatrick: My first answer is to declare an interest: I was part of a legislation working group together with other industry representatives. We signed a confidentiality agreement, so we were essentially a sounding board there. Nothing was discussed that I have put forward.

From there, the submission we made to EPSDD during the consultation on the draft bill reflected the wider membership. We consulted every week with the wider membership on specific issues, got feedback and related that, and that is our 30-odd page submission. The submission to this committee basically said, "Of all of those 30 or 40 recommendations the planning authority, EPSDD, ignored, or did not pick up or

disagreed with on a number of matters—that is what are putting to the committee." So, essentially, there was a second bite. Some of those were that we are strong advocates for the pre-DA consultation process, and we think it is not irreparably broken. It is an okay process. We think there are some enhancements that can occur in the legislation, and that is where we have put in the submission to this committee some of those additional points that we still think are quite relevant.

MS ORR: On the pre-DA development, for example, you said that has not been picked up, so you are going to come back and prosecute the case a second time. What reasons were given for not continuing with that process?

Mr Fitzpatrick: The Chief Planner, I think is—I cannot answer why it has been removed. I understand the planning authority did not believe it was working effectively, and it created an early adversarial position for parties, so they thought not doing it was the appropriate course of action. That is my understanding, but I am not privy to the details.

MS ORR: That is maybe one we will hold back for now.

THE CHAIR: We have heard a lot of views from a lot of different people, industry and community that pre-DA consultation should be retained and the process should be improved. Do you see benefit in retaining it and improving it?

Mr Johns: I most definitely do. I think the opportunity exists for the local community who live in the territory to have a voice about what they see as being the impacts of a development, and to offer ideas about how any of those impacts might be ameliorated, or the development improved, to have a better impact than the one they might see happening.

I also believe that the process does not necessarily have to result in an outcome that both parties agree with. It provides an opportunity for people to have a say and to understand what the developer is trying to achieve and fully develop, and to understand how the community see that impact occurring. My own personal experience has been that you do get that chance and you do get that opportunity to have a say. It is worthwhile retaining it. It really is.

THE CHAIR: We heard a number of people suggest that it could run at the same time as the design review panel process, and we asked the members of the design review panel. They did not have a lot of qualitative comments, but they could not see any reason why it could not run at the same time. Would it be okay if it ran at the same time, do you think?

Mr Johns: You could run them at the same time, or you could run them separately, I would have thought. In one that I went on and was part of, they had consulted with the design review panel at the same time as they were doing the consultation—the pre-DA consultation.

THE CHAIR: Very interesting.

MS ORR: On the pre-DA consultation, I have seen very varied successes of

implementing the pre-DA consultation in the time it has been there. In some cases, it has worked very well, where it has achieved a good rapport between the developer and the community and a good understanding of what the two were trying to achieve, and in other cases it has really not worked at all.

It has definitely been seen as "I have to do this" and not "I know what the benefits I am going to get from doing this are". In keeping it, I can see both sides of the argument: your side of the argument, and what we assume the directorate has said. How, in your opinion, would you overcome the bit where it is not working? How would you overcome the bit where it is turning into "we have to do this, but we do not really want to engage with the process", so you get improved outcomes overall, where the community is understanding what the developer wants to do and the developer is genuinely taking on board the feedback of the community?

Mr Fitzpatrick: I am not too sure you will never get an ideal outcome—an ideal situation on an end product. There will always be opponents in the development industry, for example, who do not want to do it. I think that is a given. They have to tick a box, and they will say, "If this is what the legislation makes us do, I will do it."

Often, because they get to a point where they have invested an incredible amount of time and money to get a level of plans to refer to the DRP, or to the community, and they have got an incredible level of ownership of those plans, they are really excited about it. That is from the applicant's point of view.

On the flip side, you have often got a community who are against development no matter what. It would not matter what was put there. They are going to tell them it is too big, there is not enough car parking, it will block up the traffic and what have you. There are elements of the community that will never get past that level of concern about ongoing development.

So, if you have got two fundamental positions that are diametrically opposed, you will never get a great consultation outcome. What we try to do from a professional Planning Institute point of view is to try and find that middle ground—to accept those arguments from the edges but to focus on where the issues are. Is there a genuine overshadowing, or a genuine impact or a design element that could be adjusted that will appease people? Then we talk with the developer and the architects about how we can address that.

If you have two extremes but you have a good body in the middle, those at the edges will still say "it's a sham and it's a rubbish thing", but by and large you can achieve a reasonable outcome—even though the noisy area thinks it a rubbish outcome, it can be a good outcome. I think that it is where we need to focus on—pre-DA consultation.

MS ORR: With that—and I know Ms Clay touched on the best timing for it—would it be a case of the earlier the better?

Mr Johns: Yes. The earlier it is, the better. Picking up from Mr Fitzpatrick's point, I think the thing the community would expect would be a full report, which would show what issues were raised, and a response that would really address why they chose to adopt an approach and the reasons for that—so that people can see that their

voices were heard and that there was a good and reasoned response provided.

MR PARTON: We have spoken, in the first session, about the intent of this bill to restore trust in the planning system in the ACT. There was this really cool paragraph, which I have now found, in the Planning Institute submission, which says:

> Without early community participation in the development process, people are more likely to feel that development is set in stone, that their involvement is tokenistic and that little opportunity for change will occur, other than through appealing the decision.

In your submission, you go back on a number of occasions to that pre-DA consultation. I want to mention it again, because I can see that it is seen by the Planning Institute as a real problem with this bill.

Mr Fitzpatrick: Yes, it is a strong element. We think there is good reason to have the pre-DA consultation. As Mr Johns said, it should occur as early as possible. The double-edged sword there is that, as the design efforts are really early in the process and the design development is still occurring, the actual DA lodged or approved will be different, particularly through influences from the DRP and others, and the assessing officers. The end product might be different to the one consulted on.

From our perspective, it is a matter of whether the planning authority would then need to make a value judgement: is the development they are now approving, effectively, the same as the one that was consulted on early in the process? If there are strong elements that have changed that were the subject of community concern, maybe they would need to go back to the community again before making that decision—that would be the thing. But if the objections were not enough car parking and the car parking did not change, why even bother going back to the community at that point?

MR PARTON: Yes.

Mr Fitzpatrick: So, it is a value judgement to make at that point. To me, that is how you could consult early in the process—by saying to the community, "This is not the end product. There is still a DA lodgement to occur and a DA decision to occur, and there are changes that can be made." If the community are understanding of that, I think that is a better consultation process.

MR PARTON: I am really keen to draw Ms Flannery and/or Ms Cassidy into this conversation. I am not sure if you have a view on this, or you would prefer a question in another area?

Ms Cassidy: I have a view on this. It is important those pre-DA processes weigh up the values of the existing community that live within that area and the community that want to be part of that area. I think it is 70 per cent of new housing that will be in Canberra's existing footprint, so we have to really consider how we enable that to happen.

Some of those older areas are quite resistant to change, yet those older areas are where we have the most ability to increase the density within those spaces and to do that in a

really sustainable way that meets good planning outcomes and good design outcomes. I think that is a really important part of any pre-DA process. It should not unnecessarily weigh the scales only towards the community that has lived there to date, given that we want to grow our community across Canberra.

THE CHAIR: How do we put the voice of the people who are not there yet in the room?

Ms Cassidy: There are a number of emerging community organisations that are part of the various industry forums representing, for example, people who are wanting different housing choices to age in place within the communities that have built their lives there—additionally, younger people who, again, have built their lives in a particular community. There are emerging industry voices that represent those younger people and renters, who are looking for affordable housing within the communities where they have built their lives, and some more options for that.

Ms Flannery: I would like to reiterate what Ms Cassidy and Mr Fitzpatrick have expressed with regard to that whole public consultation process. If anything, I feel that, as part of due diligence of working on many of the sort of larger projects around Canberra, the sooner you get the community involved, and know what their expectation is, the better.

I think, in some ways, there is more value in going to the community at the beginning of the design process and then allowing the professionals to take it on board and integrate it, because we are like the balance between the public and the whole desired outcome. It is not just the community; you have environmental groups, and you have all these other sorts of people with whom you have to consult, take on board all this information, decipher it and try and tease out the best outcome for the site.

Sometimes, like Mr Fitzpatrick said, the process can really change, and unless there is some sort of standing and commitment to the pre-DA consult process, it is very hard for someone to design confidently from that point on. If the person that you are dealing with changes—the project officer, internally—and their view is different, if it is not appropriately reported, then it is easy to lose that process and confidence.

MS ORR: Ms Flannery, I just want to go back to the point that early consultation leads to best practice and provides the best opportunity—if I paraphrase—for there to be a consensus formed around the development. As professionals who work on this every day, with those developers who are sceptical of the process or do not see it as necessary or see it as a task and not an opportunity, how do you actually start to change that attitude?

If that attitude does not change, you risk ending up, like Mr Fitzpatrick was saying, where you have a group where, although some people might achieve something, there is a lot that are not. So how do we bring up that consistency so that we are seeing the benefits of these pre-DA consultations? If it is always going to be a fraught process—even though, in best practice, it is the best thing to do—and it is not going to be delivering those outcomes, it does become somewhat counterproductive.

Ms Flannery: To be fair, I actually think a lot of the private developers on the bigger

sites do it better, in a way. Maybe it is because they are held more accountable to that process, like with the approvals, and they are more scared of not having the community on board and the implications of the delays to their project—the cost et cetera.

As to the fact that the community feel like it is tokenistic sometimes, we as professionals sometimes feel like that whole process is tokenistic too and there is no confidence in what we do or our opinions as well in that process. If anything, I think sometimes the community get more of a sounding board than what we do.

It would be really nice to think that we have the community behind us as well to gain momentum, that they had trust in what the consultants were doing also, and that we are professionals in that field. We may not necessarily listen to 100 per cent of what they want and we will not achieve 100 per cent of what they want, because that is unrealistic, but at least if we gain 20 per cent of what their wish list is that is a better outcome than maybe what they started with.

THE CHAIR: I want to ask about your views on whether we need a senior landscape architect. We were just speaking to the Government Architect and Mr Ponton, in his capacity as a member of the design review panel, and they told us that the current system and the new system have as much protection for our landscape architecture and respect for our landscape in the bush capital and our buffers as they would possibly need and they have all the expertise that they already need in the system and there is no need for any change. Do you have a view on that?

Ms Flannery: I certainly do.

THE CHAIR: Excellent.

Ms Flannery: That is actually really disappointing to hear. When you are looking at an outcomes based planning system, you really need that balance in knowledge. When they look at situations like New South Wales and South Australia, where we have drawn examples of within our planning reform, they actually have a government architect's office which has a senior landscape architect, planner and engineer, and they all work collaboratively. I actually do not think that the planning reform has even touched on the fact that there is a great need to have not only to have a senior landscape architect as a base to the design review panel but also a landscape policy for the entire ACT.

I do not yet have my head completely around all their precinct plans because we have got until the new year. But skimming through that documentation, I appreciate that they did take some of the comments on board and they have mapped some of the green corridors et cetera. But, to me, what is the vision for Canberra at the outset of this whole planning reform? And it is not Canberra; it is the ACT. They have limited themselves with this planning reform. There were so many more opportunities.

Landscape is a living system. It is holistic. So how do we get these outer greenspaces connecting to our city? That can also assist in the whole densification of a city as well. Knowing that, say, one greenspace is really just a token leftover space within that suburb and it is not really imperative to any ecological value or physical connections

et cetera, maybe you could put an argument that we can actually utilise this greenspace for urban infill, but maybe the other greenspace is really key to getting people from A to B to C, and we should keep it. Having that language and that all nutted out at the outset also helps with the community and the confidence that we are not planning reactively; we are actually being very proactive.

THE CHAIR: Ms Flannery, is that something that would have to go in the legislation or is that something that would be better done through the strategic planning and through things like the district strategies and scoping studies?

Ms Flannery: When you think of landscape, it is also biodiversity and it is playgrounds. Having been involved in landscaping for 30 years in Canberra, the terminology that TCCS use for open space areas is out of date and needs to be reviewed—like district parks. A lot of our neighbourhood parks are, more or less, becoming district parks because of the limitations on the blocks themselves to provide that amenity for residents. So we were already behind before this planning reform came to be.

There is still a lot to be done, and I feel that having a landscape architect on that panel—as a government landscape architect or as a senior representative in the government office—is key. We keep talking about the bush capital, about climate change and about the tree economy. If we are being honest about all those things, we really need a landscape architect—because our profession is the one that really draws science, design and planning together.

THE CHAIR: And that landscape architect should be on the design review panel?

Ms Flannery: It definitely should be.

THE CHAIR: Interesting.

MS ORR: Again, it goes back to my original question: are those things that would need to be in the legislation or are these things that would be done within the wider system reform?

Ms Flannery: I think both, I think it is unfortunate that that is how Ben and the Government Architect view landscape in this city.

THE CHAIR: I would encourage you to look at the transcript. I may have miss-summarised. But we did hear quite clearly—and I think Mr Parton was here—that there was no need for any different role for landscape architecture than the one we currently have.

Ms Flannery: Having been privy to some of the panels, I see great benefit in the sooner you are involved in the process, the better, because, otherwise, you get these non-usable greenspaces. The other thing with the planning reform is that it tends to just talk to planning and built form but not the landscape. By "landscape", I am also talking about streetscape and that interface of buildings to the verge and how welcoming that is. Just look at the CBD. Yes, the built form might be fantastic—with great architecture and great scale et cetera—but the space that it leaves for the

pedestrians to utilise is not necessarily pleasant. That has gone amiss in this whole process.

Likewise, large projects like the light rail should have been integrated into this whole thing because that is the vision, obviously, of the planners for Canberra. But how does that then connect back into the suburbs? How do people move through to this element? It should not be seen as a divorced element. There is a big disconnect between all these entities and how they were operating. Until we collaborate all that information, I do not think we will get a really great planning reform.

THE CHAIR: I am so sorry but we have come to the end of our time. I think we could probably do a day with every panel, but we do not have one. I do not think we had any questions taken on notice. Thank you very much you for your submissions and thank you for your input.

Ms Flannery: Thank you very much for your time.

Short suspension.

HOPKINS, MR MICHAEL, Chief Executive Officer, Master Builders Association of the ACT

THE CHAIR: Mr Hopkins, thank you for joining us today. I would like to thank you on behalf of the committee. I just want to check in: have you had a chance to read and do you understand the privilege statement? And do you understand the rights and responsibilities contained in that?

Mr Hopkins: Yes, I have read and acknowledge the privilege statement. Thank you.

THE CHAIR: Excellent. Given our limited time, we are not taking opening statements. We are receiving them to be tabled. We are proceeding straight to questions, and we will start with Mr Parton.

MR PARTON: Straight off the bat, Mr Hopkins, there seems to have been a fair bit of dismay communicated from the MBA over the quality of consultation by government on this bill. Do you have anything to say, first up, about that?

Mr Hopkins: First up, Mr Parton, there is lots in this bill that we support and there is lots in this planning reform process that we support. To be clear, we support the planning bill progressing. But the process by which the government has gone about consulting on the bill and the Territory Plan is something that we think could be substantially improved.

I think it would be near impossible for any member of the ACT community to fully understand the bill that has been presented, with the resources and support we have been provided by the government to do so. It is an extremely complex piece of legislation and it is actually very difficult to provide a full and detailed assessment of the bill because of the difficulty during the consultation process.

I think the Territory Plan is even worse because it was actually publicly advertised over the Christmas period, when most people would be on Christmas holidays and most public servants are not available for questions and meetings, and information sessions and the like.

Mr Parton: I do not want to put words into your mouth, but do you have a belief that that is almost by design?

Mr Hopkins: I do not think that is for me to say. My comment is that this is an extremely important reform for the ACT government and for our members, for the ACT building industry, and it is important that we get it right. Our position is that, notwithstanding the imperfections in the bill and the Territory Plan that we have seen, it should progress. It is a step forward from what we have got.

But in hindsight, if we had this process over again, we would like to have seen a lot more resources from government put into supporting the consultation process—running information sessions, running detailed sessions. There is a difference between quantity of consultation and quality of consultation. While I have sat through many presentations from government officials about the bill and the Territory Plan, I would

not say they are quality. We have not got into the depth of understanding of the bill and the Territory Plan that I think we really need to, to get meaningful feedback and to provide meaningful comments for improvement.

MS ORR: Mr Hopkins, what consultation and engagement have you participated in on the bill?

Mr Hopkins: There are a number of established forums that industry has with government which have been used for briefings on the bill and the Territory Plan. We have read the written material that has been produced by government and we have occasionally had an officer from the directorate attend committee meetings to present often the same material.

I guess, this is my point. We are not criticising the quantity of consultation but maybe the quality. Particularly when we get to the Territory Plan and we are going to be talking about particular development types and changes in technical standards, we really want the opportunity to test these, to run example development proposals through the new system, through the bill, through the new Territory Plan. Our worry is that we are not going to be given the time or the support from government to really get into that detailed review that we need.

THE CHAIR: We did hear a number of submissions call for planning decision examples. That is interesting. That is also something that you would have found useful?

Mr Hopkins: I think some examples would be really useful in two parts. One, it would be useful for industry, who use the plan on a day-to-day basis, to actually workshop how you use the bill and the plan, and to run some example projects in a workshop format to illustrate how the new bill and the new Territory Plan will work. But I think it will also be useful to share the results of those examples so that everyone can see the difference between the new system and the current system.

MS ORR: When you say "examples", are you talking about hypothetical situations that simulate the application of the bill?

Mr Hopkins: Yes. They could be very simple applications. It could be how the process of building a house works under the new bill and Territory Plan, versus the current system, through to something more complex like a block of townhouses or even a very controversial development to illustrate how the decision-making process may be different and how the consultation process may be different. At the moment, while we have the written material, the bill and the Territory Plan to try and understand that, it is extremely complex. I do not think we are going to really understand the difference between the new and the old without working through some examples.

MS ORR: Mr Hopkins, you cannot understand but you want to see it go through. I am sitting here going, "Well, they support it but they don't support it." I am a little bit confused as to your position.

Mr Hopkins: Do not be confused about our position; we support this bill proceeding.

But can I share with you that during our process of drafting our submission for the bill one of the threshold questions for us was: is the bill, as presented, a net improvement on the current system? Is it worth taking a step forward, even though it is not perfect, or should we advocate for a position where we go back to the drawing board and start this process again?

Our position, on balance, is clear: this is a step forward. We should advance this bill; we should move forward with the Territory Plan. No-one, at the end of the day, will be completely happy with every element of the plan. I heard your previous witnesses talk about trust in the planning system. If we are to rebuild trust in the planning system then the consultation process for the bill and the Territory Plan is how you will rebuild that trust, by genuine, in-depth detailed consultation, whatever it takes, to get the industry members and the community members fully understanding what has been presented to us.

MS ORR: It is interesting because in the previous section, too, we were talking about the pre-DA consultation and there were two views. One is that it is just comparative and does not achieve much. Everyone digs in and it just becomes a ticked box: "We have done it, but we have achieved no outcomes from this."

The other one is that if you go in with a level of goodwill and a willingness by all parties, on both sides—the community and the developer—you can get to a consensus that improves something. There was a view saying that there should be a greater commitment to achievement. Your members are a big component of that. We have heard from professionals who have said that they would like to see the process continue. I am interested to hear, from your perspective, what your members would say about how we can better rebuild that trust through that early consultation and that consensus building with community.

Mr Hopkins: I would bring you forward even further in the process than the moment before you lodge your DA to do genuine consultation, and that time is now. The time to do the genuine consultation, particularly with the community, is now, while the plans are being formed. Our view is that the effort should be put into consultation on the Territory Plan—the zoning, the technical specifications, the uses, the form, the solar guidelines, the setbacks, the tree rules—when these rules and guidelines are all being set, which is now. Once you are five minutes from lodging a DA, that is too late to be doing genuine PDA consultation. So do not think that we are anti consultation. We are just advocating for it to be brought forward in the process and to be done now, while the Territory Plan and the district plans are being prepared.

MS ORR: So what role would your members have in that consultation process?

Mr Hopkins: Which one?

MS ORR: A pre-DA consultation process, as you have just outlined. What role—

Mr Hopkins: I am talking about pre-DA consultation, being the draft Territory Plan consultation process.

MS ORR: Okay, so there would not be a role there for individual developers to do

any pre-DA consultation in your proposed model?

Mr Hopkins: I am saying that the government should be spending more effort in consulting now on the Territory Plan, which is before—

MS ORR: But that is not answering what role your members should have in it.

Mr Hopkins: What role should our members have in making submissions to the draft Territory Plan?

MS ORR: No, that was not my question. My question was: what role should your members have in pre-DA consultation for their proposals?

Mr Hopkins: I think it is in a proponent's best interest to consult before and during the DA, and during the construction of any project. I would make two points. Firstly, a lot of developers and applicants understand that, and will do that in a form, whether there is a regulation that requires them to or not, because they understand that investing that time early will pay off into the future. Secondly, because of the focus we have had over the last few years on community consultation, I would say that the quality of consultation generally has been improving, particularly for major development proposals.

THE CHAIR: We have heard a lot of fear from many submitters about moving to outcomes-focused planning. They do not quite know what a good outcome is. They are a bit worried about this new system. I noted that in your submission you said that you were not aware of any operational improvements intended to be made by the directorate to implement this new outcomes-focused system. The view is that in an outcomes-focused system we actually need more skill and more resources in the government making these decisions because they are more qualitative and less tick the box type decision-making. Can you talk me through what operational improvements you would expect government to make to be able to carry out high quality, outcomes-focused planning?

Mr Hopkins: Yes. First of all, we support the move from a rules-based to an outcome-based system. It is one of the major features of this planning system that we support. It will require a significant change in how we operate the plan from the industry side, the government side and, I think, the community side.

It will require a lot of value judgements to be made through the process because it will no longer be the process where an officer of government assesses a plan against a prescriptive rule and says, "Yes, it complies." There will need to be a value judgement made. That will require us to trust the chief planner's decision, at the end of the day, because ultimately it is that position making those value judgements. We all need to trust that decision, whether we agree with it or not.

It will also require a lot more expertise to be involved in the planning system, both on the industry side and on the government side. I heard you asking the previous witnesses about landscape architects. I think that is just one example of the additional skills we will need in the planning office to properly operate a performance-based and outcomes-based system. We will require design professionals. We will require

professionals with a whole range of expertise who are qualified to make these value judgements and to have discussions with professionals on the industry side, where there are points of disagreement or clarification that are needed.

THE CHAIR: That is very helpful. You would probably be looking for skills in landscape architecture and design. Are there any other specific fields where you have noted that we will be needing more skills?

Mr Hopkins: I think we would concentrate on the design professional areas. Urban designers, architects, landscape architects, as you suggest, are all areas where we should be looking to increase not just the number but the quality of resources within the directorate so that those value judgements and discussions with proponents can be had. If we do not do this then all the benefits of the outcomes-based system will not be realised. The innovations that we are trying to encourage, the greater sustainability outcomes, which are very difficult to document in a rules-based, prescriptive system, will not be realised if we do not properly resource the planning directorate to be able to have those discussions and make those decisions.

THE CHAIR: This sounds very sensible. In improving the quality, would you be looking for specific qualifications or would you be looking for higher levels so that we are paying people what they are worth? Do you have any particular views on how we would do that?

Mr Hopkins: Well, certainly, qualifications. But, broadly, the experience and the qualifications of the people assessing the applications needs to be commensurate with the quality, experience and qualifications of the people submitting the applications so that those people can have professional discussions about the proposal.

MS ORR: Mr Hopkins, in your mind, what happens when the assessment does not agree with the proponent's proposal? How do you see that being reconciled in an outcomes-focused planning system?

Mr Hopkins: The bill provides for rights of appeal and rights of review which could be used in those cases, f those issues could not be resolved during the assessment process.

MS ORR: Should I be taking from that, then, that your view is that the outcomes-based focus, and making sure that there is a rigorous assessment process, would be iterative and that there could be improvements made and your members would be willing to take on board those improvements and make amendments?

Mr Hopkins: To the proposal that is being submitted? Yes. I think a fundamental of the outcomes-based system is that there needs to be a discussion, a debate, if you like, between the proponent and the assessing officers about the merits of the proposal. If changes need to be made, based on the value judgements that are being made, then that would add value to the assessment process. The alternative to that is the rules-based system that we have at the moment, which makes it very difficult to have those professional discussions and make those improvements during the assessment process. I think the bill outlines a process which enables that to happen.

MR PARTON: Mr Hopkins, in your various submissions you continue to make the point that it is almost impossible to consider this bill on its own without consideration of the Territory Plan and district strategies. I want to ask about the population assumptions in the Territory Plan and whether sufficient housing has been planned for. Does the MBA have a view on that?

Mr Hopkins: The MBA has made numerous submissions over the time about the slow land release and the impact that has on housing affordability and the impact it has on our industry. One of the points that we have also made for a long time that maybe has not been heard is about the need to provide a greater diversity of housing.

Yes, we need to provide a greater quantity of housing to meet our population growth, but we also need a greater diversity of housing. Our initial, preliminary view of the draft Territory Plan is that there has not been any substantial advancement on allowing for greater diversity of housing, or maybe even the quantity of housing. We note that the Territory Plan is based on 2016 ABS population statistics and there are now more recent population statistics. We note that the Chief Minister made the point that Canberra's population growth has increased significantly above the official forecasts. The Territory Plan at least needs to be adjusted to include those updated population forecasts.

Our initial view is that there is not sufficient land for the housing that we will need to support our growing population, or the diversity of it. Housing is in the national spotlight at the moment, with the National Housing Accord that was announced as part of the federal budget. But, quite apart from that, we have a need to provide sufficient housing to meet our population growth. I think that has been a long-term problem in Canberra. The draft Territory Plan is the opportunity to correct that. Our worry is that there is vastly insufficient capacity built into the planning system for that extra housing that we need.

MR PARTON: Thank you.

MS ORR: It is such a big reform and it has so many parts. I think we are just starting to hit the crux of the issues. We have heard a lot of things spoken about. I want to go back to the bill, in the short amount of time we have left. You have said you want to see the bill progress and you think there could still be some stuff that is improved. I am still at a bit of a loss as to the things you want to improve, because the conversations we have had are all to do with Territory Plan updates and strategies and other policies that sit outside of the bill. We have had those discussions for a long time. We will continue to have those discussions, I have no doubt. But just bringing it back to the bill, I would like to focus a little bit more specifically on understanding what you think could be improved within the bill.

Mr Hopkins: I think what you have described is a fair summation of our position. In the submission we made to this inquiry our position was that we supported a number of elements in the bill, as amended. Overall, our position is that we do support the bill. I agree that lots of the questions and comments I am making are not so much about the bill but are about the Territory Plan. We made a written submission to the inquiry on the bill specifically. Again, do not be confused about our position on the bill. Our position is that we support the bill, as amended, and recommend that it be moved

forward because, on balance, this is a step forward in the overall planning reform process for the ACT.

THE CHAIR: Can I just jump in and check: what is your understanding of and your concerns about an outcomes-focused process? What do you think an outcomes-focused planning system is in this bill?

Mr Hopkins: We support an outcomes-based planning system because it will set up a system where innovative proposals can be put forward, even if they do not meet specifications or standards or rules, to use the old terminology. And they can be considered on their merits and approved. That might mean proposals which vary from setbacks, site cover, building heights or open space provisions, to any provision that is outlined in the Territory Plan. That proposal can be considered on its merits and approved if it is deemed to overall have merit for the ACT. That system, as we were talking about before, is a big change from having a list of rules—if you like, a tick box system—where lots of value judgements will need to be made through the assessment process.

The outcomes-based system, while it might be seen as an innovation in the ACT, is not an innovation if you look nationwide or worldwide at other planning systems. If you like, we are catching up with other planning systems in moving towards an outcomes-based planning system. We know that the directorate has done lots of research on other planning systems in informing this bill. There is lots for us to learn from other places already. The questions that you asked me about resourcing, qualifications and experience were all the right questions to be asking. The answers are in the experiences of other jurisdictions which have gone down this path before the ACT.

THE CHAIR: Thank you very much. That brings us to the end of our time. Thank you for joining us this morning. I do not think you took any questions on notice, so you are free to go. Thank you very much for your contributions to this review.

Mr Hopkins: Thank you.

THE CHAIR: We will now suspend for a short break. Spend it wisely, colleagues.

Hearing suspended from 9.55 to 10.09 am.

FEATHERSTONE, MS IMOGEN, Development Manager, Planning, Riverview Projects (ACT) Pty Ltd
van der WALT, MR PIETER, Senior Town Planner, Canberra Town Planning
LOWE, MR GORDON, Head of Planning, Molonglo
PEARSON, MR WILL, Town Planner, Molonglo

THE CHAIR: Thank you very much for coming. Welcome back to the public hearing of the Standing Committee on Planning, Transport and City Services inquiry into the Planning Bill. Our proceedings are being recorded for Hansard and transcribed. They are also being livestreamed. If you take a question on notice, if you can say, "I will take that on notice," that assists our secretariat to track down those questions after the fact.

We have Ms Imogen Featherstone from Riverview, Mr Pieter van der Walt from Canberra Town Planning, and Mr Gordon Lowe and Mr Will Pearson from Molonglo. Thank you all for coming. Can I just check, before we start the proceedings: have you all had a chance to read the privilege statement and do you understand and agree with the rights and responsibilities in that statement?

Mr van der Walt: I have.

Ms Featherstone: Yes, thank you.

Mr Pearson: Yes, I have.

Mr Lowe: Yes. I understand and agree.

THE CHAIR: That is excellent. We have a very limited amount of time today and quite a lot of material to cover, so we are not taking opening statements, although we are tabling them if you have them. We have received the submissions to the government's earlier version of the bill and the submissions to this inquiry.

I might jump in directly with a question to Ms Featherstone. We heard in quite a few submissions about master plans. There was a bit of concern from a number of people who wrote in to this inquiry about why we need to give master plans more status. It came up on the bill; it is probably more related to district strategies and the Territory Plan. But can you just tell me what you think is the role for master plans and where you would like to see those?

Ms Featherstone: Thank you. Riverview Projects is the development manager for the Ginninderry joint venture project. The reason master planning is perhaps a little different in the context we are talking about is that it is a holistic approach to development. What that means is that we do not consider a block-by-block infill development. We consider a network for water-sensitive urban design, where people are going to meaningfully live, work and play. Where are those parks located? Where is the transport network located? If we look at things at a block-by-block level then you lose some of that. The best example of that is really around living infrastructure. One third of the Ginninderry potential developable area has been locked away in

perpetuity in the Ginninderry conservation corridor, which means that it will be protected and conserved by the Ginninderry Conservation Trust.

That leaves two thirds of the area to be considered, developed and master planned. So if we consider it at a macro level, at an estate level, then we are not seeing the potential outcomes that may be negative if we are considering it at a block-by-block level, in terms of housing affordability, tree placement, treescapes and the like.

THE CHAIR: Where do you think master plans would fit? It is quite difficult, this review, at the moment because right this second we are looking at the bill. We have previously looked at the Urban Forest Bill, and the district strategies and the Territory Plan are out at the moment. There are a lot of different moving parts. We also have in this bill outcomes-focused planning, and we have heard a little bit about that. Whereabouts do you think this concept should be?

Ms Featherstone: It is sitting around that estate level and perhaps maybe a little bit higher than that, to that point about the district space. We consider our master plan to be a 30 to 40-year master plan, and we are doing a refresh now. Even at an estate level that is almost that next level of detail; that is too far down. We almost need the weight at that district planning level that has teeth. When we are looking for these outcomes for a six-star, green star community then we do really need to look at that macro planning level. Sometimes it is too small at an estate level, when we have over 40 ponds and water networks for our water-sensitive urban design strategy. We do not consider that at an estate level. It is at that macro, master planning level.

THE CHAIR: Right. Thank you.

Ms Featherstone: So that is the challenge. I think that is the point that you are making.

THE CHAIR: Yes.

Ms Featherstone: It is a real challenge. If I could just make this other really quick point: I think that is where Ginninderry is getting a little caught. We agree with the living infrastructure principles, but if you do not consider it at that macro level you lose control at the block level and the ability to have affordable housing, particularly terrace housing, which is that missing middle. That is the product that we are most concerned about.

You also get to have your run on street trees in your urban spaces and get the outcomes you are really trying to get. On block you lose control because people can pull things out and have a preference, which we see, for a low maintenance garden. We try to educate people, but we find that people's preference is low maintenance, with their busy lifestyle.

MS ORR: We have heard from some of the other witnesses this morning that they think a number of the larger groupings—and I think Riverview and Molonglo would fall into that, given that the people you represent are a large grouping—do consultation very well. Could you please tell us what you do and how you think this

could be reflected in the planning reforms we are doing to get a more consistent and better approach through all planning practice and through all development practice?

Mr Lowe: I will start. For those of us who do not know our background or our work, we are the developers of New Acton and our biggest project at present in the ACT is the Dairy Road development. We do not particularly like the term "consultation" because it actually has the wrong connotations. It is too often a conflict type of process where someone will formulate a proposal or a plan and then consult with the community with: "Here is our plan. How does it impact on your interests? Yes or no. Give us some feedback." It sets up a process of dispute right from the word go.

We actually prefer to the term of engagement with the community, and early engagement or participation in the planning process is what we try and achieve. That means conversations at a very, very early stage that help inform what this place could be and how we could meet the aspirations of the broadest range of people. That sounds easy but it is actually quite difficult. It requires a great deal of investment up front and time and money and skills, but it pays its dividends when you get to the pointy end of the development process. In particular, it pays its dividends if you have done that participatory process properly. Our objective is for others to judge, but our objective is actually to earn the trust of the communities and the neighbours of the communities that we are dealing with. That is the objective of our participation process. If you do that then you avoid conflict as the development rolls out.

What the government can do in terms of that is reward people. We will do it anyway. Whatever you put in legislation, we will do it anyway because that is just the way we conduct this. But I would suggest that it could be prudent for incentives to be incorporated into the Planning Bill for those entities or individuals who do undertake true public participation in the planning process. Everyone will say you are talking about more yield. No. The incentives would be perhaps in time savings through the approval process.

At the moment, when our development applications go across the counter, we are treated no differently to a bulldozed building. There are no incentives at the moment. You do not get any advancement up the list for presentations to the National Capital Design Review Panel, for example. You do not get accorded, necessarily, a dedicated case officer in EPSDD to resolve the different sectional interests of all the various agencies and regulators and utility providers. They are the sorts of incentives that I am suggesting. If a proponent makes an investment up front in true participation in the planning process and community engagement then it can be acknowledged that this has broad support and therefore can be accelerated through the planning approval process.

There are now the territory priority projects in the bill. I see that that is not just territory projects now, so that is a step forward to open that up to others. But, other than being exempt from third-party right of appeals, I am not sure what a territory priority project would benefit from in terms of having to go through the regulatory process.

MS ORR: I have some follow-ups, but others may want to answer the first question.

Mr van der Walt: I absolutely echo everything that Gordon is saying. I have had the benefit of being a planner now for over 20 years in Canberra. Being a consultant planner, I see everything, from a driveway all the way to some of the biggest buildings in town, being prepared and being put across a desk for consideration.

I do not really like the term consultation because an expectation is set up between the parties. I think especially in my time in Canberra it has not always been very genuinely transacted between people. We tend to talk about engagement and conversation and actually having a genuine conversation with all of the stakeholders—and the community being a strong stakeholder is really important. We have found that where we do consultation, especially on some of the larger projects, and we build that rapport and the trust between proponent and community we have really results. When we go out to community councils we tend to get a pretty good hearing even on some controversial projects because of that level of trust.

We go there with truth in the presentation you have. You do not shy away from the hard argument or the hard discussions and you transact them with both dignity and integrity. Having the benefit of working from small to large things, there is no one size fits all in consultation. Things need an airing. And it is not about large or small. It is often about the impact that these things have and the community's interest and the like. I have taken things to the community and they have said, "Why are you talking to us? We are not that interested." With other things we have seen a brief, small, minor thing turn out to cause a lot of interest in the community. It is a little bit about trying to understand why that could be.

We have found that the expectation is that we can have this conversation. They want to be able to have their say. As we said in our submission, I am really concerned that if we take that opportunity away we will see that come back in a review by the tribunal because that is the only avenue that the community will have to have their voices heard.

THE CHAIR: The pre-DA consultation, do you mean?

Mr van der Walt: Indeed. Yes, the pre-DA consultation. They get an opportunity to put a representation in to the DA that they have not had that consultation. We are quite fortunate that when we speak to our clients, even often on matters that are not required to have consultation, they can see the value in that and they are happy to invest in that.

I echo what Gordon said: that we do not see any dividend or benefit of that in the process. It often becomes quite hard to convince a proponent to spend the time and the effort and the money to do it genuinely. They say, "Well, we spend the effort and the money but we actually see no benefit in the system, whereas Joe Blow doesn't do it and gets the same result." Thinking about how we can incentivise people to do the right thing, I think, would be really beneficial.

Ms Featherstone: If I could quickly jump in? In terms of stakeholder engagement, the line of sight is perhaps where there has been a struggle for community perception,

because there will be a master plan and it may take four or five years. Then it comes as a draft variation to the community and maybe some of it is commented on and some of it is not. I understand the work that the planning authority have been doing in looking at the district level, and perhaps that might go some way to assisting.

Part of the confusion with the community is that the planning authority might engage on a piece of land or a development, but as soon as it is sold onto the developer then that engagement drops away, particularly where there are controls on a site or a project and maybe that transparency is not there. The community says, "The density is too much. Why do you have X number of football fields, supermarkets?" whatever the proposal is. If there could be that engagement that continues, for transparency, so that the community understands what the requirements were on that particular piece of land, that would help.

I think the other thing that is really important about stakeholder engagement is that it does not mean that the community are going to get what they want. It is about being clear. We have a very educated community in Canberra. We have a very smart community in Canberra and they have great ideas, but at times they may not have the skill set or professional understanding of what the implementation of that actually means. It is our job, as professionals, to help them through that process and to have a process that can facilitate the best planning outcomes.

The other thing is that, as per our submission, Ginninderry supports no third-party appeal rights for estate development plans. We are very strong on engagement and we do stakeholder engagement, whether we are required to or not. The communities that comment on estate development plans are not the communities or people living there. I give the example that people might comment that they want an elementary-style playground when actually we need a preschool-style one. Maybe we do not need that level as an elementary style. So it is about understanding the needs of that community, moving forward, rather than decisions being held up in court or in ACAT and not really understanding what the future needs of those communities are, which is our job in terms of master planning.

THE CHAIR: We often have quite a lot of groups commenting on estate development plans, including environmental groups. Is the problem that you do not think there should be third-party appeals at all, or is the problem that, as the system is currently operating, third-party appeals take a long time to process and maybe are not always handled by people with the expertise to make those decisions?

Ms Featherstone: I would say that the planning process that we have is rigorous and quite robust. It is about understanding the amount of work that needs to be undertaken for environmental approvals and understanding that they are professionals in those fields and that it then goes to the relevant authorities and entities within government. It has already been through a rigorous process.

The community absolutely should ask the questions, but do they have the expertise and the ability, in terms of questioning that, to take it to ACA, and should a project be delayed at that point in time? I guess that is our perspective—that third-party appeal rights are not adding value to the process. Rather, they are delaying the process,

because it has gone through that rigorous process and environmental assessment.

MS ORR: On that, when you talk about going through those processes, how do we overcome this issue where people provide feedback and they expect it all to be responded to? There are always design considerations. There are always constraints within any development where things cannot necessarily be done or that becomes an impediment. How can that be better communicated so that this rigorous process that you are talking about has that respect within it and we are not getting to the point where people go, "Well, I haven't got everything I want, so I'm going to appeal"?

Ms Featherstone: I do think that this is about transparency. The planning authority and the government have to be able to have that voice and say confidently, "This is the information that has been provided. It has gone through this rigorous process. We are making a full assessment. If, on balance, it is not right then it will not get approved."

There needs to be trust in the planning process and trust in the decision-maker because they are professionals in the planning authority and there are professionals on the other side and you have got your entities. I think there may need to be a bit of communication and trust in the directorate, in and of themselves. They should be empowered within themselves so that they can make these comments either way and that communication, at that point in time, through the assessment.

MR PARTON: Can I go straight to pure outcome and just ask whoever wants to contribute to this question: if you had a red pen and you could go through and make one change to the bill, what would it be?

Mr van der Walt: I have got two.

MR PARTON: You always want more, Pieter, don't you? You always want more.

Mr van der Walt: That is right.

MR PARTON: I am happy to stretch it to two. Where would you go, Pieter? What would you change?

Mr van der Walt: It is interesting, because we talk about the conversation in the community. I am personally very much for that. I think it is a fantastic idea, and the question that Imogen tried to answer. Yes, we cannot always please everybody on every side, and everybody will have a view about what happens. But we have found that that really strong conversation is where things get balanced out quite well. Most people, if you deal with them reasonably—and if they are reasonable people you can deal with them reasonably—kind of understand where things are going.

Two things really concern me in the bill. One is the pre-decision advice. I am concerned that it is setting up an opportunity for conflict between proponents and the community. Where a DA is just about to be refused, the authority is going to send notes to the developers that say, "For the following reasons, we are not going to approve it." That gets published. That kind of puts a sign out to the community: "Well,

you know, this thing is terrible. It needs to be refused."

From then on, whether the developer does it or not, how are we going to please everybody? With the bar for third parties being as low as it is at the moment, we are just going to keep all of these things in the tribunal. I am also concerned that that is going to make developers stop trying to go on an outcomes-based path and just stay closer to the technical specifications because they do not want to try it, because they just cannot sustain the time working through the process.

I am the veteran of way more ACAT cases than I care to remember, and every time it is a compromise. There is hardly ever a good outcome because of the way that that system works. I am really concerned that we are setting us up for a very big adversarial position between the community and proponents. Developers are going to stop trying, the community is going to be upset, nobody gets satisfaction and we end up in the tribunal.

The second one is that I cannot find in the legislation any limitations on the tribunal's powers, in what they can review and what not. My concern is not about third-party review per se but more: how do we deal with those vexatious submissions that go through the tribunal? I deal with many of those. In the way the system is set up, everybody gets a fair hearing and it takes a lot of time. Often proponents just do not want to go there because some of these things are taking six, eight, 12 months to be resolved, or longer.

The cost for dealing with that is not only the hearing but holding the site for the time, which is stealing from our community in the sense that that money needs to be covered somewhere. So we are seeing poorer outcomes, dumbing down of developments and the like. Simply, you just cannot sustain the cost of having all of that. When you talk about sustainability and affordability, it is just not working at the moment. Unless we think about whether the bar is high enough, and often limiting some of those powers, in the end we are putting the good planning outcomes that the new system seeks to deliver in the hands of the legal fraternity, who look at these things with black and white rules, in my experience. They are the two things I would put out there.

Mr Lowe: Minor changes are required to two provisions of the act, Mark. Section 50 of the old act, now that it is carried through to the new act, says:

> The Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act ,that is inconsistent with the territory plan.

The problem is that the Territory Plan actually contains within it, particularly in what was previously development codes and standards—and now will be technical standards, I believe—provisions that suit the interests of the various government agencies or utility providers that drafted those standards and codes. They are quite at odds with the strategic outcomes that the territory government and the people of Canberra want. This is particularly so in terms of green infrastructure and people-orientated places.

I draw your attention to section 47 of the act, which states that the Territory Plan "must promote principles of good planning". Tick; we all agree with that. It "must give effect to the planning strategy and district strategies". Fine; no issues with that. It "may give effect to relevant outcomes related to planning contained in other government strategies and policies". The Climate Change Strategy—is that discretionary? The Living Infrastructure Strategy—is that discretionary? Why is that discretionary?

Without meaning to be controversial, I would suggest that, in practice section, 47(c) of the act is interpreted as: "May give effect to relevant outcomes related to planning and other government strategies and policies, provided that this does not conflict with the narrow sectional interests and quiet life of government agencies and service utility providers." That is what we find in practice. We pride ourselves on innovation in our developments and we have to fight tooth and nail to actually implement innovation, because innovation inevitably conflicts with the standards and requirements that some government agency wrote decades ago. You cannot have innovation by using the rules you used decades ago; it is madness.

I would suggest that change. It is not "may". It is not discretionary anymore. It should be: "must give effect to relevant outcomes relating to planning contained in other government strategies and policies". That means that, where some development code or standard conflicts with what we are trying to achieve in terms of climate change emergencies and introducing living infrastructure, the agencies have to adapt, innovate and amend their standards to reflect the—to use a popular term—outcomes that, as a community, as a nation, as a planet, we are all trying to pursue now.

THE CHAIR: That is the best legislative response to outcomes-focused planning that we have heard today. Thank you very much. Ms Featherstone?

Ms Featherstone: If I may.

MR PARTON: Yes.

Ms Featherstone: To your question—

THE CHAIR: Mr Parton's question, I think, is if you were going to make one change—

Ms Featherstone: Sorry; yes. To the question earlier about where master planning fits—

THE CHAIR: Yes, sure.

Ms Featherstone: Really, I have two changes. One would be that the greenfield development was considered within that masterplan estate development, within the planning bill, to make sure that we do get those environmental conservation outcomes, transport, water-sensitive urban design and basic liveability, but also the actual stock of housing to get that diversity. That would be the one matter that we would really love to see so that we can control the outcomes within that masterplan context.

The second would be the moratorium on variation 369 taking effect on Macnamara EDP 1 approval. It is understood that variation 369 will apply to Macnamara EDP 1 when the new Territory Plan takes effect. We ask that Macnamara EDP 1 be exempt from variation 369 in the Territory Plan, as blocks have been sold under the current Territory Plan and relevant planning controls that are applicable.

So whilst there is that moratorium now—and we understood that that was for developments like Ginninderry—because of the time that it takes for construction, construction has just commenced on that estate, but by the time that block is handed over to mum and dads they will have the new Planning Bill. Then you say, "Well, what does that actually mean?" If you have bought that block of land under the current planning controls and you might not be able to walk up and down stairs but the block may be of a size that means you now need to, then how are you going to be able to walk up and down those stairs?

Particularly, our largest concern is around affordability, Ginninderry delivers its only turnkey product as terrace-style housing, to deliver affordability to the market. If we are reducing the requirement for the dwelling on the block, as a result of variation 369, to increase the living infrastructure requirements we have to increase the block sizes and therefore affordability goes up. Our ability to consider masterplan communities means that we can control the public realm and get those outcomes that we need and ensure that they are delivered in a way that is appropriate, rather than people coming in and taking out trees and putting mulch in or pebbles.

THE CHAIR: Thank you. We only have two minutes left, and there is actually one more matter I would like to touch on. We have heard a lot of suggestions about and issues with third-party reviews and ACAT, and we have heard a range of solutions to those concerns. Would any of the problems raised by this group be allayed if ACAT were differently formulated, if there were different skill sets in there, if there were more FTEs in there or if that was somehow done in such a way that decisions were made in a quicker manner or in a different manner?

Mr Lowe: Pieter has so much more experience than anyone else in the room on such matters.

Mr van der Walt: Yes. I think that could lead to more balanced decisions because at the moment they are really statutory, the decisions that come out of there. They are really very narrow interpretations of the words on the page. With respect, the Territory Plan does not get drafted with the same rigor that legislation gets drafted, so I see barristers and lawyers having a field day with the words on the page. Especially on an outcomes basis, I do not think that is particularly helpful.

So, for me, absolutely, that could make a big difference. If we are going to an outcomes basis and the government has afforded us this amazing opportunity with the design review panel, the community is actually paying to get that outcomes-based advice on an early stage proponent. So it follows that that should be afforded. If there is a good conversation with the community then they can actually get closure about what they want, under the broader framework of the Territory Plan. When we look at

the new policy, is it going to have the key matters that we consider? I would like to see some of those matters. If there are agreements in place and the design review panel supports a good outcome, I cannot see how the tribunal, in this form, can actually give a better outcome to that.

THE CHAIR: So the concern is ACAT overriding the design review panel?

Mr van der Walt: Absolutely, yes. That is why I am talking about limiting what can be reviewed. On the one side it is lots of vexatious stuff and the other side it actually gives the tribunal a lesser range of stuff to deal with, which should hopefully result in quicker administration and decisions and potentially less cost and time. Really, really try to capture and hold onto those outcomes-based components of the system. Otherwise, very quickly we erode the trust that could come through the new system, and where we end up is that everybody will just go to the lowest common denominator because that is what ultimately would be approved.

THE CHAIR: Thank you very much. I am so sorry that we have come to the end of our time. We have a very busy schedule. We very much appreciate your time and your comments to the government consultation as well. I do not think we had any questions taken on notice, so go and enjoy your youth. Thank you.

Short suspension.

MACLEAN, MR HOWARD, Convenor, Greater Canberra Inc
PRYOR, MR GEOFFREY, Convenor, Canberra Planning Action Group
LEIFER, MR EBEN, Deputy Convenor, Greater Canberra Inc
DONNELLAN, MR ANDREW, Secretary, Greater Canberra Inc
OBERDORF, MR ALBERT, Member, Canberra Planning Action Group

THE CHAIR: We will move to our next witnesses. Thank you very much for coming. It is a huge amount of material that we have put out, and we really value the detailed and thoughtful submissions we have had. I will start by saying we have limited time, so we are not taking opening statements. Has everybody read and understood the privilege statement? Can I get a verbal agreement?

Mr Leifer: I have read and agree to the privilege statement.

Mr Donnellan: Yes, I have read the privilege statement.

Mr Maclean: I have read and acknowledge the privilege statement.

Mr Pryor: I have read and acknowledged the privilege statement.

Mr Oberdorf: I have read and acknowledge the statement.

THE CHAIR: That is excellent. We will begin with a question from Ms Orr.

MS ORR: We have had Greater Canberra appear before us, I believe, with the urban forestry bill. At the time there was a lot of views, and we said we look forward to hearing those in the planning review inquiry. I would like to pick up where we left off and get your views as to how the planning bill does or does not work. I will come back to specifics.

Mr Maclean: I believe it was before the housing affordability inquiry, for the record.

MS ORR: Yes, sorry.

Mr Maclean: We share a lot of the concerns with other stakeholders that the rationale and exact operation of the proposed planning system is not as clear as it should be. In terms of our major concerns, which are outlined in our submission, we believe the outcomes-based system that does not identify housing affordability as a standalone outcome is a bad idea. It will lead to suboptimal outcomes, if we want a planning system which prioritises housing affordability, because we know that planning does have a large impact on median rents, poverty and homelessness in our city because it is a large driver of those median rents and housing costs by supply.

If we want to have a system that ensures we have low rents in our city, low rates of homelessness and low poverty, we need to have a planning system which is orientated towards dealing with those things. The problem is that housing affordability, poverty and homelessness are barely identified as part of the principles of good planning.

I believe that housing affordability is a principle, of a principle, of a principle in the housing and activation principles, or the activation and liveability principles—I believe it is the activation of liveability principles. As a core concern, we would welcome the addition of a standalone principle that makes it clear that these concerns stand on an equal footing with the other principles of good planning.

In addition, everyone we have talked to has major concerns about how planning decision review works. No-one is happy with the system: not proponents and not community members. ACAT as it currently stands as a way to review DAs is slow, expensive, opaque, confusing, adversarial and inaccessible.

We believe that by introducing an alternative mechanism which allows for a speedier, public and non-adversarial context, as outlined in our submission, we can end up with a better system that allows fairer, more transparent and more public review of planning decisions.

Mr Pryor: Were you asking us as well as them?

MS ORR: Yes.

Mr Pryor: We are a bit more direct and blunt about that, as you have seen. Have you received our document that we sent yesterday?

MS ORR: Yes.

Mr Pryor: Many of the points that Mr Maclean has just made are points that we have made consistently right through the whole of this process. One of the reasons for being so dramatic about it is that we have, like Mr Maclean, heard a lot of people say common things, and these are a range of people with considerable experience and understanding. If this is about the future of Canberra, where is the engagement with the wider community?

Also, we want to raise a key issue: what problem are you addressing? You ask, "what about the planning act?", but we have not seen any evidence that the problem is the act that is presently in place. We have heard a lot of people say that there are issues around it, and we would agree completely, but there has been no evidence that it is actually the act itself.

Things can change, and we all understand that acts are quite likely to be in need of review, and I see that people are suggesting constant review, but I wonder whether you have actually seen a document which says, "The way in which the wording of the act, as it presently stands, has led to these problems"? Or is it really the interpretation and operationalisation of the act that is actually the problem?

Before we came here, CPAG asked itself why we should come before you, because we are a community group and we thought, "What is it that we might say that other people have not already said?" There has been a lot of common ground in that respect, but we surprised ourselves.

The first thing is that we want to reinforce the fact we think the draft bill has to change. The second thing is that we want to support you. That may sound strange, but your inquiry is a critical element. As we have highlighted, the Assembly seems to be completely eliminated from the whole process, whereas an inquiry is a very good point to put forward.

I have made it pretty clear that CPAG started off as a facilitative agent. We were not particularly trying to be an advocate, and our goal was to try and look at the first question that we raised. Our goal was to ask, "How can we identify what the problems across the community are, what the real issues underlying those conversations are and why they have come about?" COVID inhibited that at the beginning, but we think until those sorts of issues are really significantly addressed, and an inquiry is a way of highlighting the need for those types of answers, then that means the process and your question are not properly answered.

We also want to know: has anybody actually got a template for what might be a best practice planning act? That sounds pretty crazy, I imagine, but the fact is that we have not seen a template against which you might make some judgements. We see the objects of the act making some statements about what good things are, but they are statements about intention. They are not actually outcomes from the operationalisation of the act itself. How then can you make a judgment as to whether the proposed draft bill is best practice or simply an amalgam of ideas and attempts to find solutions to individual problems?

Mr Maclean: The ACT is a unique jurisdiction, because we do not have a level of local government that the state planning act or higher level of government delegates responsibility to, and we also have the NCA. I do not think we are in a position where there are any other planning acts or planning frameworks in Australia or peer countries which we can directly draw upon as best practice.

Mr Pryor: I am not sure that I agree with that particularly, but we can discuss that another time. The fact is that the principles are what you are looking at. Really, what you are looking at is not how the act itself operates but what the outcomes of it are. The outcomes are going to be contentious, and there are going to be clashes about that, but what is the process that is best practice in that?

We have also been very critical of the consultation process. The reason we have been critical about that is because the consultation process cannot be accepted in the way it has been undertaken—again, Mr Maclean mentioned other issues like housing, groups of people who are disadvantaged, young people and unemployed people. We have figured out something like about 0.1 per cent of the population was engaged in this consultation, yet it is not a statistical issue; it is about everybody's right to think about the future of their community.

How you do this in practice, of course, is not an easy task. That is why we have an inquiry and why we have so many people interested. Whether there be mechanisms that are in place now within the ACT that makes it a bit unusual may or may not be relevant but we—

THE CHAIR: Sorry, Mr Leifer was going to say something.

Mr Leifer: Yes, I was going to respond. I am representing Greater Canberra. As a lawyer, I think there is a lot of disagreement on what the role of objects in the act is. There is a key purpose to them, and they guide interpretation of the act. While I respect CPAG's submission that they are not particularly relevant, they are. We take the view that they will guide how people interpret the act, which is one of the reasons why we are quite keen on an affordability requirement in those objects, because that will guide how planners and lawyers read the legislation, and how places like courts apply it. There is a necessity to ensure these objects are included and we focus on things like affordability, prosperity and sustainability so they form a part of consideration in the application of legislation.

Mr Maclean: Yes, in an outcomes-based system the objects and principles of good planning are the outcomes, so what is in them is drastically important. On the consultation point, we did outline our own concerns for consultation, and we agree with what was earlier said—that the current percentage of the community that is involved in consultation is very low. We did have a solution for that to get a more balanced, impartial view, which our secretary, Andrew Donnellan, can talk through, if it assists the committee?

THE CHAIR: Yes.

MS ORR: Yes, I think that would be good.

Mr Donnellan: Our thinking around public consultation is that you need to make consultation as low cost and accessible to as broad a subset of the community as possible. At present what is often found, not just in Canberra but in other jurisdictions in Australia and internationally, is that a lot of systems for public consultation are built around quite expensive forms of participation.

Things like turning up at hearings and writing detailed written submissions consume a lot of time. They are difficult for people, particularly those in the workforce, who lead busy lives and really would prefer to be doing just about anything else with their lives than sitting down and reading hundreds of pages of planning legalese.

In our submission, and our discussion around public consultation, we want to see principles of good consultation that emphasise representative consultation done using methods that allow people to convey their opinion in a low effort form that does not require huge amounts of free time in order to participate. So, we are talking about the use of representative sampling and the use of surveying techniques that can account for the discrepancies in different demographics to make sure that people from different age groups and different income levels get heard equally and get their responses weighted equally in public consultation reports.

We are also conscious, though, that we want public consultation to be about how we get to "yes". It is not supposed to be a step of the process whereby members of the community who are particularly against something can rail against it at length and delay and delay and delay. It is about how we find the best solution that balances

competing interests and how we get the final decision to a point where it gets the broadest acceptance and achieves the broadest range and the best balance of outcomes.

THE CHAIR: Thank you.

MS ORR: That is a really interesting point, because I think we have heard from quite a few people this morning about how consultation could be better achieved through the bill—I think that is a fair way to summarise it—with some saying that pre-DA consultation should be retained, and others saying it needs to be worked up a bit more and there are issues. People acknowledge that there are issues with it, but it can be improved, and we have also heard from other people going as far as to say, "There should not be third-party appeals because it just becomes vexatious, and it does not achieve a better outcome in the end anyway." I would be really interested to hear—just picking up on your point there about looking at how we do the consultation and how that forms the position we come to—how you think that could be better achieved through the bill.

Mr Pryor: Ms Orr, I have actually been engaged in community consultation for 30 or 40 years, and many of the points that have just been made are well recognised. The Victorian municipal association recently, or a couple of years ago, set out to try and reach out to those people who are members of their community that are most difficult to get to, so it is not as if there are not techniques by which to do that.

I would also like to distinguish between consultation and engagement. Really, the key point about consultation is: does it necessarily really mean people are part and parcel of the process? As we mentioned before, we understand that there can be abuses of these processes, but there is a whole range of tools and techniques that are available. For example, when I was convenor of a group called the Concerned Residents of West Kambah, we did a five-year project in looking at the future of Kambah about a decade ago. We used processes like—the word has just gone out of my mind. We used processes of actually talking with people on location and with learning circle kits. These types of processes are well and truly known.

We have to be able to find a commitment. One of the objectives of the act is that it should be timely. We think there has to be time involved. This process that we have been through recently took place mostly during an election campaign—a federal election campaign—and the minister was not seen around at various different things, and maybe for very good reason, but it was not timely. It is the time that people have to do it. What is the deadline that is so important that leaves many people out of this particular circle? In answer to your question, we can follow-up with some suggestions about how to go about it.

I was also going to put a question to you, as members of this inquiry, about why you could not recommend, as part of your report, that a detailed discussion and report be undertaken to look at what would be an engagement process in today's modern society, when democracy is at the heart of a lot of people's concerns. What would the Assembly, for example, do to find out what might be able to answer your questions? We obviously have a whole range of different solutions. World Cafe is the process I was thinking about before.

THE CHAIR: We have got a lot of people here, and we need to move—

MS ORR: I still do not have an answer to my question, referring back to the legislation.

Mr MacLean: I can answer in 60 seconds.

THE CHAIR: Please do so.

Mr Maclean: To answer the member's question, we recommend a further reliance on stratified random sampling rather than opt-in mechanisms like the YourSay panel. We also recommend upstreaming consultation beyond original DAs—that is, engaging people at the district strategy process rather than relying on everyone getting their individual DAs. We support the removal of pre-DA consultation, because we do not want people to go through the process twice.

In addition to that, we also support the removal of third-party ACAT appeals. We do think that the model that we propose in our submission is better, and it allows for a more balanced, more public and more open mechanism that does not give a much higher weight to the people that have the time and, frankly, the money to engage in ACAT processes.

THE CHAIR: Thank you. Mr Oberdorf, you had a comment.

Mr Oberdorf: Yes. I want to go right back to what I think are the core issues. These matters we have discussed are important, but the fact is that I do not believe, and my colleagues do not believe, that the principal fault lies with the legislation. It lies with the implementation of it.

In detail, we have worked with Richard Johnston on a huge critique of the bill. Our problem is that we see a big difference between what the legislation actually says and what happens. In that regard we prepared papers for Senator Pocock, which show that the ACT planning is not being implemented as it should be and as stated in the legislation or as approved by the spatial plan.

We prepared a paper, "ACT Planning not Climate Resilient", showing that the principles have been ignored in regard not only to the special plan but also to the ACT planning strategy. We are happy to make that available.

In regard to housing, we have prepared another paper called "The Crisis of Social Housing in Canberra—An Overview". We have set that out in some detail using consultation with ACTCOSS and their CEO, Dr Campbell, whom I have only met twice. She is quite brilliant. We say something very simple: a cause of unaffordable social housing in the ACT is the fact that $1.58 billion was diverted from social housing into light rail. I could go on, but I am going to keep quiet now.

THE CHAIR: Thank you very much.

MR PARTON: I am going to stay with the point that you raised there, Mr Oberdorf, because I note that the submission from your group does indicate that, perhaps, there is a light-rail-centric vision that is portrayed in this bill and in other associated things we have seen in terms of the district strategy.

The Planning Institute in their submission specifically said that, when it comes to determining territory priority projects, the light rail should be removed as a standalone and that it should follow the same process as any other project if it is to be declared as a territory priority project. I would like to—

Mr Oberdorf: I would like to comment on that if I could.

MR PARTON: Yes, please.

Mr Oberdorf: I have done—again, for Senator Pocock—a full analysis of the ACT light rail. I do not form opinions. I go on facts and bring them out. I have also done a second paper, which says that there is a critical need for a full business plan for the ACT light rail stage 2.

I have been in planning and development in four countries for pretty close to half a century. I have never yet in a Western country seen a project implemented without the DA approved and the business case put in. I personally have nothing against light rail. I have concerns about the process, and I agree with the Planning Institute.

Mr Donnellan: Of course we have great respect for the Planning Institute's professional expertise and the efforts they put into their submission. But in the existing Planning and Development Act there are exemptions around light rail which were considered by the Legislative Assembly and passed into law through a democratic representative process. In our view, maintaining the position of light rail as a territory priority project in the new bill just maintains the existing position of the light rail exemptions that are in the current legislation.

We believe that good public transport is vital for this city. We said in a media release that we put out some months ago about this that we consider light rail to be housing infrastructure. We consider that the delivery of public transport that is well integrated with the existing light rail network and that extends the existing light rail network is certainly something that should sit at the core of how we plan the future of housing in the city.

Mr Maclean: Just to add to that, going to the core of the member's question, we think it would be much of a muchness. Light rail would qualify as a TPP under the existing program. To the principle of the matter, we do not believe that, if a government runs of implementing infrastructure, somebody should be able to go to ACAT and challenge the merits of that decision. That seems to us to be profoundly anti-democratic.

In addition to that, we also do not believe that third-party ACAT reviews should exist at all. We have proposed an alternative model. If that is adopted, the entire TPP structure would not need to operate, because the main purpose of TPP is by denying

the potential for merits review by a third party.

Mr Pryor: The issue of transparency is fundamental. How you get there, obviously, depends on the intent. The mechanisms have to be, I think, inclusive, because it is not good enough just to say there is one group of people who are going to review. We are actually proposing that there should be, like the Northern Territory, an overarching commission. That necessarily adds to that confidence in transparency.

So a particularly contentious discussion has to be dealt with politically. That is the nature of our democracy. That is not really at question. What is at question is the processes by which the final decision actually is justified and then acted. It could not be just straight plain political decision-making. That is fine, too, but you have to be able to underpin this decision with a series of very well-argued cases that actually support the public interest and the public purse in these sorts of issues.

I think that you have to be able to have an external body which actually oversees these decisions from the planning point of view—not that it is actually going to be the determinator of the decision-making but that it actually highlights how the process has been undertaken and what the evidence base is for the decisions, so people can make a decision about whether they think it is a clever idea or not.

In this case we are not arguing for or against light rail. What we are really concerned about is how it fits within this proposed act and whether it would be under scrutiny if, in fact, the bill, as it has been presently put, whether it would be covered, and whether it would be covered appropriately.

THE CHAIR: Mr Parton, did that cover it?

MR PARTON: Yes.

THE CHAIR: Excellent. We have ten minutes left. I might ask a question and have five minutes from Greater Canberra and five minutes from CPAG. It is the same question. It is quite interesting that here we have a community group that thinks we should not have third-party appeals, in essence and we have a community group that thinks we need an independent body. I am wondering if I could get five minutes from each of you as to why you think no appeals is the correct solution and why you think that an independent body is the correct solution and where those things would apply—whether it is across the board or whether it is in particular things.

Mr Maclean: The background to our position is that Canberra grew at an annual rate of 2.4 per cent over the past decade. We have put on more than 100,000 people. That means that the challenge that lies in wait for our planning system is enormous. We are potentially the fastest-growing major city in the Western world after Austin, Texas, which is growing at 2.7 per cent, between the respective censuses. That is a lot of major decisions and a lot of planning, particularly if we are going to keep to a 70-30 infill target. That is a lot of infrastructure. That is a lot of infrastructure dollars. That is a lot of potentially contentious rezoning decisions and major decisions about the future of our city.

In our view, the only body that has the ability to make those decisions and the only body that has the political capital to be able to coordinate between all the elements of the ACT government is the ACT cabinet. They are the only ones that have the democratic legitimacy to do so, because they are responsible to the Assembly, who are in turn responsible to the voters.

Our concern with this idea of creating a large number of independent statutory officeholder agencies with different fiefdoms, that have different responsibilities, are not coordinated, and that are all independent of each other, is that independence and accountability are two mutually exclusive traits you can have in system design. We can either have a system that is accountable and democratically responsive, because it is subject to political direction from the ACT government, or we can have one that is independent of government.

In other contexts, outside what Canberra is, maybe there would be a case for more of what we are looking at here if the entire process were technocratic managerialism status without any real change to the challenges that lie ahead. But that is not the situation Canberra is in. We need to make those major political decisions. An independent statutory planning commission simply would not be able to make those decisions, because it will not have political legitimacy to do so.

THE CHAIR: I am not sure it is a politically democratic decision, though, if it is primarily made by the territory planning authority with no third-party appeals. Do you see there is a role in there for the political arm?

Mr Maclean: As proposed in our submission, we would prefer that the chief planners served at the pleasure of the ACT executive without fixed term. Currently they are a statutory officeholder. We think that is undesirable. We would prefer that we had a political system where the chief planner was understood as being the agent of the cabinet, that the cabinet is responsible for the decisions that they make, and, if those decisions are unpopular or incorrect, that the cabinet should have the ability to remove the chief planner. So we would propose a clear line of political accountability as the way in which we make decisions.

We are also cognisant that third party appeals are very expensive and very slow, and they have had a massive impact on dampening the public housing provision and infill and everywhere where you can apply for a third party ACAT appeal. They are practical costs that are borne by everyday people in this city that are on the waiting list for public housing. So it is a mixture of that kind of principle decisions. We think that all these decisions are political, because planning is political, and that, as a result, the ACT executive should be accountable for it.

Mr Leifer: Just to build on that third-party review point, the issue with that is that third-party review is an ideal system of dealing with individual rights where someone is directly affected. Where someone is going to be directly affected by a DA, we have a proposed an alternate system forward. But what we are seeing now is not individual people's rights being contested. What we are seeing is territory priorities in government plans being contested. We are seeing decisions about building more public housing going to ACAT. We are seeing decisions about whether or not to build

an apartment block being challenged, with none of the people pushing for that challenge actually being directly affected by it.

The best form of consultation we have is the ACT election. That is the only time where everyone in Canberra can get up and say, "We back this view," or "We do not back this view," and we all vote accordingly. When we give people third-party reviews for things like public housing and so on, we are saying to them, "You disagree with government policy, but, rather than let everyone decide in a democratic manner, we are giving you an undemocratic means to challenge a decision made by a democratically elected body for very low cost and very easily."

Standing is very easy for any residents group who has been formed by two or three. We saw that in Ainslie with the YWCA where the Ainslie Residents Group, formed by a handful of people, were able to challenge a decision on the grounds that they represented the entire suburb, despite having no election, no consultation and no accountability to the actual people of that suburb. The only people who are accountable are the members of the Assembly, who are elected duly every four years.

Our proposal would provide a system where you do have a form of reconsideration but it goes to the heart of that political decision-making. If people are not satisfied with that, in the end, they have the ability to campaign and run and sit for an election. That is the best chance they have to put their ideas about what is wrong. If people's individual rights are directly affected, they will still have a means to challenge it. But if they are just challenging issues such as whether or not a public housing unit with the same footprint of the normal RZ1 should exist in their suburb, that is a decision that goes to a fundamental political core about what our city should look like and should not be reliant on an individual's ability to prosecute in it in court, but rather on the ability of it to perform in a democratic playing field.

Mr Donnellan: There is an ACAT matter that we are actively monitoring right now that is a three-unit public housing development in Griffith. By the time that that has finished going through the ACAT litigation style process—it is not a court; it is a tribunal, but it is litigation in a form—it will have taken longer to go through that process than it took to build the Empire State Building.

THE CHAIR: I might now move to CPAG. CPAG, you have got a lot of views about having an independent commission—and you have heard this now. I would like to hear what you think?

Mr Pryor: There are many things that they have said that we agree with, but I just want to make a political point. Today's society is different. If you really want confidence in democracy you have to engage people at a level that we have not so far—and you can see that the results of the elections are beginning to actually reflect that concern.

We agree that the Assembly is actually the arbiter because that is an election result. But you guys also work in a very difficult complex environment. So there is a need to actually have people help you understand by going into the detail of the proposals. We accept that there are conflicts and we are not saying that you are going to go without

having a conflicted set of circumstances, and people will abuse it.

But we also propose that this present bill actually does not have enough of a role for either the Assembly, or your inquiry or general engagement. The idea that the chief planning officer is somewhat independent of the government in having the freedom of being able to act without being cognisant of the policies of the government and actually responsible for acting on those policies, is really quite inappropriate.

So, politically, if we are looking at a democratic process in today's society, we have to try and find new ways to do it. We are not against the idea of people noting whether the decision-making is going, but we are really much for engaging people in a way that they have not been engaged in in the past. Transparency and understanding will hopefully help reduce the conflict at the level that these guys are talking about.

Mr Oberdorf: We note that the present bill actually diminishes the role of the Legislative Assembly. The Legislative Assembly is given no role in the metropolitan strategic plan or district strategy. The Legislative Assembly is given no role in supporting material to the territory plan et cetera. We also notice that the bill gives the chief planner the capacity to act within 10 days if the federal minister for environment does not respond. If that is not taking away power from the elected people, I do not know what is.

Anyhow, in summary, I really do think that the bill should be withdrawn and that we start again. But that is my view. Thank you very much for allowing me to present it.

THE CHAIR: Thank you. Thank you very much for coming. We have come to the end of our time. That was a vigorous session, and we appreciate your contributions.

Short suspension.

CAMPBELL, DR EMMA, Chief Executive Officer, ACTCOSS
DARUWALLA, MS AVAN, Policy Officer, ACTCOSS
WALLACE, MR CRAIG, Acting Chief Executive Officer, Advocacy for Inclusion

THE CHAIR: I now welcome Dr Emma Campbell and Ms Avan Daruwalla from ACTCOSS. Thank you for joining us. And we have Mr Craig Wallace from Advocacy for Inclusion. Thank you very much for coming. We appreciate your time and your submissions. The amount of time that people are putting into this is incredibly generous. Before we begin, I need to check that everyone has had a chance to read the privilege statement and that everyone understands the responsibilities and the rights that are contained in that statement.

Dr Campbell: I have and I do.

Ms Daruwalla: I have and I do.

Mr Wallace: I have and I do.

THE CHAIR: Great. In the interest of time, we will not be taking opening statements but we do have some tabled. We will go straight to Ms Orr for questions.

MS ORR: Mr Wallace, I note in your submission you talk about the principles and having various bits and pieces included, and you note that you would like more in there about inclusive design. Can you just run me through what you would see an amendment would look like and also how you would see the inclusion of those principles and what it would do for people with disability?

Mr Wallace: We think there needs to be a much stronger reference to both universal design and accessibility as a feature of the space activation principles for high-quality design on page 11 of the bill. Currently we have some pretty clear directives in that bill around issues like integration with the urban forests, safe movement and ensuring that new development has consistency with local character. We should be applying the same level of prescription to measures that support people with disabilities and older people in our city to move freely around the city and to do so without the risks of trip hazards and falls that can result in them being in acute care.

In our submission we have provided some suggested wording. We would remove some wording which says "serious consideration of universal design practices" and would include "accessibility standards", because they are two different things. Universal design is planning for accessibility but not necessarily doing it now—so building in some features which are easier to alter later on. Accessibility is the actual capacity for somebody with a mobility issue to use the space right now. I hope that answers the question.

MS ORR: Yes, it does. Just following on from that, we have seen some changes to the national building code as far as universal design and accessibility goes. If these are in the building codes how would having them in the act further enable or enhance what is already listed within the building system?

Mr Wallace: As I understand it, these activation principles talk about the high-quality design that we are striving for in the city. If we are doing that, we should not just be aiming to go for the minimum level of standards described in AS40 28.1—the 2021 version of that which has been issued to coincide with the Building Code. Standards are a range. For instance, if we are talking about building a ramp—sorry; it is the obvious thing I can think of—they prescribe that the minimum standard is one in 10 in terms of its slope and camber. But it is possible to do so much better than that. It is also possible to do things like accessible toilets that have changing rooms in them—to exceed the standards in the work that we are doing. That is what the new Planning Bill should be striving to do if it is to meet the needs of people with disabilities and older people within a changing and ageing city.

THE CHAIR: Mr Wallace, can I just supplement on that? Is that primarily a concern with housing or is that a concern of the city as a whole—with accessibility of streets and things and like that? Are you mostly talking about the houses where people live or is it all the connecting bits?

Mr Wallace: We have a number of different imperatives here. Housing is a different piece. We think that the planning system should be working to track more accessible and affordable housing. But that specific section of the bill on page 11 refers to the urban realm. There are still significant issues, particularly outside of the national capital precinct with the standards and quality of accessibility in the built realm in Canberra. There are parts of Canberra that people with disabilities cannot safely enter. There is also new development that meets the minimum standard of accessibility. But, if you talk to a person with a disability prior to designing it, they would have said, "We can do better than that to ensure that everyone is included and able to use that space."

MR PARTON: I will go to ACTCOSS. A lot of your submission focused on affordable housing. You have noted that the government has a target of at least 15 per cent releases for affordable, community and public housing builds and that, for the most part, they are not economically viable in terms of their delivery as affordable housing. So, from the perspective of your submission, it appears that you see that there is a missed opportunity in this bill with regard to the delivery of affordable housing. What would you change, Dr Campbell or Ms Daruwalla? What would you change in the bill if you could in that regard?

Dr Campbell: We have frequently said in our submissions around the Planning Bill that there needs to be a much more explicit reference to social housing as a measure of whether or not the Planning Bill has been successful. We want to include projects that may be delivered by community housing providers as "territory priority projects".

We want the Planning Bill to also directly respond to the current housing crisis by guaranteeing the release of affordable land to community housing providers. It is meaningless to have a target of what percentage of affordable land is being released for affordable and social housing when the cost of that land means that delivering community housing is unaffordable. So it is really important that the bill ensures that land release is done in a way that means projects are economically viable for community housing providers.

One of the ways that we think you can do this is for the bill to include provisions that ensure restrictions on assigned plots for release for affordable land are sufficient to produce valuations below market or revision to be made to the Planning Act to allow discounted land sales for defined social outcomes. That would allow for community housing providers to take up restricted land release offers.

The big barrier to our social housing providers delivering more properties is affordable land. If they have access to affordable land, they can then leverage that to access other funds from the commonwealth government and from other sources such as superannuation funds.

I think there is movement now by the ACT government finally to start being a bit more proactive in working with our community housing providers to deliver more housing. But this is a great opportunity to ensure, by locking it in legislation, that social housing and affordable housing is a priority for the territory.

MR PARTON: Dr Campbell, I do not wish to speak on behalf of Mr Ponton or Mr Gentleman but I am guessing that they would argue that such matters should probably be dealt with through another instrument, other than the Planning Bill. But that is not your view?

Dr Campbell: I think—and Craig would probably agree with me on this—that planning should be all about social outcomes—what kind of city and community we want to create. I think what is lacking from the Planning Bill—although there have been some positive inclusions—is an overall focus on including people who face the most disadvantage. Given that our housing crisis is going to be in play for the next 10 to 20 years even if we start doing something now, I suggest that you want to take every opportunity and every mechanism to try and fix that challenge as well as other social challenges that we face, such as the inclusion of people with disability and people who are ageing, given that we are an aging population, and the policy of all governments is for people to age in place.

THE CHAIR: I just want to supplement on something you said earlier. You mentioned territory priority projects and social housing. We have this concept of territory priority projects, which is available for government projects. It is also at the moment in the bill available for private projects. Can you tell me what sorts of private projects you think would be suitable to be a territory priority project, which basically means that it is going through a different approvals process? Is it just social and affordable housing, and is there a sort of a particular way that you would set that out?

Dr Campbell: We welcome the inclusion of those types of private projects. Private would include not-for-profit organisations like our community housing providers. In particular, we would focus on housing but then maybe other examples of critical infrastructure such as schools or hospitals, given that our system at the moment is privatised.

THE CHAIR: Private schools and hospitals? Yes, I am with you.

Dr Campbell: Our hospital system is. If it is delivering positive social outcomes. So a private hospital, which is often part of our public system.

THE CHAIR: Yes.

Ms Orr: I was actually going to pick up on the priority projects and how you would see that working for housing. You said that you would like to see housing included. How do you see that being applied and what do you think the benefits would be?

Dr Campbell: Can I take that question on notice with regards the specifics of how that would make a difference? I would probably want to check in with the Community Housing Industry Association. But what we think is really important is that any benefits that go to priority projects that are being given to public housing or government measures should also be applied to our community housing providers because they are partners with the government in delivering these projects. I am very happy to speak to CHIA to see what benefits the government projects currently get that they would like to avail of. But our general principle would be that the provision of affordable housing by our community housing providers is in partnership with the provision of public housing and, therefore, it should avail of those same powers and benefits. But, if you want the specifics of those benefits, I can—

THE CHAIR: I think the broad context is fine. So I am satisfied with that.

Dr Campbell: Thanks.

THE CHAIR: You had in your submission a concept of social planning unit in the territory and planning authority. That was quite an interesting idea. We have not heard this from anybody else, but we have heard about specific skills that people want in the territory planning authority or that they want on the design review panel. Can you tell me a little bit about the problem now that sparked that and how you think having a social planning body would help that problem?

Dr Campbell: I might defer to AFI to answer this question in detail, but I think, overall, the comment of ACTCOSS is that there is an insufficient reference to social outcomes relating to people who face disadvantage. We are essentially talking about social outcomes—a more inclusive and fairer community. We do not think there's enough in there. That demonstrates the need for some kind of unit within planning to constantly bring the minds of people who have immense power over these types of decisions back to the interests and needs of vulnerable people. That is all the more important as we see the transition to net zero emissions. If we are going to not only take people with less with us but also use the transition to net zero emissions to actually put them in a better place.

Craig, do you want to add anything—because I was inspired to the social planning unit based on my work with you many years ago?

Mr Wallace: You may be aware that I actually did some planning work for a number of years and, sadly, I am old enough to have chaired a social planning committee for the ACT government back in the early noughties. There used to be considerable social planning capacity within the ACT government. That was about ensuring that we audited, did stocktakes and drove work to improve accessibility in community facilities and other parts of the urban realm that were important to a range of groups

experiencing social disadvantage in the city and that that was done in a planned and resourced way within the ACT government. So, for AFI, we think that there would be value in ensuring that there was a part of the ACT government that was responsible for audits, stocktaking and driving accessibility improvements for people with disabilities within the city.

I would also observe that we have some gaps in representation and lived experience input on vulnerable people within our governance systems around planning in the city. I acknowledge that that goes to some of the discussions you have been having across the day which I have been looking at with interest. But that might be a broader set of issues that you want to ask a separate question about.

THE CHAIR: Mr Wallace, this is really helpful. I actually did not know that that social planning committee used to exist in the 2000s. I am quite a new politician. Would this role of auditing the actual outcomes that we are seeing in the city be something that you would want to see in ACTPLA or would that be something you would want to see external to ACTPLA? There used to be an Assembly committee. Where would you put that kind of role?

Mr Wallace: There are two arms of it. There used to be a social planning unit within the old PALM, Planning and Land Management Canberra, that was responsible for ensuring that there was a sort of an ins of disadvantaged people applied across planning policy. Sometimes they put individual DAs, ranging from educated certifiers to looking at policies. If there was suddenly an urban cafe policy or a policy which affected paths of travel around transport, they would cast an eye over that to see if vulnerable people were being adequately considered and in educative work across the planning system, including the developers and certifiers and other people that made a difference, and ensuring that the voices of older people, of homeless people, of young people and of women using prams were heard within planning conversations.

This is needed now more than ever, given that our planning conversations now tend to be development and people shouting at each other saying the development should not happen. Where are the voices of people with disabilities, older people and others that are profoundly affected by changes in the urban realm? We have a quite broken system here that has no way in for people like me who are highly invested in planning decisions to effect the outcome. If this was Sydney or the New South Wales metropolitan area or other areas, local governments usually have accessibility committees. They often have committees that are about other marginalised groups of people that oversee development and planning discussions and provide advice to the municipal government. That is a missing piece of our governance here.

MR PARTON: How would you change the bill, Mr Wallace? How would you amend the bill to allow that sort of engagement and consultation to occur?

Mr Wallace: My argument would be that, to achieve any of the activation principles within the bill, you would need to set up a social planning unit and do consultations better. As to the amendments for the bill, that is a question for the drafters. But I would imagine you could legislate to require that there be these kinds of mechanisms within the bill.

Dr Campbell: At the moment, we understand that the bill says. under the drafting in the current legislation, consultation will fulfill the principle of being inclusive if undertaken in a way that aims to engage all stakeholders affected. But, really, it should only be met where consultation has resulted in direct engagement with at-risk and affected people. Using the bill to require the establishment of a social planning unit once again brings attention back to the importance of planning being around the inclusion of vulnerable people and people who face disadvantage, particularly when there are poor planning outcomes.

THE CHAIR: I believe, Mr Wallace, we have an accessibility committee—I am probably getting the name of it wrong—that works in transport. We are obviously not reviewing that, but I am wondering whether that kind of thing is achieving anything, or do we need something much more legislative in the planning sphere?

Mr Wallace: It is achieving something but it is mainly focused on matters around needs analysis for on-demand transport in Canberra, which is a really important piece for people with disability. But there is a much broader set of issues around access to the public realm, around links between transport and the public realm and around space activation improvements that needs to be undertaken. One observation would be that there are a whole lot of access challenges currently being thrown up by the reconstruction and changes within the city which are resulting in really poor accessibility—and National Capital Private Hospital is a good example but also some of the challenges within the city. Workarounds for those issues could really benefit from dedicated groups of people with lived experience providing advice to government on how we can make people's lives easier during construction and also in the areas in older parts of Canberra that need to be improved and brought up to standard.

THE CHAIR: Dr Campbell, we have heard quite a lot of different views about third-party appeals with ACAT, and there are quite divisive opposite views on this topic. One of the examples that is often raised is the difficulty in building public and social and affordable housing and how that gets reviewed in ACAT. I am wondering if you have got views about that and, in particular, whether you think the problems are with having third-party appeals; whether the problems are due to the fact that we do not currently resource those third-party appeals; whether we would get different results if we had an ACAT that had specialist members or more people involved; or whether we would get different results if we had different types of early consultation, if there is a way through that. Have you had a good think about that particular problem?

Dr Campbell: I do not think we are best placed to answer that question in detail. I heard the comments from Greater Canberra. I have some sympathy with the view that often ACAT has been used to challenge broader policies as opposed to the rights or an individual issue.

I will make the comment, though, that there are people in Canberra who are very afraid of having social housing and community housing built near their homes—as we have seen, for example, with some of the appeals against the YWCA development. Quite a lot of that stems from the very poor management and maintenance of much of our public housing in the ACT and the lack of supports for people who live in our public housing.

The state of much of our public housing is shameful. The report on government services demonstrates that the standard and maintenance of our public housing has worsened over time. I will acknowledge that the ACT government has committed significant funding—I think up to $100 million—to maintain and improve the stock. I think that also reflects just what a state it is in. I think that the proper management of our public housing stock would go a long way to rebuilding the trust of the community with regards having a salt-and-pepper approach and having social housing built in their communities.

THE CHAIR: Thank you. That was an excellent answer, and I think you have hit the nail on the head.

Dr Campbell: Can I mention one more thing, if I might?

THE CHAIR: Yes, please do; by all means.

Dr Campbell: In response to Mr Parton's question, there was one other thing to note with regard to planning and social housing is zoning. We have been calling for a significant period of time for the ability to rezone church-held land so that it can be used for community housing and also to look at zoning so that we can unlock land to be transformed into social and affordable housing. That also links to the question that you put to me around building trust with our community so that people are comfortable having social and affordable housing on their doorstep.

THE CHAIR: Thank you. Does anyone have any final comments that they would like to make?

Mr Wallace: I would like to make a comment about governance and community representation in the planning space. I would just observe that, while I have made some comments around the conversation being broken, I think some of the commentary by community councils around development and housing is driven not just by a not-in-my-backyard approach but also by genuine concerns about the lack of social and community infrastructure as the population grows and as housing density increases—for instance, in Coombs and Wright, where you have got all of a sudden a whole lot of population pressure falling to Cooleman Court and the community facilities around there and the lack of accessibility that we are seeing in some of those spaces. That is a legitimate concern for them to express.

I would mention that, for AFI, community councils are not resourced to take on good advocacy around disability access issues in the urban realm, and we need to do that better to meet the needs that we have talked about through this session.

THE CHAIR: That is interesting. The community councils get very, very low resources all round So you are suggesting, Mr Wallace, that we perhaps look at how we would better skill or resource them to be able to incorporate that?

Mr Wallace: I am saying that, given that the population is ageing and the critical issue in the urban realm is access for people with disability and no doubt others, from our point of view, they should be getting specific resourcing and we should have

people with disabilities on our community councils so that they can undertake some of that work. That would be a good use of those bodies.

THE CHAIR: That would be great. Thank you very much for joining us today, and thank you for your submissions, your input and your time.

Short suspension.

FATSEAS, MS MAREA, Chair, Inner South Canberra Community Council
GEMMELL, MR BILL, Chair, Weston Creek Community Council
BOURDET, MS MICHELLE, Secretary, Weston Creek Community Council
BOLLARD, MR JEFFERY, Vice-President, Tuggeranong Community Council
CARRICK, MS FIONA, President, Woden Valley Community Council

THE CHAIR: On behalf of the committee, I welcome Ms Marea Fatseas, from the Inner South Canberra Community Council; Mr Bill Gemmell and Ms Michelle Bourdet, from the Weston Creek Community Council; and Mr Jeffrey Bollard, from the Tuggeranong Community Council. Thank you very much for your time and your detailed submissions. We have received the submissions to this inquiry and we have also received the ones to the government consultation on the bill itself. So we have got a package of material today. Has everyone had a chance to read and understand the privilege statement that we have distributed and do you agree with the rights and responsibilities in that statement? If I can just get a verbal yes, please.

Ms Fatseas: Yes.

Mr Gemmell: Yes

Mr Bollard: Yes.

Ms Bourdet: Yes.

THE CHAIR: Fantastic. We have limited time—I am very sorry for that—and we have a lot of material to cover and a large panel. So, in the interests of time, we will not be doing opening statements. We will proceed directly to Mr Parton for questions.

MR PARTON: Mr Gemmell, your extensive submission suggests that this draft bill does not actually deliver true reform, that it sort of says that it is going to be a reform of the planning arrangements but it just provides a reset point for the existing scheme. I know it is an exceptionally broad question, but what changes could we make to this bill so that it genuinely does reform the planning arrangements in the ACT?

Mr Gemmell: Thank you for reading our submission. It is good to know somebody reads them. We have discussed this over many months and we have consulted with the community about council meetings for a long time and we put it in our newsletters and we got extensively back from people. That is what ended up in our submission. The common theme coming through is that we have probably got reasonably good laws but we do not have the proper scrutiny over how the laws operate.

I am talking about governance. I am big on governance. We are very uncomfortable with the concept of notifiable instruments. We have seen a number of errors occur because I do not think it has had the scrutiny of the Assembly, which is why we are recommending in our submission more disallowance. During the consultation we were told that the Assembly does not have time to do that—that members do not have the time. I would make the point that, if the Assembly were expanded to 25, it would allow the Assembly to spend more time on matters of importance, like land and the management of land.

Land is a most important resource. It is our only real natural resource, besides the people, and we delegate it away from the Assembly, who are our elected decision-makers, into a bureaucracy. To me, that does not compute. So that is the thrust of where we are coming from, and I think that is where we start. Let us get better accountability over the law and then we can get into the way it operates—and we have covered it in our submission. But there are other people who have got things to say as well, so I might—

MR PARTON: That is a good point for you to make, and I want to echo the words of the chair, too, that this is a large panel and we have a very short period of time. If it is possible to make your comments brief, as Mr Gemmell has just done, that would be wonderful. Is there anyone else on the panel who wants to respond to that question, although it was crafted directly to Mr Gemmell.

Ms Carrick: I think governance is a major issue because there are no checks and balances in our system. We have a unicameral system. We have got no house of review and we have got no local government. While we have the committee system, I am not sure that it is a body of expert planners that are providing advice to the government. What we need are independent experts that provide advice to the planning directorate and the government. Then, should that advice not be accepted by the government, they should say why they have not accepted it. Governments do not always accept advice, and that is fine, but they need to tell us why. At the moment, things are just slipping through and there is no explanation of why we are getting poor planning outcomes.

MR PARTON: Fair enough.

Ms Fatseas: I would add to that potential integrity issues and conflicts of interests. I think we need to have a separation of powers between the person who is the chief planner and the person who is the Director-General of Environment, Planning and Sustainable Development. At the moment, as I read the Planning Bill, it would be possible for the views of related entities, such as the Conservator, to be overruled if it is considered to be in the public interest. Quite apart from the fact that I did not see a clear definition in the bill of what the public interest is, I think there is a lot of scope there for potentially undesirable consequences in terms of good governance by not having very clear roles for the different parties in that planning system.

THE CHAIR: While we are on governance, I was interested in the table you put in your submission, Ms Carrick, which outlined some of the different models we have got in difference places. The biggest difference that leapt out at me is where you set out that there is independent advice provided to government in New South Wales, Victoria, Western Australia, South Australia, Tasmania and the NT, usually by an infrastructure body, but that we do not have that role in the bill in the ACT and they do not in Queensland. Did you want to talk us through that a little bit more?

Ms Carrick: I guess that is back to the point I was just making that right now the bill allows there to be a planning strategy, a territory plan and district level plans, and then the directorate will put into those documents what they see fit. As Marea was saying, there is no separation of powers between the directorate and the new planning

authority. Who is making these decisions? Who is reviewing these decisions? Often, we cannot even go to ACAT. If, for example, it is a development in a town centre, we cannot even take it to ACAT. So you have got the broader issue of the spatial plan for Canberra and then you have got each development as a separate DA.

At the moment, we do not have checks and balances, apart from these committees. There are no experts providing advice. In other jurisdictions, there will be a house of review that can check things, local government that is looking after their local area and then there are the expert panels that are providing advice about infrastructure needs. We do not have any of it. Things are just slipping through without any proper review, independent expert review.

THE CHAIR: Have you had a think about the design review panel and the role that that is playing now?

Ms Carrick: The design review panel looks at individual Das—and that is good, if we are allowed to see the reports. We at the Woden CIT are not allowed to see the design review panel's report. Why is that? How is that transparent? But what we are missing is the spatial plan for Canberra. Where is the expert advice for the planning for Canberra itself?

MS ORR: We have had various witnesses today, and there has been a bit of a conversation about community engagement. Everyone has been quite in agreement that there should be consultation and engagement. There has also been an understanding in that that you are not always going to necessarily achieve 100 per cent consensus on every single development that is out there.

Ms Carrick, I particularly taken by your comment that there should be expert review. should be expert review. In considering how to bring the community and the industry together, the professionals were almost saying, "We cannot necessarily always do everything the public wants." From your perspective, as someone who is an advocate within the broader public and the community interest, how would you say it can be reconciled? Where there are reasons that something cannot happen or there is a professional judgement made, for whatever reason, that is not necessarily in line with the community expectation, how can that be reconciled so that we do not end up in an adversarial position?

Ms Carrick: For an individual DA, the design review panel will put forward their expert advice and then a decision will be made. The government should explain why they do or they do not accept that expert advice. As the community, we know that we are not always going to win and we know there are diverse views. But we just want to see some checks and balances in the system.

With planning for Canberra as a whole and where the facilities are, we have an inequitable distribution of community facilities and social infrastructure at the moment. If we had a similar thing to the design review panel—but not just for a DA; for planning strategy—like a panel that provided expert advice, then the government may accept that advice or they may give us a reason as to why they do not accept that advice. But at least there is a check and balance in there that the community can feel happy about, or a bit more comfortable about.

MS ORR: So are you saying that, if reasons are stated, that is fine and the process is working and we can all move on? We have also heard from other people that it will go to what some might call vexatious litigation—which everyone agrees is actually not a good use of anyone's time, from what I can tell.

Ms Carrick: That is true, but you still have to have a review mechanism. The community still needs to be able to go to ACAT and have things reviewed. It is just good practice that those opportunities are available. But perhaps if there was an expert panel that provided advice, the community might have a bit more of a comfort level about the process and there might be less vexatious litigation over it all.

Mr Gemmell: Giving a correct answer on that is very difficult. Getting the community's view, I think, is one of the challenges that the government has given the community downfalls with respect to developments. Getting people to engage is a very difficult task. We try all the time. And then you get an opinion out of left field and you go, "Why didn't we think of that?"

But we have met some recent good examples over our way. There is a site on Streeton Drive. Admittedly, it went to ACAT. Then we all got together and we had really positive consultation with the developer, through COVID, and regular update meetings with the architects. We were doing it online. We tried to get all the community engaged. I am hoping it is about to be approved. It has been a long time in there. But my understanding is there is no disputation, because we got the people engaged, we talked and we listened. They did update some of their plans. They went above and beyond, to some extent, and I congratulate them for it.

Where I am coming from is that the community likes to feel like they have been engaged, and that will reduce disputation. That goes on in every bit of administration, not just planning: get the community in, get them engaged, empower them and also create the expectation that they are not always going to get their way.

The current system is very combative, and it is about knocking each other down. We need to somehow meet in the middle and get some compromise—coming from me who does not like compromising much, that is great to say—and get people to compromise on these things. Delays cost money, and the uncertainty in the community gets gossip and rumours happening and it just festers further disputation.

Ms Fatseas: On the point of community engagement, I think—as Gordon Lowe, from Molonglo Group, said this morning—that pre-DA consultation is very important, and I think it was counterproductive to drop it. We agree that there were issues with it, but, rather than just dumping it, let us try to fix the problems. We have certainly found with, say, developers who do come to us early, as Molonglo Group has, you build that trust. So you find in those situations often the community does not have major issues with it because there is that initial trust that has been built up.

So I think rather than just dropping pre-DA consultation, let us see if we can find better ways of using it. One of the ways could be, for example, with the design review panel process. I do not know whether the design review panel gets information about community attitudes or views about particular developments before they have a look

at the aspects of the built form and how it fits in the public space around it. But it would perhaps be very helpful to have the design review panel able to get some feedback from the community to help inform them when they are looking at it, or perhaps even have somebody from the community involved with the design review panel. That could be a practical way of addressing some of the issues, especially when you are talking about precinct scale developments, large buildings and so on.

THE CHAIR: Ms Fatseas, I might just supplement on that, if that is all right, Ms Orr. We did ask the design review panel—we had Mr Ponton and Katherine Townsend, the Government Architect—and I think from their answers that they are probably not looking at pre-DA consultation. They could not sort of comment on how those things intersect at all. We have had 23 submissions out of 65 suggest reinstatement of pre-DA consults. That was from all sectors. It is almost universally called for. But there were obviously some problems, and I think what the bill has done is simply dumped the process. How would you suggest we improve the pre-DA consultation process in the bill? If it were to be reinstated, how would we make it better than it is right now?

Ms Fatseas: I really think that that connection with the design review panel is important. Design of a precinct is not just about the architectural form and the town planning form; it is also about how it engages the community in those spaces and whether it responds to how people feel that place works. So I really do think that that is a critical aspect.

To an extent, there has to be a will in the developer. I think it also came out from the hearings this morning that there are some developers who are genuine in seeking early views from the community and that, in those cases, they will just go out of their way to come to the community and seek community views. So there is also maybe an issue there of engaging with developers and maybe them even learning from each other that the ones who actually engage early get better outcomes. I do not know about the idea about incentives but, if people engage early, perhaps they could get an easier pathway through the process. I think there should be some kind of reward.

THE CHAIR: I was going to ask about that because some of the witnesses we had this morning spoke about incentivising the pre-DA consultation so that there was a reason to engage with it, for those who might be a little bit more hesitant than not. I was interested to hear how the community would feel about that. Would you be open to a system that said, "Yes, we are going to have this pre-DA consultation. It is going to be good," and that, if that was the case and it was done well, then you would have things like streamlined application processes. That was one of the examples that was given by witnesses. I am interested in views from the community on a development within the process along those lines.

Ms Fatseas: I think it depends on whether the community feels that the pre-DA consultation by the proponent is genuine or whether they are just ticking boxes. If there is a view that the plans have changed in response to community feedback, that is when you really get to see if it is genuine or not. If you are engaged and then nothing is different after the community engagement process then you do not have trust in that developer. But if there is evidence that the developer has actually picked up on community comments, then perhaps there is some room for innovations in other processes.

I have been involved in two community panels, both the Canberra Brickworks Community Panel and the Kingston Arts Precinct Community Panel. With the Brickworks one, the community panel has been going on for several years. I sometimes think, "We have been involved in a lot of these meetings, including with the developer,' because that is where it is at, and then I think, "My gosh; why is it taking so long? Where are the delays occurring at the moment?" So I do sometimes wonder—even as a community person who has spent probably thousands of hours over the last few years in that case—what is going on outside where the community is having a role and what their interaction is like with all of the related entities?

Ms Carrick: I was just going to say that it is about people-based planning, as Marea said. So, if you do not get your precinct plan right in the first place, we will fight against each development, because it is contributing to a poor outcome. I will provide a very easy example. The zoning allows for 28 storeys around the perimeter of the Woden Town Square and it is going to overshadow it. So, to start with, that is very poor precinct planning. Every time a development goes ahead that is overshadowing the town square, we are going to fight against it. It does not matter how good it is or how much pre-DA consultation there is, if you have got a really poor precinct plan to start with we are going to fight as it gets implemented. So it really comes back to that people-based planning right from the beginning.

Mr Gemmell: Yes, I would agree with that. We have got a cultural problem, and I am putting it straight back to government. There is a cultural problem. They have not fostered a culture to bring the community and the developers together. Maybe I am being too idealistic here, but I think that if you create that positive culture you are going to get less disputation. Share the understanding. Share the boundaries of where we are going to go, because at the moment my perception is that the community councils are thrown out there. We have no guidance from government on what they want. I imagine the developers are the same. We are just butting heads at times, unless common sense prevails between the developer and the community, and that is just not right.

MR PARTON: No. Mr Bollard, I think you had a contribution?

Mr Bollard: Thank you, Mr Parton. One of the things that we stressed in our submission was very much about community participation. Quite honestly, the pre-DA consultation under the current arrangements is a sham and I think the developers have been gaming that quite well as they go through the process. My understanding is that there is meant to be a scheme of community participation written in guidelines to the act now. I think that is the important part about getting community consultation in place so that we can see what is going on and so that consultation from the community is being meaningfully reviewed.

The other thing under the current scheme is that we are not getting feedback about the outcomes of the review of our input. I think it is very important for us to have that guideline for community consultation actually within the act, and for it to be observed and for there to be feedback to the community. At the moment it seems that we go through a pre-DA consultation, there are a number of objections, then we see alterations to the DA and it does not restart again; it just flows on from there.

I make one other comment about community participation, and that is on the territory priority projects. I am concerned from the point of view that it appears to be down to the minister alone to determine that. Whilst we may have a very considered opinion from the minister, I would very much like to see that as a disallowable instrument so that our representatives that form the Assembly can all take their part in that and determine what is a territory priority project, and so that it is very clear that the community is being represented by the representatives sitting in the Assembly. Thank you.

THE CHAIR: Thank you.

Mr Gemmell: We agree.

MR PARTON: Ms Fatseas, in the inner south submission, under the subject of what you have described as the excessive discretion provided for in the Planning Bill and the consequent risk to accountability, you have made the suggestion that the roles of chief planner and director-general of EPSDD should be held by different individuals, not by the same individual, as is presently the case, and that the chief planner should report directly to the minister and to the Legislative Assembly, rather than through the director-general of EPSDD. Why?

Ms Fatseas: Because I think that there is a lot of scope for conflict of interest. If you look at the director-general's role, you have got the tree conservator, you have got the heritage function and you have got the environmental aspects, as well as the planning aspects. So the director-general has a number of different roles that he, in this case, has to perform. The chief planner should be looking at the planning outcomes and that whole area If you look at the organisation chart, under the act I think the planning authority is the chief planner, so you are really talking about one individual.

If you look at the organisational chart of the EPSDD, you would expect that if the planning authority is really independent there would be a direct line from the planning authority to the minister. In fact, if you look at the organisational chart there are a few individuals and they are kind of highlighted and then there is a great big gap; there is no direct reporting line to the chief planner. And then you have got the chief planner.

To me, having people within an agency and saying that they are independent and they are reporting directly to the chief planner—you just look at the evidence of the organisational chart and it is just part of a line department—I just do not think that you are getting checks and balances. That is quite apart from the issue that Fiona and Bill mentioned, which is that you do not have the checks and balances that you have in other states and territories—we do have city councils.

When you have conflation of those roles it reduces the opportunity for different perspectives even more so, so you are seeing a greater and greater concentration of power. Three years ago we were told specifically that governance was off the table in this review. We wanted to talk about things like having an independent planning authority, and basically we were told governance was off the table. To have the planning authority then running the planning review process itself and, as a result of that planning process, having a further concentration of power in that role is a recipe

for disaster.

Mr Gemmell: I asked the question during the process: where is your independent advice on this governance structure? The answer left me underwhelmed. The answer was, "Well, we are relying on the drafters to give us that advice." They are not governance experts. I would have expected that with so many big firms around town they could have gone independent. They could have gone to the corruption commissioner, whatever he is called, or the Auditor-General. They could have gone to another state and sought advice and said, "Do you think this model will work?" They did not.

I perceive a risk in that. A fellow once said to me, "Chinese walls don't work. You will have leakage between the two." How can the chief planner separate his role from being the director-general when you have got clashes in accountability between the two? How do they do it? Do they take a step back, pretend they have not heard as they are making a decision? I do not know, but that really troubles me.

MR PARTON: All right. Thank you.

MS ORR: We have heard a lot about what you think should be changed. I am interested to know what you think the bill gets right.

Ms Fatseas: Bearing in mind what Fiona said before about some issues with the spatial aspect, I do feel that having a more spatial approach and trying to find a line of sight between the bill and then the Territory Plan and the district strategies is good. I think the move towards district strategies is good.

Where it falls down is that I do not think we have got that line of sight right yet and we have only had a preliminary look at the Territory Plan and the district strategies. At the moment I think there are potential issues there in terms of that line of sight and also in terms of the statutory aspect—the fact that the district strategies are going to be notifiable instruments, not disallowable instruments. I think it falls down on that.

We are all aware, and other people around this room are very much aware, of the many hours people in the community have spent on master plans. They think that their views will be taken into account and then they see the precinct code and there is hardly any of their input included in the final statutory document. I think that spatial aspect and the use of district strategies is really good, but you have really got to have good community engagement and then show the community that that is actually picked up in the final strategy and that that has some statutory effect through being a disallowable instrument, rather than a notifiable instrument.

MS ORR: Anyone else, in the few minutes we have got left?

Ms Carrick: Maybe one way to see where it does work is to run some case studies and see how it gets us good outcomes. We can put forward the Woden town centre and say, "How does the bill get us good outcomes? How does it improve things?"

THE CHAIR: Do you mean hypothetical case studies as part of the consultation with the government? Is that what you mean?

Ms Carrick: Maybe the inquiry can run some case studies, pick some developments

in residential areas and see how this would help.

THE CHAIR: Unfortunately, the inquiry is reporting on 22 December, so I am trying to work out how that could be done.

Ms Carrick: I think at some stage we need to run some case studies to see how the bill will improve the outcomes.

Mr Gemmell: I have a few points. There is not a lot in it I liked, to be honest. I would actually send it back and start again and get somebody independent to do this who understands planning. Sorry.

But a further factor that came to mind the other day, when the Assembly agreed on the Human Rights Act amendments on the right to a healthy environment, is that there is no linkage in this at all to healthy environment. We found that when we were preparing a case for ACAT, or before we did. We were commenting on a development application and we said, "You are putting a car park next to a kid's bedroom. How can that be something you can approve?" They said, "It is not a factor we consider." That highlighted to me that the human element is missing from the bill and that is carried over to this.

That takes me to the point that there is no clear decision-making criteria. It is not codified anywhere. If I am Joe Blow on the street and I am looking at something, I want to know in simple terms how they made the decision. I would like to see it codified: these are things we need to look at. It is not hard to do and it would make life a lot easier for other people.

I also point out that there is ongoing lack of enforcement of the laws. It is a constant bugbear in our community feedback. I can give you mountains of examples where what is planned might be a stallion but what is delivered is a zebra. Then you have got your ongoing problems. Not happy.

The heat island effect—where is that mentioned? There is a lack of community consultation. The community consultation on the strategies has been appalling. We have got huge concerns coming at us—the western edge, for example. We have got concerns, but the concern are: how do we get our voices heard in the current framework? I have probably taken up all your time now.

MS ORR: Yes, I think that is probably a wrap on the hearing.

Mr Gemmell: Sorry.

THE CHAIR: Yes. I am so sorry; we have come to the end of our time. I am sorry we did not have much time here for a great deal of content, but thank you very much for coming along and thank you for your submissions. I do not think we had any questions on notice, so we will move on to our next session. Thank you.

Short suspension.

DENHAM AM, DR DAVID, President, Griffith Narrabundah Community Association Inc
TONGUE, MS SUSANNE, Vice President, Griffith Narrabundah Community Association Inc

THE CHAIR: Thank you, Dr David Denham and Ms Sue Tongue from the Griffith Narrabundah Community Association. We do appreciate your time today. Can I first check that you have both had a chance to read the privilege statement and that you understand the rights and obligations in that statement?

Dr Denham: Yes, I have, and I do.

Ms Tongue: Yes, I have, and I do.

THE CHAIR: Excellent. Due to our very limited time, we are not doing opening statements. I will jump in with a question. I will only ask about one of these things, but there are two things that have come up repeatedly—pre-DA consultation, and fears about outcomes-focussed planning and whether the bill currently gets this right. I would invite you to talk about whichever of those two you think is of most use.

Dr Denham: I will start with the pre-DA consultation, because one of the things I like in the new planning bill is that it says it is going to provide a scheme for community participation. I do not know who complained that it did not work—the current scheme—because two of the developers we know are very keen to participate in it and thought there was benefit from it.

I think what should be done—and I know this is a resource thing for ACTPLA—is that it should not be controlled by the developers, but it should be an ACTPLA responsibility for this. ACTPLA is, with the new Act, going to be responsible for just about everything, and it should be charged with the job of getting a better scheme, and I do not see how that would be too difficult.

THE CHAIR: Thank you.

Ms Tongue: An example is that we are currently before ACAT in three cases, and in all three cases, if there had been better consultation with us, the association, the need to go to ACAT might have been avoided.

Dr Denham: Yes.

THE CHAIR: That is certainly what we heard from three developers this morning, interestingly enough—a similar view.

Dr Denham: Yes. Can we stray a little bit into the review process of DAs and ACAT, or have you got other questions?

THE CHAIR: Yes, sure. Is that alright, Ms Orr?

MS ORR: Yes, that is fine.

Dr Denham: One of the things we found is that what is happening now, what we see is happening, is that Housing ACT are trying to bang as many dwellings onto single blocks as they can—and this is also relevant to the ACTCOSS thing. What is happening is that the public housing people are being treated as second-class citizens.

MR PARTON: In what way, Dr Denham?

Dr Denham: Because they are identified as public housing: "There is three on that block, and there is one all the way round; they must be public housing. They have got a corrugated iron roof. They do not have solar panels". What more do you want?

MR PARTON: Yes.

Dr Denham: The problem has been to squash the three on to comply with the planning rules. We have had six different changes to the rules by Housing ACT to try and fix the problems, and they still have not done it. The people who put in original comments on the development application do not know this is happening, so they are kept out of it. There is just no information getting to the community or the people who are involved with that.

Ms Tongue: If you asked me what the two things are I would change about the bill, the first thing I would say is that if you knock down social housing flats, you should mandate that 10 per cent of the replacement units are social housing, which we are told will happen, but it never does—for example, the Red Hill flats.

The second thing is, if you put in a DA, you get one opportunity to put in further information about it, and after that, ACTPLA should not act as an organisation to shepherd through development applications—so the developer does not get several opportunities. In one case, we have had eight, and ACTPLA had to beg them to put in further information so their DA could get through.

MR PARTON: So you think it should just rely on the documentation that is present at the start of the process?

Ms Tongue: Yes, exactly. They cannot have several bites of the cherry. The regulator cannot be there at the behest of the regulated; they are the regulator. Sure, you might make a mistake in your DA and get another opportunity, but it cannot be backwards and forwards. That is not ACTPLA's job; their job is to decide the development application.

THE CHAIR: I think it was one DA and one chance to correct.

MR PARTON: Right at the start of the submission there is a suggestion that to improve this bill we should redraft the object of the act.

Dr Denham: Yes.

MR PARTON: You have argued that the bill fails to deliver on either the project purpose or the two objectives: "enabling resilience and sustainability of Canberra

without compromising its valued character; and providing trust and clarity of processes, roles and outcomes for the city's community." How would you go about redrafting?

Dr Denham: I would go back to the 2007 one, which is perfect. I mean, why do we want two pages of objects when in the 2007 bill it was just three sentences? I will read it out.

MR PARTON: Please.

Dr Denham: The object of the act:

> … is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—
>
> (a) consistent with the social, environmental and economic aspirations of the people of the ACT; and
>
> (b) in accordance with sound financial principles.

What more do you want? That is beautiful. But this draft thing here—why do you want to "promote the wellbeing of the residents"? I would have thought you would want to improve the wellbeing of the residents or maintain the wellbeing, but not promote it. Who are you going to promote it to? It is just sloppy stuff.

And "outcomes focussed"—we still do not know what outcomes focussed is. The government has not said what the advantages are in terms of outcomes. They have not said, "Right, this outcome will deliver that." When you look at the whole of the planning scenario, it is full of regulations and rules. There is the one that was discussed this morning—there is the adaptable housing one, with the ACTCOSS thing. That is just one there. That has got all the rules in there; you would not want to throw that away.

You are guided by rules for how many dwellings are on a block now, and there is a whole swag of rules. They could be simplified. I think what we have got now as a problem is that the criteria are above the rules, and it should be the other way round. You should have the criteria which says, "this is what you want on the block" or "this is what you want on the site", and "to achieve that, these are the rules", and you have to comply with that. Then everybody knows what is going on and there is certainty. People need certainty with the act; they need to be able to trust it. One of the ways of trusting, of course, is to see that it complies with the rules.

MR PARTON: Fair enough, thank you.

Dr Denham: I would get rid of that page at the front. There is one page and then the next things are all actions rather than objectives or objects. It is just poor. I would have done better myself.

MS ORR: Mr Denham, can I take from that you do not support moving to an outcomes-based system and you would prefer a rules-based system?

Dr Denham: We do not have any evidence that it is going to improve things. Normally, I think you get a little summary at the front of the act saying "we are doing

this" because of so and so, but there is nothing here, and it just goes straight in. There really should be something which explains what the benefits are going to be, and there is not. At least, I cannot see it, at any rate.

THE CHAIR: Can I ask about a very small thing that has quite big implications? I believe in your submission you talk about the definition of "ecologically sustainable development". Have I got my notes right? Was that one of the things that came up?

Ms Tongue: We did talk about it.

Dr Denham: Yes.

THE CHAIR: The reason I raise it is that it is a topic that came up in a lot of different submissions. We have not yet spoken about it; we have spoken about quite a lot of things. I am wondering if you had concerns about the current definition that we have in there of what ecologically sustainable development is?

Ms Tongue: It is defined as "achievement of economic growth and prosperity", which is, intuitively, a very odd definition. When we looked at that, we thought it needed a better definition.

THE CHAIR: How would you change it?

Ms Tongue: We will take that on notice.

Dr Denham: Yes, I think so.

THE CHAIR: That would be great, yes.

Dr Denham: It is a difficult question. In the 2007 act it just says "looking after the environment", and that is broad. I think now we probably need something a bit more focussed than that, because we have got to look more closely at how we plan residential houses and everything because of climate change, water resources and all the rest of it. The word I like is "resilience". We want a city that is resilient so it can cope with more people, it can cope with higher temperatures and it can cope with more water. So, I like the word "resilience" in there, and "sustainability", I think, is a good one.

THE CHAIR: I notice you do not have the words "economic development" in there.

Dr Denham: I do not like that.

THE CHAIR: Yes, interesting.

Dr Denham: Because that is a way to an end—to achieve what you want you have to have the economic development. You do not necessarily have it like that. I do not know; that is a tricky one.

THE CHAIR: What you have said is mirrored in a number of submissions, thank you. I am sorry our time is so short today but thank you very much.

Dr Denham: Okay.

THE CHAIR: Is there anything that we have not touched on during the day? We have covered quite a few things, but please tell us if there is anything.

Dr Denham: What I might do is table my speaking notes with you.

THE CHAIR: Yes, please; that would be great.

Dr Denham: There is the one other thing, the final one—it is knockdown rebuilds.

THE CHAIR: Yes.

Dr Denham: I think the biggest single complaint we have in the community is about knockdown rebuilds when there is no DA—people see this wall right up close to them, and they see this, and they see that. Even under the new bill, when they will be able to see the plans, there is still no DA needed. I think that is bad, because one house in a street can affect the whole street. It is going to be there for 50 years, one would hope, so why not have a DA for it? It is just idleness or lack of resources or something like that. Then there is no review; you cannot go to ACAT on it. If it complies with the rules, then you are stupid to go to ACAT. That is one of the things that we would really like—

THE CHAIR: You would like an improvement?

Dr Denham: Yes, we would.

THE CHAIR: We did see that in a number of other submissions too. Thank you very much for your time today.

Dr Denham: It has been good.

THE CHAIR: I am sorry it was so brief—we have had a number of witnesses. Jump in and have a look at the transcripts.

Dr Denham: I admire your sustainability!

MR PARTON: There is a way to go yet!

Dr Denham: And you are still smiling! Thank you very much.

THE CHAIR: Thank you.

MR PARTON: Thanks. We appreciate your time.

Sitting suspended from 12.50 pm to 1.33 pm.

HYDE, MR GLEN, Deputy Chair, Belconnen Community Council
ALBURY-COLLESS, MS MAREANNE, Committee Member, North Canberra Community Council
ELFORD, MR PETER, Treasurer, Gungahlin Community Council

THE CHAIR: Welcome back, everybody, to the Standing Committee on Planning, Transport and City Services inquiry into the Planning Bill 2022. We are recording and transcribing this and we are also live web-streaming. If you take a question on notice, if you could use the words: "I will take that on notice," that assists our secretariat to track those down.

We welcome today Mr Glen Hyde from Belconnen Community Council. Thank you very much for joining us. We have Mr Peter Elford from Gungahlin Community Council. Thank you. We have on screen Ms Mareanne Albury-Colless from North Canberra Community Council. I will just check before we start: has everyone had a chance to read the privilege statement and do you all understand and accept the responsibilities and the rights that are contained in that?

Mr Elford: I have.

Mr Hyde: Yes, I have and I do.

THE CHAIR: Great.

Ms Albury-Colless: Yes.

THE CHAIR: Excellent. We have really limited time, I am afraid, to cover a lot of material, so we are not taking opening statements, but we have received submissions to this inquiry; thank you for those. We have also looked at the government submissions. We have had a number of statements tabled, so if you have anything further to table, please let us know.

I am going to jump straight into the first question, in the interests of time. We have had a lot of people saying similar things. I am going to pick up one of the strands that we have had less discussion of today and that is not because the other things are not important. It is because I think they have actually been covered really well. We have had quite a few people talking about the principles of good consultation, whether or not these are properly covered in the legislation. In that context we have also had a lot of people saying that they would prefer pre-DA consultation to be put back in.

I would love to get a comment from the panel members here as to whether you think the bill has got the principles of good consultation right and whether you think they are implemented, whether you think they are given enough teeth in the act. Has anyone got a view on that?

Mr Hyde: I might start. I think we are all in heated agreement that pre-DA consultation is absolutely necessary. It has worked brilliantly in the past. One of the examples I am going to use is what the Suburban Land Agency did with the five parcels of land in the Belconnen town centre a couple of years ago. That process was

absolutely faultless. I have not seen a better process. In fact, I supported a recommendation for them to go to the national planning awards for that framework and that consultation process. If there is one positive that should be reinforced through this legislative process, it is that one.

MS ORR: Can you run us through, Mr Hyde, what the process was?

Mr Hyde: In a nutshell, the SLA wrote to the community council and said, "We want to undertake pre-DA consultation on these five parcels of land. We want an opportunity to present live to the community council and through any other workshop that may come along."

The next process was them actually turning up to the committee meeting and giving us a heads-up on their presentation. It was fulsome; it was inclusive. It told us about when they wanted to take feedback on, when they would report back on the feedback, and then any further comments that the community might have.

The next stage of that was to start implementing, by way of changing the framework around subsequent consultation, based on them having—how do I put this diplomatically?—a non-rubbish process by which to engage with the tender process and the community around what that process looked like.

The final stage of the process was: "Here is what we are intending to put out in the tender documents. This is how we intend to bring all of the concerns that you put forward to us within the contractual terms, and then, once we have our tenders come through, we will report back to you again on what that looks like." As far as we were concerned, that was probably the best process we had seen, certainly in my eight years on the council at that point.

MS ORR: Mr Elford, I do not know if you have anything you want to add in a minute or two, but I do have a follow-up question, so I will come back to it.

Mr Elford: I would like to. I would like to reiterate that the consultations we have seen from the Suburban Land Agency in preparation for the sale of land have followed exactly the pattern Glen has outlined. They have been exemplary in that they have been early, they have been well informed and they have been deep. Those engagements are then coupled to the commercial sale of the land through a tender process where the proponents have to respond to the criteria identified by the community. That is fundamentally different from simply putting a block to auction, which simply is all about price. So I would strongly support Glen's comments on pre-DA.

The other piece I would like to follow up is the chair's question around principles of good consultation. It is good that they are now in the bill, as opposed to an optional component. We, the members of the Environment Planning Forum, were asked to contribute some ideas on what would be good consultation in a workshop, in one of the EPF meetings, and that was written up. It was somewhat disappointing to not see a number of those key principles make it into the bill. I note that discussions must be well informed. Both the community and the government must be early in the process, views must be taken into account, and the government, the planning authority, should

actually approach the relevant impacted people and organisations, rather than simply putting out a public call.

MS ORR: I just want to go back to the pre-DA and the examples that you have given. We will just finish that off and then we can come back to the other one. Both of you would have a lot of different proposals coming before the councils that you are a part of. You both identified the SLA as someone who has done a good process. How does that compare to the other processes you have seen, and what has been lacking in those other processes in comparison to other proponents?

Mr Elford: Just very quickly, it is variable. That is the short answer. You will get some proponents who are clearly interested in just doing a quick presentation of their current designs, through to proponents who are genuinely interested in understanding what the issues are that the community have identified in the town centre. They will actually have a cup of coffee with members of the community council and say, "Well, we are thinking this," and we will go, "Well, have you thought about that?" and they go, "No, we haven't thought about that." There is an honest two-way around the table, rather than across the table dialogue. I think facilitating more dialogue between the relevant parties is pretty crucial.

THE CHAIR: I might just invite Ms Albury-Colless into the conversation.

Ms Albury-Colless: Thank you. I applaud the two previous speakers from their various councils and quite agree with all the principles they have outlined. The issues with not having a pre-DA and DA consultation are huge because all sorts of things seem to slip away in the absence of them. Even when you have a DA or a pre-DA consultation, I do think in many cases that the learnings, to coin a word, need to be passed backwards and forwards between the proponents and the people with whom they are consulting.

Sometimes the government needs to know about those sorts of things—what has been said—so that the consultation process can be quite a fruitful one. We certainly have had pre-DA consultations come to us in North Canberra Community Council. Sometimes it is simply a tick-the-box situation and very little that comes up through the council's meeting actually ends up in the result, in the proceeding building, so I would make a warning there.

In terms of development applications, I would make the point that at the moment we have got code, merit and impact, and I tend to think that some of the problems there, in terms of people using those codes, need addressing as well. They need to be simplified. In many cases, particularly where heritage is involved, people seem to think that code works, and we have certifiers coming in and making all sorts of nonsense decisions. In many cases they should be in merit track. Sometimes, of course, the impact is very new, particularly where environmental impact is going to be a big problem. I think simplification and the themes that come out of the negotiations and conversations need to be forwarded as well.

MS ORR: We have had an example of a good one, but we have just had a bit of a discussion here about how it is quite variable and that you will see all sorts of things. It is not uncommon for it to be a tick-and-flick process, so I guess my question—

Mr Hyde: Do you want a bad one?

MS ORR: No; it is fine. I do not think we need to single anyone out in particular, on the bad side anyway. We have heard from a number of witnesses today that they would like to keep the pre-DA consultation and that there is value in it but there is certainly scope for improvement. Some of the ideas that have been put forward have included, say, providing incentives to get more commitment there from developers, particularly those who are a little reticent to buy into the process. I would really appreciate your views, as members of the councils who see a lot of these things, as to how the system could be improved and whether you think incentives are part of the answer or what you think might be in addition to those or separate to those.

Mr Hyde: I might go first. Incentivisation of any process, regardless of whether it has to do with land or whatever it might be, tends not to work. Really, you need to have a firm set of controls at the start, in the middle and at the end which developers have to comply with. Incentivisation requires something that you are prepared to give and something that they want. We know that developers, in the simplest terms, are just looking to maximise their profit at the end of the day.

I think we went through, particularly with the Belconnen town centre master plan—and I am sorry we are doing all the north side—the low key mark. I could talk about Calwell Shopping Centre and that process, but that is for another time. I think what we have seen with trying to encourage developers to put community assets in place as part of the build, so that there is some sort of legacy piece that can live on, has not been successful at all. That was the largest incentive that we saw in the last raft of changes. My recommendation, and certainly what you will hear from the Belconnen community, is that we have lived that experience and it has not worked.

Mr Elford: Just picking up on Glen's point, it needs to go very early. While the government continues to sell blocks off at auction, block by block, the clear sign, the clear message being given, is: "We are only interested in the best price for the land." Once you start to require people who are seeking to purchase a block to meet a tender requirement and indicate how they are going to meet their community obligations or deliver a community asset, and it is actually written into the lease conditions or the contract of sale, that sends a very clear and very early message that can then be carried through a middle stage around consulting. Then the closing stages are: "Well, was that actually delivered and are there any consequences if it was not?" As much as I love the idea of incentives, unfortunately, unless there are clear guidelines and clear principles, they are not going to come through.

MS ORR: Mr Elford, I appreciate that your comments relate to greenfield land, but we see a lot of development applications coming forward for brownfields, and I think that is what Mr Hyde referred to. Did you have any comments you wanted to add for brownfields? They would not necessarily be able to go through a tender process.

Mr Elford: Certainly, my comments are based on experience, which in the last 10 years has been very much focused on the town centre, and very large-scale developments in most cases.

MS ORR: Ms Albury-Colless, did you have anything to add?

Ms Colless: Yes, I do. My main experience is not so much in terms of green space, green fields. It has been mainly to do with the Dickson area: the Coles-Doma drama in the Dickson Centre and the development applications that went through there and how very conflicted the process was. It ended up in ACAT. Eventually, Doma bailed out and I think the minister exercised his powers to call it in.

I tend to think that when you have a community council involved in a situation like that, we are very much at the whim of the people when we go to ACAT. If I can take the DA to ACAT, I am very much at the mercy of the capacity of the proponents who are wanting the development to occur and who can afford many silks and the advice of solicitors. That really does tend to put us, unless we have the capacity to find similar pro bono work, at the other side of the table, arguing through the development application and how it very much does not to fulfil people's expectations, let alone good design principles.

I do not know whether you want to talk about this, but certainly that is where we have been with the Northbourne Oval situation, where the Raiders deconcessionalised the land and valorised it. It was a land banking situation and they have now put a lot of apartments around it. Certainly, the original plan was abysmal. The second plan was a lot better, but green fields and the deconcessionalising of leases without proper scrutiny as to what is really happening is a real problem. The lack of capacity for councils to find the resources to take an application to ACAT, with the level of legal support that is required, is something that I think that the panel ought to be thinking about as well.

MR PARTON: In regard to the three submissions that are represented by this panel, Gungahlin Community Council's is the most critical. It is constructively scathing in a lot of the submission. Mr Elford, it seems as though you almost favour a complete knock-down rebuild and that you are suggesting an independent review of the Planning Bill by an external legal counsel. How would you summarise your belief that this bill has failed to achieve what it said it would achieve?

Mr Elford: At the highest level, and this is stated in the original principles document, one of the key messages the directorate indicated they had heard was that there was a lack of confidence in the planning system or a lack of trust that the planning system would enshrine and defend the interest of the community. That is what we wrote in our submission. The process of the planning reform has not taken the community—and, to be honest, industry—along with it. We have been handed material over the table. We have not been around the table in developing the new planning reform, so we have, in fact, not regained any of the confidence or rebuilt any of the trust that was required to carry forward.

Gungahlin Community Council does not have the depth of expertise that a number of the other community councils can bring to bear, so we have based our experience on trying to work changes in Gungahlin to the planning rules that apply to the town centre, because they are not delivering a good outcome. That is what we have been trying to do, and we found that enormously frustrating. As part of this process we had great hopes that it would be better, but we have been spending years asking for

worked examples of how the new system will work better than the old system and have struck out.

MR PARTON: I sense that you feel shut out by the process. I certainly would reflect that Mr Ponton has, over a number of years, suggested that he was going to radically simplify the process. Planning is complex. How do you simplify such a complex process that allows individuals without expertise to genuinely enter the room and participate? That is the question.

Mr Elford: I think the fundamental problem is that the way the community engages with government is very difficult. The community councils are small and run on a business process that I describe as "heroic endeavour". So if you get really good people who are prepared to work incredibly hard in their own time, you may get good representation of your community and good outcomes on behalf of your community, but it is extremely hit and miss.

Compare that with a local council or a local government, where the mayor is accountable for this patch of dirt and outcomes on this patch of dirt, this district or this town. We have nothing like that in Canberra, so we have no base of informed public opinion to draw upon. The current situation of the planning environment is made worse, in that I do not think that we have a great level of accountability for delivery of every individual district. Who is responsible for good outcomes in Tuggeranong or Belconnen or Gungahlin? The answer is: it is a dozen directorates, all working very hard.

MR PARTON: Mr Hyde, I can see that you are bursting to make a contribution to that discussion.

Mr Hyde: "Champing at the bit" I think is the colloquialism. I think what Peter said is absolutely true. It does not matter what region you are in. If you go and talk to Tuggeranong Community Council, they will echo the same sentiment.

MR PARTON: I will be there tonight, actually.

Mr Hyde: That will be your opportunity to push that line a little further. From our perspective, we do have some people who are very qualified. Having a panel of subject matter experts who can review decisions, who can review some of the difficulties that arise in DA processes, and having one of those seats available to someone who can liaise with the community councils and draw that community expectation and experience into the panel seems to us to be the most logical way to deal with it. I think, Mareanne, your experience of Dickson will be probably along the same lines.

Ms Albury-Colless: I completely agree. I hear the fact that we do not have expertise and I completely agree with the contention that city planning or city shaping is a system of systems. You have got land and landscapes; environment and biodiversity; people in their residences; resources, including water and energy; work; traffic; education; heritage; play; health; and government. They are just some of the systems within that system. However, we have all got lived experience. I personally have lived in India and China and Malaysia, and the experience of living in these various places,

in various suburbs in various cities, really does give us some level of expertise. Obviously, Canberra has added to that, living here.

I do think that this bill needs to be reworked. My contention would be, particularly, the lack of what I see as the capacity to adapt to climate change. I remind you of some of the climate events of the last decade. In 2003 fire destroyed 500 Canberra homes—four deaths and there was the destruction of many houses. In 2006 we had a supercell storm that damaged and destroyed homes and a shopping centre in Civic. In 2019 there was another supercell storm, with hail. Thousands of cars were smashed and there was property damage. In 2019-20 there were fires again. We have a very long and vulnerable peri-urban area, particularly around the north side of Canberra. In 2019-20 we had the plague, COVID, and that is why I am actually speaking to you from home. In 2022 a supercell storm again destroyed property.

I tend to think that there is an absence of scientific basis, metrics and modelling to underpin this draft Planning Bill. Yet it is a moment in time to take a planned city into the next decades, to look at how we can cope with this. I think that this Planning Bill does need a whole lot more work. I think a lot of work has gone into it. I can see that a lot of work has gone into it and I pay tribute to that work that has gone into it, but, basically, the objects of the Planning Bill must relate to climate change and resilience and sustainable and these must carry through to the rules and the planning controls that are going to be embedded in the proposed Planning Act, the Territory Plan and the district strategies.

I just cannot get over the fact that there are the UN sustainable cities goals. Number 11 came out in 2015 and the expiry date is 2030. If we looked at that, if we marked Canberra on that grid—and I am very happy to send that to you—I think you would find it wanting and that this particular bill, this planning bill, would not get a decent mark from that United Nations sustainable development of cities goal. We are focusing on cities here. I think this bill does need a lot of work.

THE CHAIR: I am very sorry to say that we are at the end of our time. We have your submissions, so thank you for those. Thank you for your time, both for serving on the councils and for coming in today. It is a lot of time and we do appreciate it. Thank you.

Short suspension.

KINSMAN, DR MARTHA
DAKIN, MR HUGH
MORRISON, MR RICHARD, Vice-Convenor, Lake Burley Griffin Guardians

THE CHAIR: Thank you very much for joining us today. We have Mr Hugh Dakin, Dr Martha Kinsman, and Mr Richard Morrison from Lake Burley Griffin Guardians. Thank you very much for coming to speak to us today. Can I start by referring to the privilege statement that hopefully got pre-circulated and should be in front of you. Has everyone had a chance to look at that statement? Do you understand and agree with the rights and responsibilities that are contained in that?

Dr Kinsman: Yes, I do.

Mr Morrison: Yes.

Mr Dakin: Yes.

THE CHAIR: We have very limited time today. We have received submissions and we are receiving tabling statements as well. We might move straight into questions, if that is okay, to make sure that we cover the issues that the members of the committee need to cover off in our report. I would like to open up with a bit of a chat about the definition of ecologically sustainable development that we have in this bill. We have had a few comments about whether that definition is currently balanced well. Dr Kinsman, I believe this was covered in your submission. Did you cover this in your submission?

Dr Kinsman: Not directly in this submission; in an earlier submission.

THE CHAIR: We may have pulled it from the government one. Do you have a view on whether that definition is now hitting the right balance?

Dr Kinsman: I am trying to recall. My feeling is that the emphasis on prosperity and economic development is perhaps an overreach, compared with some of the other aspects of ecological sustainability, but I will defer to my colleagues and the other people here because I am really trying to remember what I said.

THE CHAIR: Yes, sure. It has been through a couple of iterations, and if it is not something that you would like to comment on—

Dr Kinsman: No, not now.

Mr Dakin: I have no comment on that. It is a level of detail that I have not engaged with. I have broad principles that I would like to comment on, when the opportunity is presented, but the minutiae of the detail, such as that question, I have no comment on.

THE CHAIR: Mr Morrison?

Mr Morrison: Yes. I did comment on it in the submission from the guardians. I have an economics background, as well as a heritage background. I object to what I call the

neoclassical term that is used in the act and would prefer a better term, such as "economic sustainability", and/or to define the concept in a more balanced form of words. The EPBC Act, which I used to work with, defines it as "effectively integrate both long-term and short-term economic, environmental, social and equitable considerations". Those last two concepts are quite important, and I do not think the way it is defined is sufficiently useful.

THE CHAIR: So something closer to the EPBC Act might be more useful?

Mr Morrison: Yes.

THE CHAIR: That is a useful comment to make. Thank you very much.

MR PARTON: Mr Dakin, I will go to you, because I note that in your submission you are concerned about the so-called outcomes-focused system. My first question is: why? Shouldn't a planning system focus on outcomes? I know you have a specific example to bring to the table, where you are concerned that if we did have an outcomes-focused system you may have ended up with an extremely detrimental outcome.

Mr Dakin: I am concerned with the general situation, rather than the specific example I quoted. I put to you that there are two options with a planning system. You can either have a rules-based system or you can have an outcomes-based system. Up to now, Canberra has had a rules-based system, from the time of its inception, and it has served us very well. We have a very fine, well-planned city. Rules-based systems prevail in many other parts of the world. For example, the UK has a strong rules-based system. Friends of mine in Germany say that it has a strong rules-based system.

The alternative, the outcomes-based system, in my opinion, is inferior because it removes the rules and replaces them with a subjective outcomes base. It has been in place in Queensland and it has been strongly criticised in Queensland. It has been in place since the nineties in Queensland and strongly criticised there. I believe that the whole bill is fundamentally flawed. You may say it is late in the day to say that, but this is my first opportunity to say it. I believe it is fundamentally flawed. So my first point is the historical one, that Canberra has been based on a rules-based system that has served us very well, and that Queensland is not, in my opinion, served well by an outcomes-base.

Point two: I would say there is an inherent tension and opposition of interest between the development industry and residents, broadly speaking, in society. It is the purpose of a good planning system, in my opinion, to have clear rules and an independent judiciary or quasi-judiciary to decide between them so that, when the inevitable clashes between developers and residents occur, there is a framework on which that is going to be measured. That framework must be rules; otherwise you are fighting in the dark.

How can somebody argue about a building? You can argue it in the case that I quote, which is a carport, a very small thing. Nevertheless, exactly the same thing would apply with a knock-down rebuild; you would have to do the same thing with a

20-storey building. You have rules so that, for those who propose the construction and those that oppose it, there is a common rule book which society has agreed, the legislature has agreed. On that basis it can be discussed and it can be arbitrated. If it is outcomes-based, how are you to know what the outcome is until the thing has been done? It is not outcomes-based; it is looking ahead, forecasting, and we know what happens with those forecasts and we know how things change.

I am not demonising developers. They are out to make a living and to make a profit, and that is what they do. I am not demonising them. I am saying they should be controlled in what they do. The way they are controlled in what they do is by giving the community a fair way of engaging with them. That means there must be rules. Otherwise it becomes so subjective, and the developers who are in the game the whole time are going to be much closer to the development authorities, whoever is calling the shots there, than the individuals in the community. There is going to be an imbalance there of influence and association and even friendship, and that is quite wrong, because people have invested in their homes and businesses and the community and are entitled to a certain security in outcome.

So all I am saying is that there should be clear rules, and that means that there is a fair way, if we are debating it, for both sides. There should be a fair and competent highly skilled judgment body which decides between them. Therefore, I think that the whole principle of the outcomes-base, which is not even defined in the act, is flawed and faulty and should be rejected.

THE CHAIR: Dr Kinsman, do you have a comment on that?

Dr Kinsman: Firstly, I would like to note that my submission to the planning review is number 44. I am sorry I did not refer to it in this current submission. I could not find it for a while because there were no names attached to individuals in their submissions, only organisations, which perhaps suggests a bit of bias in its own right.

I guess my position is that, first of all, the outcomes-based approach is, as I think has already been alluded to, it is not really an outcomes-based approach; it is an intention for an outcomes-based approach. In other words, it is a planning outcomes-based approach. I was involved some time ago in a number of big project evaluations in overseas aid. The whole point about them is that the planning needs to be monitored, needs to be evaluated, needs to be fed back ex-post into the next project. There is no provision for that; there is no awareness of anything. The principles that they talk about as being the principles for getting to these outcomes are planning, consultation, design principles. There are inevitably a number of trade-offs between them. There is nothing that will allow you to have a perfect answer to each of those principles in one building.

Given that, I think the governance model—and this really goes to my submission—is inappropriate if you are going to have an outcomes-based or outcomes-focused approach. The governance model is for a single, individual authority with really no accountability, even as a statutory authority, and no annual report that appears before Assembly, let alone any accountability more directly and more regularly to a planning committee or even a minister. If you are going to have a single authority like that, I would agree you have to have, absolutely, a rules-based approach because then the

rules that that authority is expected to implement can be scrutinised, appealed and so on.

If you are going to have a more general, more nebulous kind of approach to planning, you may get good outcomes. It is a very high risk. You may get very bad outcomes, but what you have got to do is to make sure that the balance between all those principles is a balance that has community authority behind it. In a previous submission I think Caroline Le Couteur and a lot of people suggested an advisory committee and suggested input through a structure of district committees. I guess what upset me most and surprised me most was that those suggestions made in earlier submissions to the planning review were simply ruled out of scope. There is no major change to the current governance; therefore it is going to stay the same, even though everything else is being turned on its head.

I think that the inconsistency between talking about outcomes and good design principles, many of which can be contested in their own right, and then keeping the governance model that is really an implementer of rules—and you can scrutinise these and appeal these—is extraordinary.

MS ORR: It is interesting because I think it is fair to say that there were witnesses in the last session too who were quite strong on wanting to stay with a rules-based system, but then we had witnesses this morning that were saying that there is a level of tension with rules and with other parts of the planning system as it currently is now which is not actually helpful to anyone. I think it is fair to say that there was a sentiment put forward that having conversations earlier on the path and up front and building a consensus is important. It is about acknowledging that there is a different level of enthusiasm from proponents on this approach, but having that conversation early and coming to a consensus will actually get to better outcomes and move away from this idea of a litigation-heavy planning system. I am really interested to hear your views on that, given the comments that we have heard so far.

Dr Kinsman: I am all for consultation up front. I cannot understand why the pre-DA consultation has been removed from a bill that says it wants more community engagement. I have included an example, I think, in the submission of where, with an amended DA, consultation might have fixed the problem in the Lawson stage 2 estate, so, yes, I am all for that.

The problem with outcomes, when they are so nebulous—and my other concern—is that they are unappealable. How can any judicial system sit there and say, "I don't believe that you had your good intentions or that you really thought that this was the right balance. I don't believe you thought it was the right balance"? You cannot judge people's intentions. I think there needs to be more engagement, certainly, but I think it has got to be engagement with authority, not project by project. I do think there needs to be an advisory committee that can talk to the minister. I think that has worked well in the past for the ACT in some instances, some examples.

I also think that the bill implies that when the Territory Plan comes up that is where all the rules and the standards will be, but from what I have seen of the Territory Plan in the very short time that we have had to have a quick look at it so far, there are no rules there. In fact, RZ1, RZ2 and RZ3 can all do the same things, except RZ1 cannot

have co-housing. I do agree with—I cannot remember the name—another submission that really this bill should not go through in advance of the Territory Plan, checking that it has got enough standards.

Mr Morrison: That was said in our submission as well. I would like to say something about outcomes versus rules. I am only aware of one—there are very few—study of outcomes-based approaches to planning in Australia. The one that Mr Dakin referred to, Queensland, is where it has occurred. I will just quote something from the person who did that study, six years ago, Jennifer Roughan. It was called *Performance Based Planning in Queensland*. She concluded:

> … added to the complaints from within the industry of complexity and a lack of efficiency—

so it is the industry that complains about it too, not just the community—

> there are increasing signals from communities (and elected representatives) that all is not well—possibly a lack of confidence in the system, and certainly confusion about what means what.

I think that is a good summary of what we have been hearing about outcomes-based approaches. If that is one of the rare commentaries on a system that has been in place for some time then I think we should be listening to that.

THE CHAIR: I am very interested in implementation and enforcement, and there are quite a few areas there. There are the controlled activity orders that individuals used to use. Also, we are trying to get our heads around how ACAT is going to work in this system. I would love to hear a comment about what we need to do on enforcement and implementation with this bill, if it is going to work. I cannot tell if you have an awful lot to say, Dr Kinsman, or absolutely nothing.

Dr Kinsman: I guess at the moment my sentiment is despair, because when you look at the way that they are talking about outcomes, it is all of these principles. As I said before, I cannot see how they are appealable, because it is all in the intention that the territory authority, the one person, decides that the balance is right. Any internal review is a review by him of his own decisions, or her of her own decisions. I think the whole notion of this sort of autocratic approach combined with outcomes makes ACAT very difficult.

It would be possible to put into this bill, I guess, a provision for an independent non-judicial mediation review, but it would have to be independent of the territory authority and therefore there is a question of who it reports to. That suggestion was rejected out of hand in the earlier debates and discussions, as I understand it. The other thing, it seems to me, is that if you are going to have an outcomes-based process—which I am not in favour of; I am in favour of some sort of rules-based process—then you have got to have standards, monitoring and evaluation that says, "Was this outcome translated on the ground?" If it was not then there has got to be some accountability. It strikes me as much messier than a rules-based approach.

The other thing that I think people find is that the expense of going to ACAT, with, as somebody mentioned earlier, all the silks and so on is difficult. I saw some time ago a

suggestion, at least two election terms ago, that a citizens advocate be appointed to advocate for citizens in relation to the discussions around these major developments and new estates in particular so that people who are trying like mad to understand "Is this a good design principle?" or "Is this what this rule is?" do not have this perception of unfairness when the decision goes against them. Part of the lack of trust in the system is that people are not qualified and do not spend enough time reading rules and understanding rules, and they certainly do not spend enough time understanding exactly what is in the mind of a sole authority in terms of outcomes.

I think a citizens advocate or an ombudsman-type person who intervenes on behalf of citizens and residents might in fact go some way to solving the problem of the merits review. I do not think you can simply get rid of it. There are some suggestions that judges are not accountable, but of course there is a whole judicial system above ACAT, so I just do not think you can get rid of an administrative review anyway.

THE CHAIR: You made one comment earlier about an independent non-judicial review that was dismissed out of hand. Did I hear you right that that was a suggestion that came up earlier in the planning review and it was automatically dismissed?

Dr Kinsman: Yes.

THE CHAIR: Was that in sessions? Where was that suggestion made? Or was it in submissions that you made earlier?

Dr Kinsman: It was in submissions: the idea of an advisory committee or a separate review committee, not a design panel review but a review of decisions, internal, pre-judicial, I suppose, and non-judicial—I can't remember. All the governance stuff was ruled out of scope for that review.

THE CHAIR: Thank you.

MR PARTON: Mr Morrison, the Lake Burley Griffin Guardians' submission makes some comments about territory priority projects which line up with a number of the Planning Institute comments from this morning. You are a little concerned about the concept of territory priority projects and the way they would be chosen. Certainly, your comments in your submission lead us to believe that you have almost got a vision of a planning dictatorship overseeing certain projects. Is that too far?

Mr Morrison: No, I think that is pretty accurate. We have seen it operating in some states already where you have a premier's department or a parallel premier's department with a major projects unit of some sort and they lift up projects that they see as appropriate to progress. Frequently, under those circumstances all other planning controls are wiped and not adhered to because it is a priority project. I do not think the community would be happy with seeing that in the ACT. There has been a lot of controversy over it in other states and territories, where major projects have gone ahead and heritage has been trampled or the natural environment has been trashed on the altar of someone's choice that this is a major project and it should be fast-tracked. That is our position on it too.

MR PARTON: Does anyone else on the panel have concerns with the territory

priority projects?

Dr Kinsman: Only similar to what has been mentioned already. I share that.

THE CHAIR: We had, earlier in the day, discussion about territory priority projects and whether they should exist at all, and whether they should be for public projects only or for public and private projects. I do not know if that makes a difference.

Mr Morrison: Not at all. Neither, I would suggest.

THE CHAIR: Yes; okay.

Mr Morrison: At the moment we have discussions about the stadium in Civic, for instance, and I am sure the Chief Minister would like to see that as a priority project. Around the lake we have got west basin too, and the city to the lake project, which is similar, and I think there are considerable concerns about those. But the protests that exist would have no teeth, if you like, against those projects if they were seen as priority projects. I think that is legitimate; the democratic protest should be continued, allowed.

THE CHAIR: I would not mind having a bit of a chat about estate development plans. Did you make comments, Mr Morrison, about estate development plans?

Mr Morrison: Yes.

THE CHAIR: Yes. I think you raised some concerns about estate development plans and the role of community consultation in those. It is very much related to the area we are talking about.

Mr Morrison: Except I cannot find it. Perhaps someone else can start and I will remember.

THE CHAIR: Dr Kinsman?

Dr Kinsman: I made one comment and it was to do with the explanatory statement. It was to do with reducing government prescription to provide "space for developers, and therefore owners," to make decisions on how to achieve planning outcomes. There is a hierarchy there. But I did talk about the need to encompass the needs of renters and aspiring owners in new estates. That is very hard because there is no residents association or anything like that.

THE CHAIR: No.

Dr Kinsman: It was a peripheral comment to the more general points I was making. But I did make that point about new estates.

THE CHAIR: Yes. We have had quite a bit of discussion today, and it comes up regularly. It is a difficult thing, consulting with residents is important, but also consulting with the residents who are not yet there, or the renters who maybe do exist but are not necessarily in forums where government consults. I have to say we have

not really heard any particularly actionable ways to do that. It is quite difficult. The closest we got was sample polling. That was one of the ideas that came up from Greater Canberra. Have you had any thoughts about how we can get the voices of those people in the room?

Dr Kinsman: The only suggestion I would make, and it comes back to the whole process of monitoring and evaluation, is that there should be an ex-post evaluation of an estate. The example I would like to use, I think you are aware, is Lawson stage 1 and stage 2.

THE CHAIR: Yes.

Dr Kinsman: If there had been a full evaluation of stage 1 Lawson, I do not think that they would have the same planning problems or anticipate the same sort of planning design as they are for Lawson stage 2. I think you can look at new residents in an estate as surrogates for renters and aspiring residents. There are also other groups that are speaking on behalf of renters and so on. There is no easy solution. I am not sure that it is a perfect solution, but it is a locum suggestion.

THE CHAIR: Talk me through Lawson stage 1 and stage 2—not the minutiae, but talk me through what sort of audit, what reconsideration could have usefully been done that would have led to a better outcome.

Dr Kinsman: I will give you one example. The location of Lawson stage 1 is across the road from the University of Canberra, which introduced paid parking. All of a sudden, Lawson stage 1, which was really a dormitory suburb and had a very transient population—most people are not going to stay there; it is not their home for life—became an active travel destination for people to park their cars. The roads are very, very narrow. There has been a travel evaluation since then, but unfortunately I do not think it was done when the University of Canberra was particularly active. What has happened now is that, because people have spoken about that, me included, in a pre-DA consultation for Lawson stage 2, I understand that the roads are going to be widened and there is going to be more parking provided. In other words, this sort of continuous evaluation of what has happened, we do not see it much.

THE CHAIR: Thank you. That was a good example in practice, pre-DA. I think we should open it up to see what the panel would like to tell us in the remaining few minutes. We have had a day of hearing. We have covered a lot of material. Is there anything that you think we probably have not touched on or that it is important for us to know?

Mr Dakin: I think I would be likely repeating myself because my views on the matter are global. My wife said to me, "How can you possibly go and talk about that? You have not read those hundreds and hundreds of pages of material." I said, "No, I do not think I need to." Let us say, for example, that they described that they were going to introduce a 500-page law introducing the death penalty for speeding offences. I do not have to read 500 pages of that to say that, right from the outset, I think that is a faulty idea. I do not have to wade through all the detail.

I believe that to move from a well proven rules-based system which can give fairness

to opposing views—which there always will be in development matters—and to replace it with a highly subjective outcomes-focused system which greatly advantages one side, the development side, against the other side, is wrong. My objection is at that level, not at the level of the minutiae, which I think maybe leads one down rabbit holes that could be left for later. I think it is faulty legislation.

MR PARTON: Mr Dakin, I am pleased that you are able to have robust and respectful conversation with your wife on these matters. Her contribution is also noted.

THE CHAIR: Mr Morrison.

Mr Morrison: Yes, I agree with that. However, I did try and read as much as I could.

THE CHAIR: Good on you.

Mr Morrison: I would like to direct the committee to a resource. I do not think they would be here, being interviewed, or have made a submission. It is a group called the Canberra Planning Action Group.

THE CHAIR: We spoke to them.

Mr Morrison: They have. Good; okay.

THE CHAIR: Yes, we had them earlier today.

Mr Morrison: They have spent a lot of time producing informed papers on a lot of the topics I am sure you have been hearing about. I think it would be worthwhile reviewing those papers to inform yourselves about the comments that academics and other long-term planners have made about it.

THE CHAIR: Yes; thank you. We did hear from them and got their submission, and they were also quoted by quite a number of other submitters. Yes, that was quite helpful.

Mr Morrison: The Guardians are a very focused group on a particular area of land and adjacent land within the ACT, of course. But we are commenting because what we are looking at there has a context, and that is the ACT planning legislation. That is why we are here. But the CPAG has a wider brief.

THE CHAIR: Yes. Thank you. Dr Kinsman, was there anything else you needed to tell us?

Dr Kinsman: No, I think it has been covered by these gentlemen. Thank you.

THE CHAIR: Thank you very much for coming in today. Thank you for your time and your submissions. It is a large topic. Much appreciated.

Short suspension.

BRADNEY, MS KATE
PINKAS, MS GEORGINA MAY
FIELD, MR TIM

THE CHAIR: I welcome our next witnesses: Ms Kate Bradney, Ms Gina Pinkas and Mr Tim Field. On behalf of our committee, thank you very much for giving up your time both in submitting and in turning up today. It is much appreciated. Have you all had a chance to look at the privilege statement and do you understand and agree with the rights and responsibilities in that statement?

Ms Pinkas: Yes.

Mr Field: Yes.

Ms Bradney: Yes.

THE CHAIR: Great. We will begin with the first question from Ms Orr.

MS ORR: I am going to stick with the same theme that I have had for most of the day and what a lot of people have brought up, which is pre-DA consultation and consultation more broadly. Ms Pinkas, I will throw to you first, but everyone is welcome to have a go at answering the question. You pointed out in the submission that pre-DA consultation should remain and that there should be various improvements made to the guidelines. Could you just run us through your thinking on that? I know you have been watching some of our other hearings and some of the comments we have had earlier in the day around how the pre-DA consultation process could be improved.

Ms Pinkas: Unfortunately, I am not an expert on that. That is not my focus. My focus was just to support the other comments that it is essential. But I have never been involved in pre-DA.

MS ORR: Okay. What about just consultation more broadly? How can consultation be improved? It has been one of the more consistent themes that we have had throughout a lot of the submissions.

Ms Pinkas: Yes, it is, but I think it has been well covered, so I would rather focus on other things. But, of course, I do not wish to disagree with you. As I said in my paper, consultation must actually be accountable. So, if you are making a comment, not just saying "noted" or talking about what is going to happen or saying "not agreed", say why it is not agreed. If people get value from their comments, they are then encouraged to make them. But, if they just disappear into the ether, it is a very disappointing exercise and a waste of time.

Certainly pre-DA consultation is important in terms of, as everybody said earlier, going forward together with the developer as well as the community. I would have to say that I was a bit disappointed that so much emphasis was given in the bill to when they said consultation with the community and others. Well, the only others are the developers.

I do note the comments that people have made about the power. Having worked in a minister's office, I have seen how people can become susceptible with friendships and whatever in terms of developers and yet the community may only have a one-off exposure. It is a really fraught thing that we need to be very careful about.

This is a little bit off track here, but we do not the normal access to councils when a proposal comes up and we do not have the provisions that they have in the states in terms of talking about developments and making submissions to councillors. I think that we need something like that in the ACT, because at the moment it is very much within the planning authority and you very rarely get to see the minister discuss any of these issues.

MS ORR: Ms Bradney, you were nodding your head at various points in that. Did you have something that you wanted to add?

Ms Bradney: No; I would just agree.

MS ORR: Mr Field?

Mr Field: No. It is not my area, either. I have a particular focus and, at some point, if I could, I would like to set some of that out.

THE CHAIR: I will make sure that we get to it.

MR PARTON: Mr Field, I might see if I can draw you to that area that you would like to discuss, which I am assuming, based on your submission, is about discretion and outcome-focused planning. How would you like to change the bill so that the outcome-focused planning and the discretion that is involved in that does not impose itself in a way that you would not like it to impose itself?

Mr Field: Could I crave your indulgence and answer that by first setting out some very basic stuff about the bill which has not got a lot of attention?

MR PARTON: Yes.

Mr Field: Basically, what that is it is a major deregulation exercise. There are still some mandatory rules—they are about the number of buildings you can build et cetera—but all that other stuff about privacy, setbacks, solar, heritage and variation 369, which we all spend a lot of time on, is no longer mandatory. They are just now called "technical specifications". If you conform with them, you get a tick; if you do not, you can still go ahead.

That is when we get into the discretionary stuff. If a DA actually breaches some of those technical specifications—say, it blocks someone's solar access—it does not get rejected. It goes through and then it is assessed against all those fine sounding but very difficult to pin down qualitative statements about good planning outcomes. Then there are all sorts of and there are all sorts of–well, they are not explanations; they are just re-articulations –they are not explanations—rearticulations and it is very vague. The problem with that is that if a planner uses their discretion and approves a lot of

stuff, it is going to be very hard for anyone to appeal against it because it will all go to the Supreme Court very quickly and there will be lawyers all over it.

Relatedly, it will be very hard for the planner to knock anything back because, again, we are talking money here. So, if I had to get up to defend in a court a statement that says the proposal should focus on people, how do I use that as a basis for decision-making? It is very difficult to pin down and make them reject things on the basis of statements like that. I think we will end up with a lot of confusion, a lot of inconsistencies and a lot of conflict as a result of basing everything on those very fluid principles.

I think three things should happen. One is that the bill should have a statement which says that a DA cannot be approved if it reduces the amenity of surrounding dwellings. Are we say that good planning outcomes means reducing the solar access of buildings or privacy? Say a developer wants to build right up to the boundary and it knocks off someone's solar access, we should not allow that. If by doing that it does not knock off someone's solar access, let us consider it. So there is a bit of flexibility there, but you can so long as it does not detrimentally affect others. If there was a statement like that, it would reduce a lot of conflict and it would help community acceptance of the whole process. I think there is a fear that it will be anything goes, a free-for-all, and people will lose amenity as a result of it.

The other thing I would do relates to these technical specifications, which are all the things that are now mandatory—the living infrastructure, solar access, heritage et cetera. They are currently in a document which has no legal status and can be changed by the planner overnight. So I think they should all definitely be in the Territory Plan and they should only be able to be changed through a disallowable instrument—if that is the word. Otherwise, they are not protected and the industry will lobby to water them down. I think if you did that it would protect those statements.

Finally, if we think that things like solar access and the living infrastructure provisions are important, let us just make them mandatory. There is plenty scope in all of this, because of the whole looseness of it. Given all the nice words about climate in the bill, you would think, "Why are we knocking off the mandatory provisions for solar and planting?" It is a bit strange. That is a very roundabout answer; I am sorry.

MR PARTON: No; that is a wonderful answer.

Mr Field: It is basically saying that, if you take it at face value, we do not want to destroy the opportunity for innovation but we do not want innovation where other people basically pay for it and suffer by losing amenity, and there are certain things, particularly that technical standard, that have to go into the Territory Plan and be protected. That is just trying to get a bit more balance.

THE CHAIR: That was an excellent answer. Thank you, Mr Field. Ms Bradney, I would love to talk to you about controlled activity orders. We have not had a lot of chat about it today, but they are not in the new bill and they are one of the few ways that community members have to take enforcement action. Can you talk me through how you feel about that?

Ms Bradney: I am really worried about it. I want to preface that by saying that I have kind of fallen down this legislation rabbit hole in the past year and I never really have had much experience and background. I am just going to try my best, but I come from a place of really being passionate for the environment, active travel and the liveability of my community.

What sent me down this rabbit hole was that there is a dangerous crossing in my community, and I started to have questions. Community members have a unique position to see what is happening in our community because we live there, we see the little things, we ask the questions and we kind of investigate. I guess we fall into noticing these things because it is part of our lived community. But you asked controlled activity orders. I am so sorry; can you please repeat the question?

THE CHAIR: At the moment, the bill does not have controlled activity orders in there but the act does have controlled activity orders. A few submissions, including yours, have been a bit worried about what the actual implications will be if something is built and how community members would have a tool of enforcement.

Ms Bradney: Currently, in the old bill, there is an option for the community to put in an application for a controlled activity order. If the planning authority makes a decision to take no action against something that we think is an illegal development, there is really no accountability. If they dismiss the complaint, there is no accountability and ability for us to take that to ACAT to challenge it and understand. That is something that is available in the current bill but not in the new bill. The new bill takes out the option for the community to do a controlled activity order and only lets them put in a controlled activity complaint, which is not a reviewable decision. It really does close the door on community advocacy.

I have a very timely example for a legislative change. My community and I put in a controlled activity complaint against a car park. We got a response back from the authority that said, "We're going to dismiss the complaint and take no action against the development because we do not think it is of substance." This was alarming. We had prepared 100 pages of evidence in that it was a controlled activity. It is just very alarming. I also submitted an FOI to ask what evidence was used to make that decision. I got that back on Friday, and they used no evidence. No investigation was actually conducted. It is just a very timely example for right now because it shows that you can just dismiss a complaint without any evidence. I have copies of the FOI that we got back, if you would like a copy.

THE CHAIR: It would be great if you could table it, yes.

Ms Bradney: How do I do that—just give it to you?

THE CHAIR: Yes, if you could give it to the secretary. Would you like to table it?

Ms Bradney: Yes. I will stop there, if that is okay.

THE CHAIR: Thank you.

MR PARTON: You have done good.

THE CHAIR: You have done great.

Ms Bradney: I am sorry, but I am not a very good public speaker.

THE CHAIR: That was excellent.

MR PARTON: You are all right. We are just making it up, too!

THE CHAIR: You have given us some great evidence that we will be taking back to the minister later on.

MS ORR: Ms Pinkas, I asked my question and you said you wanted to talk about other things. Would you like to tell me what those other things are?

Ms Pinkas: Yes; thank you. You will note in my submission that I raised the leasehold system. The leasehold system is practically ignored these days. The basis of ACT land was a leasehold system, and I think it is time that the Assembly actually recommended that we have a review of the leasehold system. I am happy to talk to anyone personally about that later. I have a huge paper that I did not bring with me because it was a report done in 2005, and I do not think it is fair to people to table it as a public document.

The other thing I wanted to talk about was public land. We know there have been incursions on public land. Land classified as "public land" under the Territory Plan was brought in at self-government to protect things like ovals, sportsgrounds and whatever, and there has been a sneaky little incursion on some of them with car parks and all sorts of things. I think that is something that the bill needs to be strengthened in.

The other idea, which I did not put in my paper but it has come to me, is that we need something like a planning ombudsman or somebody that you can actually refer those sorts of issues to rather than going to ACAT. I have been to ACAT, and we won, actually. That experience showed that outcomes-based planning is really fraught. One of the issues that we won was that a development in Chifley was not in character with the rest of Chifley, which was pretty 1970s at the time. That was a silly sort of criteria to win it on. What I am trying to say is that, although you can go to mediation at ACAT, most people just prefer to go through to the actual review. That is an issue that concerns me.

As per my introductory statement that I gave this morning, evaluation—which was mentioned in the previous session—is essential if you are going to have an outcomes-based planning system. I agree: I do not think an outcomes-based planning system is the way to go. I have seen how the planning authority has not looked at issues like innovation, character and all those things in the past. So why would they look at them in the future? It needs a very skilled and a dedicated workforce to be able to have an outcomes-based planning system, and then it must be evaluated—because how do you know if you have achieved the outcome if you do not evaluate it?

I think they are the key things that I wanted to emphasise in my submissions.

THE CHAIR: Ms Pinkas, you mentioned land banking concerns. Can you expand on that? Can you talk us through as if we were eight years old?

Ms Pinkas: I cannot remember the exact date, but before the 2007 act, which was when the earlier act from self-government was reviewed, you could not use a lease. So, if I bought a lease and I was a developer, I could not mortgage that lease to build somewhere else—and this is part of that review of the leasehold system I was talking to. That has been abolished because the lawyers wanted to abolish it. The problem with that is that people are land banking and using land for other purposes rather than for the purpose of building on the block.

In the good old days—as she says as an older person—you could not sell land without having something built on it. I know that we have second agencies that sell land. It does not matter. You cannot trade in land. That is the point. One of the major facets of the leasehold system was that you lease the land and you had to develop the land. Under the new system it is a moot point where the point of sale is, because we have got the different agencies. But to be able to sell land willy-nilly, which is what people are doing, is really causing an increase in the value of land and, therefore, the cost to the people that need the land to live on. That is why I am recommending that we have an inquiry into the leasehold system and how it fits into the new planning systems. I think that is really important.

MR PARTON: Ms Pinkas, I know you have touched briefly on this, but I just want to get back to it, if I could. You have a section of your submission where you suggest concern for changing the words that were used to describe a technical variation to a minor variation with some of them requiring no consultation. Can you talk me through that consent?

Ms Pinkas: Yes, I can, because I was actually working for the minister when the technical variations came in. It was based on the fact that they needed to move a bike path, and you had to go through the whole variation of the Territory Plan, which we know is an onerous process. The minister at the time agreed to have technical variations. I was absolutely aghast to find, when I came back from a trip overseas, that a technical variation been used.

At that stage, the technical variations did not have any consultation whatsoever and were not referred to the Assembly; they were just done. That is fair enough if it was just to move a bike path or something. However, it was not supposed to change policy. What happened, which most of you may be aware of, is that it was classified as community land where you could have supported accommodation, which means someone living there supporting people—

MR PARTON: Yes; I recall. I was involved in the debate.

Ms Pinkas: When I came back, there was hot issue. The issue was that that was changed as a technical variation, which should never have happened.

MR PARTON: In 2015?

Ms Pinkas: Yes, about that time.

MR PARTON: December 2015.

Ms Pinkas: In my opinion, it should never have happened, let me say. If the outcome was good and they released land for housing, that may have been a good outcome. But the process should have been a public process where the community and the Assembly were fully involved. That is my concern with this now in changing a technical variation to whatever they are calling it now.

MR PARTON: To a minor variation.

Ms Pinkas: Yes; and saying that you can change policy aspects. How far do we go? What is the limitation of this? In my submission I referred to encroachment. That is a different issue; I am sorry. How much can you encroach on public land—that much or this much? But, getting back to the technical variation, I am glad you brought that up because one of my major concerns with the whole new regime is the fact that these variations should be only technicalities because, otherwise, that is why we have the Assembly. If we vote in people that allow these things to happen, then that is our fault. But, if they do not know about it, then it is not their fault or our fault.

MR PARTON: No. I agree completely.

Ms Pinkas: I thought you might.

THE CHAIR: We have had a few comments about what level of skills and staffing the authority might need under this new system versus what they have now. That has come up a few times, and it is sort of touched on in some of the submissions here. It is difficult for a committee like ours to come up with really useful recommendations. So anything you can think of would be good. But I think the best we got so far today was that perhaps decisions are not being made quickly enough with enough qualifications and expert staffing in there and it needs to be better under an outcomes-focused system than it is now. I do not know if anyone has got any comments on that. If there is anything specific that you would tell government about how to recruit—how many people and what levels—and what the risks are if we do not do it right that would be very helpful.

Mr Field: I can perhaps add something here—though not in the planning space. Many years ago I used to run payments in the welfare system—unemployment payments and something called "special benefit", which was the sort of payment where we felt people should get some money but they did not fit in a category. You might have 50th of the number of people on special benefit compared to unemployment, and you spent three-quarters of your time dealing with that tiny payment because of its discretionary nature.

So I do not think you can just elevate it up to senior people. I do not think that works, particularly if people are looking at time pressures and you are trying to set performance outcomes based on dealing with things in a timely manner. The traditional way to deal with that is obviously training. You have to pick people of a certain level of skills but you really need a whole lot of framework and guidance to get consistency. Again, with the welfare system across Australia, one of the huge

challenges is getting consistency where there is discretion.

Even in a small city state like this, it will require a fair amount of training materials and guidelines. The question then arises: "Well, if the staff have got these guidelines, why are they not out there for developers and the community, because then we can all see if we are all heading down the same path?" Rather than people going after them forever, it should be a conscious thing, like, "Here are the guidelines and the training materials," and we can all get a feel of how we are trying to interpret it. Basically, it should not be a secret.

That is the way I would handle it. They are going to have to invest a lot of money in training and training materials. And, as I say, if you are trying to use them as public education materials at the same time, you get a bit more return for your investment.

THE CHAIR: That is very sensible. Thank you.

Ms Pinkas: I totally agree with that. We did a lot of training in the past on various issues. There was actually a TAFE course run in about 2003 or earlier than that for officers of the planning authority to learn how to do assessments and whatever. It was a TAFE course and you got accreditation and whatever. That was excellent. Again, it was on the leasehold system, but it was very, very good and you got consistency.

There is a difficulty because the workflows in the planning authority change, depending on what development pressures there are and whatever. So you will not always need the same sort of staff level. Developers and proponents of DAs were complaining about time frames, quite rightly. I always thought that we should have a fast-track assessment where you could actually pay extra to pay for staff. The budget for the planning authority is set by Treasury. That is one of the reasons that an external planning panel, made up of very good experts, was abolished—because cause the funding for ACTPLA was cut at the time.

The issue is that demand is different over periods of time. The planning authority does not have a great deal of planners to pull on. They mainly have landscapers and people like that—and that is another issue. There is not really a thorough training course. I would say that a CIT training course would be an excellent way of actually skilling up people. I know some people have got degrees and they would think that they should not be going and doing those training courses. However, you can have modules in it. I would emphasise the skills, because if we are going to an outcomes-based assessment, I just cannot imagine how it is going to be consistent, how it is going to be fair et cetera. I am quite aghast at the thought, actually.

THE CHAIR: Ms Bradney, feel free to comment if you want to come at it from a different perspective, such as what assistance government could provide community members to navigate this.

Ms Bradney: That sounds incredible—some support for community members—as a complete layperson navigating this space for the first time. Some sort of ombudsman or support to provide support would be incredible.

But I just wanted to add something on the training and skills of the planning authority

and the people making those decisions. I am so sorry to talk about my very hyper-local example, but, as well as a lack of training, there might also be an issue with accountability. I think the important thing to keep in mind is the need to have the ability to review and that there be accountability and transparency of the decisions that the planning authority makes.

It might be in some cases that something happens just from a lack of training, but it might go all the way through to maybe even a questionable decision. That is not a nice thing to say, but I think an important safety net for that is to have an avenue to review and to have accountability and transparency. But I think an important safety net for that is to have an avenue to review, having accountability and transparency and, as well as training, having guidelines. When they are making these technical decisions, having some clear guidelines that the public can see and follow would, I think, help.

THE CHAIR: That sounds very sensible. We had quite a lot of comments this morning about the need to give reasons for decisions. The fact that you have lodged FOI suggests to me that perhaps you were not given reasons for that decision if you felt the need to lodge an FOI. Have I got that right?

Ms Bradney: Yes. The reasons were very clearly not based on fact. They seemed to be really trying to sanction this development into legislation. In this particular case, they quoted their own work from a previous role, which popped up some red flags for me, in that it actually seemed deeper than just an oversight, that there actually seemed like there might be some questionable stuff going on. It was just a very a red flag situation.

THE CHAIR: That was a great session.

MR PARTON: Yes; it was good.

Ms Pinkas: Could I just add one point?

THE CHAIR: Yes, please do.

Ms Pinkas: We were talking about having a community advocate. I think that is essential, especially from my work at Woden Valley Community Council. I knew what I was supposed to be looking at, but it was a huge amount of time. If there was a position that communities could go to, that would be absolutely fantastic.

Mr Field: I would reinforce that, given these very vague principles et cetera. A lot of this stuff is going to end up in the court initially. People are going to have to try to find out about this. Someone has to interpret some of this stuff. An office of community advocate or some planning advocate could act as a source of, ultimately, resources and lawyers. At the moment, if we go to ACAT and get knocked back, what are we going to do—bankrupt our families to go to the Supreme Court? Hence it does not happen. So something which gave some resources to take that next step and help would be beneficial. As you know, it is hopelessly unbalanced between the people who are going to make some money out of this and the people who are opposing it.

Ms Bradney: It is often the community and people, who do not have a lot of money, who are speaking up on behalf of the environment and the public spaces. We are not

doing it for our own vested interests; we are doing it to keep our community liveable and keep our green spaces. So I think it would be great if we had some support and someone to go to.

Mr Field: Yes, it is an unfair fight.

Ms Bradney: The money is prohibitive.

Mr Field: Absolutely.

Ms Pinkas: Even the knowledge is prohibitive.

Ms Bradney: Yes.

Ms Pinkas: I have a point on territory important projects or whatever it is call.

THE CHAIR: Territory priority projects.

Ms Pinkas: I cannot see the difference in the call-in powers that the minister has. Maybe there is a difference, but I just think the call-in power now is that the minister says, "Okay; call it in," you decide it and then you notify the Assembly. I do raise the question of notifying and disallowable instruments, which I will leave you guys to work out, but it is notifiable. Maybe there is a difference, but the call-in powers when I have observed them have worked quite well, because the minister is accountable to reporting to the Assembly on why he or she called it in. So I do not see why we need to have an added complication, but I could be wrong.

THE CHAIR: I do not know if this was in your submission or not. I did read it and I cannot recall. Did you have a view on whether territory priority projects should only be for government projects or whether they should be for government or private projects?

Ms Pinkas: No, I did not express that view.

THE CHAIR: It was one of the ones that came up a few times.

Ms Pinkas: No, because the call-in power could be used for anything.

THE CHAIR: I think the main difference with a territory priority projects is that it is declared upfront and then the DA is lodged. So there is a degree of certainty. But, yes, the points you make have been made by others.

Ms Pinkas: It goes through the process and then you think, "This is not getting anywhere; I will call it in and approve it or not approve it."

THE CHAIR: We have thoroughly enjoyed this panel of rational human beings with some very practical suggestions, and I thank you for that. I thank you all for your time and your experience, too. We got some really, really unique perspectives and it has been great.

Sitting suspended from 3.08 to 3.30 pm.

HUGHES, DR CAROLINE, Co-Chair, Dhawura Ngunnawal Caring for Country Committee
BROWN, MS ROSLYN, Member, Dhawura Ngunnawal Caring for Country Committee
MUDFORD, MR STEPHEN, Member, Dhawura Ngunnawal Caring for Country Committee
MUDFORD, MS MARY, Member, Dhawura Ngunnawal Caring for Country Committee

THE CHAIR: Welcome to the Standing Committee on Planning, Transport and City Services and our inquiry into the Planning Bill 2022. We are recording and transcribing these proceedings, and they are also being webstreamed or livestreamed. I might just check with everyone here that you have read and received the privilege statement and that you understand and accept the rights and responsibilities in that privilege statement.

Dr Hughes: Yes.

THE CHAIR: Great. That is excellent. I would also advise that, if you take a question on notice, if you can just say, "I will take that on notice", it will help our secretariat to track down the information later on.

The committee will now hear from the Dhawura Ngunnawal Caring for Country Committee. Thank you so much for making the time to come and talk to us. It is a big review, and it is really important that we get the right voices in the room. So I thank you for that. We will jump straight into questions, and I will start.

I am interested to hear about the sort of engagement the Dhawura Ngunnawal Caring for Country Committee has had so far with the planning review and whether you feel that has been good engagement and the right engagement and whether you think it has led to the right result. Does anyone want to give me a comment on that?

Dr Hughes: The consultations have been extensive with the committee. Others have been invited along for the journey as well. Roslyn is Co-Chair of the United Ngunnawal Elders Council, and others represent the Winnunga Ngunnawal Language Group. There have been days where there have been specific opportunities to come together to talk with the consultants and provide feedback.

THE CHAIR: Thank you. Does anyone else want to comment? Was that done well? Was that done the right way?

Dr Hughes: Yes, it was done in a culturally sensitive way and it was done in a way that ensured that voices were heard. It was based on truth-telling and the opportunity for all of us to have a voice. I do not know if anyone else wants to say something.

THE CHAIR: Stephen?

Mr Mudford: No; I agree with Caroline.

THE CHAIR: That is good to hear. Feel free to jump in. It slightly awkward on screen.

MR PARTON: It is a bit, is it not? It changes the dynamic.

THE CHAIR: We have three people on screen. Please feel free to jump in, just to make sure that we do hear from everyone. I am really pleased to hear that. I am going to pass over to Ms Orr for the next question.

MS ORR: I did not actually have a lot of questions beyond hearing what the engagement in the process had been like for you.

MR PARTON: Can I just ask the panel members—and I guess I am really asking you as individuals: if you could make simple changes to this bill, what would they be?

Ms Brown: Is that a question for us?

THE CHAIR: Yes. Mark, maybe name each person.

MR PARTON: Roslyn, do you have anything to add to that? If we could make changes to this bill, what would we make?

Ms Brown: I think that it would be good to have Ngunnawal people on panels to work on the bill. I think that would be beautiful. I am sure people do not do it intentionally but, although we are consulted, we are not on the panel. We need to be part of that process.

MR PARTON: Fair enough.

Ms Brown: As traditional owners of the ACT region, that is a must. I have not read the whole bill, and I am a bit short on recalling the aim of the review of it. So I cannot really comment—and it is about truth telling. I am more interested in getting Ngunnawal elders on panels to be part of the process—so on that side of the bill.

Dr Hughes: I would just add that that would be a step in the right direction of the Makarrata statement: a voice, treaty and truth. That would be a step in the right direction when looking at the traditional custodians of the ACT and surrounding areas. It is one thing to have consultation but, in the drafting of bills, to have First Nations and Ngunnawal at the table is important. So not a small step; that is a big step.

THE CHAIR: That is a big step, yes. Mary?

Ms Mudford: I agree with Roslyn that there needs to be stronger Ngunnawal engagement. Ngunnawal needs to be recognised as rights holders, not just stakeholders.

MR PARTON: All right. Do you have a view, Mr Mudford?

Mr Mudford: I am very much behind the statements by Caroline, Roslyn and Mary, that there does need to be more Ngunnawal engagement and acknowledgement that

we are the custodians for this land that we have the privilege of living on. Having a voice and being able to participate is also heading towards reconciliation agreements and allowing us to participate helps heal as well.

MS ORR: I would be really interested to know how you would like to be engaged in the discussions around planning and land use within the territory. I guess at one extreme you could be able to provide comment on every single DA, but that would make you incredibly busy. I am just wondering if there is a balance between making sure that the things that you want to make sure that you have voice on are being realised as opposed to just being asked arbitrarily for comment on this or that DA. I just want to get a better idea of where you see the balance landing.

Mr Mudford: We cannot do much about land that has already been developed on. A lot of damage has been done to traditional lands. But, where new development is happening, there needs to be stricter rules about how sites are culturally checked first and recorded, so that those areas are not damaged in the future. It is about having people more involved in that.

We do have people that sit on some committees. Cousin Wally Bell—who is well known in Canberra, sits on the Ginninderry one. Although he is a voice, he does not always get the correct support. So sometimes you need more than one person on a panel. To us, it is important to have both a male and a female, because there are female sensitive areas that we need acknowledged as well and we, as male, cannot go and assess those sites and comment on those. Karen Denny, who is Wally's sister, does a lot of those. But we need to make sure that they have the right support following their findings.

MS ORR: Caroline, did you want to add anything?

Dr Hughes: Yes. We are really disappointed that Ngunnawal has been removed from the bill entirely—referring to us as black and yellow or blue and white brand traditional custodians. It is not as if we represent the whole of Australia. The ACT is a very small jurisdiction. By removing us from the bill, there is a pre-empting of the outcome of the human rights case and we are very insulted over that. Once again, we are being ostracised because of one small family group. We are very disturbed that the ACT government has taken that stand of removing us from the bill. What we would be saying is that Ngunnawal needs to be put back into that bill.

MS ORR: Roslyn, did you have anything?

Ms Brown: I totally agree with Caroline. I mean, haven't non-Indigenous people had enough of playing games with Aboriginal people and making arbitrary decisions on our behalf, without discussing it with us? Non-Indigenous people say to me, "Aboriginals have to get out of the past.' But my answer back is that it is in fact white Australia that is trapped in the colonial past and has got us shackled to it. I am Aboriginal, Ngunnawal. Non-Indigenous people need to do a real lot of common sense adult soul-searching about whether we are included or not. And how did it come about that we were taken out of the bill?

MS ORR: That is probably a question we can put to the government when we have

them here but not one that the committee would have necessarily known about. We do not have any jurisdiction over the bill. We are just inquiring into it.

Dr Hughes: We thank you that we are here and you are making inquiries. But, yes, it needs to be raised. I mean, it was not done in consultation with us. It was arbitrary.

Ms Brown: The government is not Indigenous people. Maybe there are one or two. I do not know. I do not think there are any Aboriginal people in the ACT government, are there? That is why I am saying non-Indigenous people; I did not mean you specifically took us out of the bill. But it is very concerning and I hope it is concerning to you too.

MR PARTON: Are you of the belief that that was done because of that—

Ms Brown: The court case.

MR PARTON: because of the Ngambri action. Because there are matters that are still to be decided on, perhaps they were just retrofitting just in case it went the other way.

Ms Brown: No. I think it is game playing. But they could go the other way once it is finalised in the Supreme Court.

MR PARTON: Yes.

Ms Brown: That is common sense adult thinking, not game playing.

Dr Hughes: And they have been doing it to us for years. That is why the Human Rights Act does not state "Ngunnawal" in it. Once again, we were consulted. We gave them the feedback that we needed to be specifically mentioned in the act, and now look where the ACT government is sitting. They are taking advice so that they can tick the box. It is tokenistic: "Yes, we consulted." And then they do not make the changes. That has led us to where we are today. They have been doing it to us for a long time.

Mr Mudford: In all honesty, it was a knee-jerk reaction. You do not put the cart before the horse; the horse is always in front of the cart, pulling it along. It was a knee-jerk reaction, whereas they could have discussed that with the Ngunnawal people and then taken action if that was necessary. We do not believe it is necessary.

Dr Hughes: The point is that they have been consulting with us for many years. I personally gave advice when I was consulted, as did the United Ngunnawal Elders Council. Yet they made an arbitrary decision, ticked the box, consulted and said, "We will still do it our own way," which goes against what the Makarrata statement and voice, treaty, truth says. It says that we have self-determination and that we have a place on that legislative floor, not just being consulted. So, yes, we are being consulted but our advice is not being taken on; it is just tokenistic.

MS ORR: Mary has been sitting there very patiently too. Mary, did you want to add anything to the discussion?

Ms Mudford: I wanted to go back to the reference to development applications. It would be a massive workload for community to engage in that. However, I do think there are technical standards in support of current heritage processes that could be put in place to ensure that both intangible and tangible values are protected during development.

MS ORR: So it is making sure that those triggers are covered so that when something comes up you know to have the conversations and to look at it so that they are not being missed.

Ms Mudford: Yes, so that not just the heritage assessments are being done through the normal heritage processes but also there are some technical standards that they have to ensure that the Ngunnawal community is consulted around any intangible values that are associated with any tangible values of that site.

MS ORR: Yes. That is really interesting. I am going to think about that.

Ms Mudford: Because quite often it is the tangible that is not recognised as part of developments or heritage assessments.

MS ORR: It goes back to what I think Stephen was saying when you were talking about green fields and so forth, but it comes up to the developed area that is already pre-existing. I would be really interested to hear views on how, in developed areas, if there are opportunities to put more of your perspective back into that, you would feel that could be achieved? Does that make sense; it was not a very clear question.

Mr Mudford: Could you repeat that, please?

MS ORR: Yes. Stephen, for the greenfield areas, the newer areas, the parts that have not been developed yet, you were saying there you can go out and there are pretty good opportunities there. You can protect sites or you can look at them and assess them. But then there is a whole heap of development that has already happened that has not had these processes that we have now got in place and things would have been missed. I guess the part I am going to is, with the parts where we might have missed something or something has not been respected in the past, how can we start to rectify that?

Mr Mudford: Proper engagement and having people involved. I know that is a lot of work for people, but maybe there are a job opportunities—employing people as part of that group to help monitor and give advice to them through the United Ngunnawal Elders Council or the Caring for Country Committee. We can support them through that as well.

MS ORR: Yes. Great. Mary, did you have anything?

Ms Mudford: I would just also like to acknowledge that our ACT Heritage staff really need to be supported, particularly with the DA process and the new developments. There is a lot of work that they do, in consultation with external providers et cetera, to ensure that heritage is protected in the ACT. But sometimes proponents and developers make decisions that go against ACT Heritage advice.

I think it is important that there are standards put to developers that they have to abide by.

THE CHAIR: I might just open that up a bit, Mary. Thank you for bringing it up. I gather that the primary way we are looking at Ngunnawal heritage at the moment is through the Heritage Council, in planning, I think that is the main method, systematically. There is a lot going on with that council at the moment. That is quite interesting. I have heard that when the Heritage Council makes a recommendation it should be quite difficult to depart from that.

Also, we have heard from other people today that if people are consulted and government does not follow what the people said, they need to give them reasons. Does that sound right? It sounds a little bit like you have been feeding in information and the government goes off and does something different but nobody comes back and says, "Here's why we did or did not do what we were told." Is that right—that reasons for decisions are not really coming through and Heritage Council advice is not really coming through?

Ms Brown: Yes, they just cherry-pick at the feedback that we give.

THE CHAIR: Yes.

Ms Brown: And they are so used to being disrespectful, they just do it.

THE CHAIR: Yes. If advice comes up from the Heritage Council or from the Dhawura Ngunnawal Committee, if you put in advice and then government does not do it, does anyone ever come back to you and say, "Here is why we did something different?" Do you ever get somebody coming back to you and having a second chapter?

Dr Hughes: It depends on where it has gone to and where it is coming from. In a lot of cases we have to follow up ourselves. We take it through our secretariat to seek follow-up advice on why this has not happened. Like this Planning Bill, for instance: if we were not looking for it, we would not have realised that we were not in it.

THE CHAIR: Yes. I am sorry to hear that. We will put that question to the minister and find out. We are seeing the minister tomorrow, so we will ask that question.

Ms Brown: Which minister is that, please?

THE CHAIR: Minister Gentleman.

MS ORR: The planning minister has responsibility for the Planning Bill, on behalf of the government, so he is the one appearing before the committee.

THE CHAIR: It was interesting when we mentioned the difference between consulting and actually having Ngunnawal people involved directly, and maybe having people like Wally Bell along, working out at Ginninderry. It sounds like there might be more of a role for some paid embedded positions earlier in the process. If that were the case, would that be mostly on green fields? Would that be mostly on

some new sites that have never been developed, or are there certain areas?

Dr Hughes: All over. All over.

Mr Mudford: With a concept fit for purpose.

Dr Hughes: We want to see Ngunnawal people elevated. We are beggars in our own land. We have people that are not working, and it contributes to a hell of a lot of issues in the community. We need more Ngunnawal people engaged across all levels of government and given the opportunity to increase their own businesses as well.

Mr Mudford: Yes, I totally agree. How you go about that needs to be done in a purposeful way, because you would be employing people like that to a specific role and the role would be around their cultural connection and the spirituality of the land. Therefore, that needs to be part of the position description, rather than a list of what inherently has been white man position descriptions. It has been, "You've got to be able to do this, this, this and that." These people have their traditional knowledge and the position description needs to fit that, and so would the pay scale. If we went down that way then that sort of information needs to be properly reviewed and assessed for the appropriate level of pay, if that makes sense.

THE CHAIR: Yes, it does.

Dr Hughes: What we are talking about is knowledge holders. You can have somebody that might have confirmation of Aboriginality, for instance, but they may not necessarily be a knowledge holder. Knowledge holders are people that have been nurtured and grown up in culture, as opposed to somebody that may have found out or just recently been getting involved with things. Knowledge holders are really important.

One of the things we are doing is also ensuring that people have an andragogical ancestor and a recent ancestor, not somebody a generation or two generations ago that they are just finding out about. They are not knowledge holders. They have a right to their identity and finding out who they are, but if you did not grow up in your culture and be with community, how then can you be the voice of community and talk as if you are an expert on something? That does not bring change for the community. The people on the ground, the people who are in the prisons, the people that are out in community, they say, "Who is that? Why are they representing me?" So government needs to be careful and work with us on who are the best representatives to do that.

THE CHAIR: Thank you. Roslyn?

Ms Brown: I totally agree with Caroline. Part of becoming a knowledge holder is that you are growing up in community and you are hearing conversations, and the knowledge is being shared. That is like a baptism into it. If you are kept away from community you do not hear all the conversations going on and you are not being taught in community. Most people, when they get non-knowledge holders on their committees and boards, find out that the person does not know very much, as much as they need to know about their knowledge. So it is about knowledge holders.

As Caroline said, we are getting a lot of people saying they have found out that their great-great grandmother is Aboriginal or great-great-great. They have totally lost their connection to the knowledge. That is not their fault. That does not mean they are bad people. It is just that they are yearning for their Aboriginality and the knowledge. We often tell people to be with elders and listen to what elders in community are talking about and sharing with each other. That is sustaining the knowledge, you see, with the constant conversations that go on in community.

I think that it is a real injustice to them too, the history of this country. While we have governments, such as people in the ACT government, playing games with us all the time, for people such as you it lowers your credibility too with Aboriginal people. I hope I am not offending anybody, but that is what happens. Aboriginal people get tarred with one brush. You also get tarred with one brush from our side of it. It is like, "They're all the same. They want to hear from us but then they don't act on what we are saying or what we are giving them." To be taken out of a major bill is such a slap in the face to Ngunnawal people that it is a crime against humanity.

Ms Mudford: It is genocide.

Ms Brown: It is cultural genocide.

Dr Hughes: It is genocide. Yes.

Ms Brown: By the ACT government.

Dr Hughes: Yes.

Ms Mudford: I will also add that I think it is important for planning staff and those who are decision-makers in the planning space to undergo Ngunnawal cultural immersion.

THE CHAIR: Yes. Are you able, Mary, to tell us what that means, Ngunnawal cultural immersion?

Ms Mudford: It is a stronger form of cultural awareness training.

Dr Hughes: It is a real immersion in bringing about cultural change. It brings about change in the individual so that they are responsible for their actions and they are not pushing back on us as Ngunnawal people. They learn about Ngunnawal culture and how to engage with Ngunnawal people in a respectful way. So it is a cultural immersion but it is also about cultural competency and helping them to have a voice in that cultural competency, in their own learning.

MS ORR: Caroline, do you think that is something that should be limited to government or do you think that is something that the development industry would also benefit from?

Dr Hughes: I think both. I think both, and there is a real thirst out there for more knowledge. We can do it, as Ngunnawal people, but once again there are people with jobs and this will cost. We cannot do it for free. We have already had everything

taken from us, so there has to be recompense back to the Ngunnawal people to develop it and to create a culturally safe program to take people out on. It would be an immersion. It is not half a day or a one-day thing; it is over many days.

Ms Brown: I think that that will be very good for non-Indigenous people, the immersion way. I think it is good for your own wellbeing too. We are all Australians, but I often find that non-Indigenous people feel guilty about what has happened in the country and the way it was cruelly invaded, and the bills and laws that have been passed to keep us down.

I know that this country is made up of a majority of good non-Indigenous people, but you do have your racists and all that. We have our own strange type of people amongst us too. That is just a human behaviour thing. On behalf of the United Ngunnawal Elders Council, I would encourage people to be part of the cultural immersion and understand that it is not about making people feel guilty; it is about sharing with non-Aboriginal people about Aboriginal people in general.

Dr Hughes: As an educator of over 30-plus years, particularly in adult education and understanding about andragogical practices, cultural immersion is an opportunity to bring people closer together. It is a shared experience; it is not just a one-off. People then have to take control of their own learning journey. As I said, there is a real thirst out there, but we cannot create something from nothing. We need support.

THE CHAIR: Stephen, is there anything we have missed?

Mr Mudford: I have one other thing about the bill and it is about after something has been developed. Beforehand there is an ecological study done and there is a cultural study done recording everything. But after something is developed, what checks are in place to ensure that the ecological system has not been damaged by the development? That includes the native plants and the animals that were there, and just making sure that they are still surviving for us. As you know, there are a lot of native plant foods out there. Some of our people may be accessing those and we need to make sure that they are still getting access. We need to make sure that the rivers do not run dry because of something that we have done.

THE CHAIR: Thank you. Thank you so much for that. I actually have not seen that in the 500 pages of the bill. I do not know if it is there, but I am going to go back to my office and check, and then we will put that question to the minister too. Checking to see what the damage was, whether it has achieved what it said it would, is an excellent suggestion.

Mr Mudford: I very briefly went over it, but I could not find it.

THE CHAIR: Yes. I have read it and I have not seen that, so I think you are probably right; I think it is probably not in there.

Mr Mudford: Yes.

Dr Hughes: Can I ask, really quickly, for introductions, because I cannot see everyone properly in the room and we did not do a roundtable at the beginning.

THE CHAIR: I am so sorry. I am Jo Clay. I am the chair.

MS ORR: I am Suzanne Orr. I am the deputy chair.

MR PARTON: Mark Parton. I am not a chair of any description. I am just on the committee.

MS ORR: He is a valued committee member.

MR PARTON: I am just a valued committee member. Can I just say, in answer to your question earlier, Ms Brown—and it ties in with a number of things that you guys have said—I am a descendent of the Noongar people in Western Australia. I am connected to my mob, but I did not grow up in community and I do not identify as being Aboriginal.

Ms Brown: Well, you should. You have a Noongar bloodline, but you are obviously not a knowledge holder.

MR PARTON: No.

Ms Brown: It is very hard for some people to admit they are not a knowledge holder. They can end up resenting community because they are non-knowledge holders. You just introduced yourself to me as a Noongar man and I acknowledge you as an Aboriginal man. I also think I used to listen to you on the radio, didn't I?

MR PARTON: Is that right? You were my listener. That is wonderful.

MS ORR: You can listen to him on the livestream of the Assembly now, if you miss him on the radio.

Dr Hughes: Okay. And the people at the back of the room?

THE CHAIR: We have a number of witnesses in the room. We have our excellent committee secretariat: Miona and Kate and Adam. I cannot introduce you, I am so sorry, to the people who are sitting here, because I am not sure who all these people are.

MR PARTON: We have got Neil.

THE CHAIR: We have the Canberra Ornithologists Group, I believe, and we have the Friends of Grasslands.

MS ORR: It is the committee secretariat and the next round of witnesses.

MR PARTON: Yes.

THE CHAIR: Yes. Did that help?

Dr Hughes: Okay. Yes, that helps.

THE CHAIR: I just want to check quickly, because we have heard a lot about government asking questions and then not doing anything with the answers. We are on a really tight time line but we are going to have a transcript from this session and then our committee is going to come up with recommendations. We are not allowed to discuss those recommendations. Is there anything we can do that will help you make sure that we have seen what you have seen? Is there any form of communication that we can do that assists?

Dr Hughes: I am going to reverse that question to you.

THE CHAIR: Yes.

Dr Hughes: What can you do for us to make sure that our voices are heard?

THE CHAIR: We could send you the transcript.

Dr Hughes: You know your processes.

THE CHAIR: Yes. Yes, Roslyn?

Ms Brown: I was going to say film it.

THE CHAIR: We can send out the transcripts. We can certainly send out the reports. I am not sure if there is anything else that is more or less useful than that.

Mr Mudford: No; that is a good starting point.

Dr Hughes: And we should also have right of reply.

Mr Mudford: Yes.

Dr Hughes: From the transcript, to provide clarity.

THE CHAIR: Yes. We will do that. We will send you the transcripts and you can certainly correct or add anything to that as part of the deliberation. Yes, we can definitely do that.

Dr Hughes: Thank you.

Ms Brown: There is one thing I would like to say besides the other things, and that is: have you read the United Nations Declaration on the Rights of Indigenous Peoples?

MS ORR: I must admit I have not read that one.

MR PARTON: I have not personally, no.

THE CHAIR: No.

Ms Brown: I would encourage you all to read that because anybody with any laws or

acts or bills or whatever needs to understand that including Aboriginal people in the decision-making is very important. The ACT government as actually signed off on it, yet they took us out of the bill without telling us, so this could be a human rights issue.

MR PARTON: Yes.

THE CHAIR: Yes. Thank you. That is excellent advice. We will take it in my office. Thank you.

Ms Brown: It would be real nice to have it before the election. As soon as they get the job back we are put back in the basket again. We need to talk about that. We do talk about it and we tell other non-Indigenous people about it, because you are not aware of what goes on.

THE CHAIR: Yes. I think that is right. I am so sorry; we are going to have to end the session now.

Mr Mudford: Did we have to fill these out to get a copy of the transcript?

THE CHAIR: No. Our committee secretariat will send each of you the transcript by email. You can correct anything. If there is anything extra that you would like to say, you are welcome to, at that point, get back to us. I am really sorry; we are on a statutory time frame and we have to report fairly quickly, so there will not be a lot of time for that.

Dr Hughes: We will get back to you quickly.

THE CHAIR: Yes. Thank you for that, and thank you for your time today. It is very much appreciated.

Dr Hughes: Thank you.

Ms Brown: Thank you.

THE CHAIR: I know your time is valuable. Thank you.

Ms Mudford: Djan Yimaba, in the Ngunnawal language, which means thank you. Djan Yimaba.

Mr Mudford: Thank you very much.

THE CHAIR: Djan Yimaba. Thank you.

Mr Mudford: Yarra, which means goodbye in Ngunnawal.

Ms Mudford: Djan Yimaba. Yarra.

THE CHAIR: Yarra.

Short suspension.

HERMES, MR NEIL, President, Canberra Ornithologists Group
HENDERSON, MS CLARE, Committee Member, Canberra Ornithologists Group
SHARP, MS SARAH, Vice President and Advocacy Coordinator, Friends of Grasslands Inc

THE CHAIR: Thank you for indulging us in running a little bit over time. I am sorry about that, but that was quite a difficult session, I think. We will proceed to our final session for the day. We were going to have Elle Lawless from the Conservation Council as well, but she is not here, unfortunately. We have submissions from the Conservation Council, but we will not have any verbal evidence from them. Feel free to tell us anything you think we need to hear from any perspective. Has everyone had a chance to look at the privilege statement, and do you understand and agree with the rights and responsibilities in that statement?

Mr Hermes: I have, and I do.

Ms Henderson: I have, and I do.

Ms Sharp: I have, and I do.

THE CHAIR: Great. It is like a wedding ceremony! This is excellent. We do not have a lot of time, so we are not doing opening statements, but if there is anything else you wish to table, you are welcome to during the session or at the end of the session. I am going to pass straight over to Mr Parton.

MR PARTON: In your group's summary of the bill, Mr Hermes, you have indicated:

> The need for a landscape or ecosystem approach, with a head of power in the Planning Act to ensure that key ecological features, and areas of high biodiversity value, are not impacted by development.

Talk me through how you would see that working practically. How would you see that working?

Mr Hermes: Thanks for the question. I would start by saying that our focus, in our submission, has really been about remnant trees in the landscape. The reason for that is the Canberra Ornithologists Group, and various scientists from CSIRO and Parks ACT, over the last several decades have identified that old established trees are one of the most critical elements to the landscape in terms of many bird species and many species of flora and fauna in general.

For example, it has only become apparent in the last little while how important particular old established trees are for what has recently been declared an endangered species, our gang-gang cockatoo. It is the symbol of the ACT territory government, the symbol of the ACT Parks and Conservation Service and the symbol of the Canberra Ornithologists Group—a significant bird in our city. It has become more apparent as we look at its requirements for breeding that it has a very specific need for particular trees. This is just one example.

Many of these trees are hundreds of years old. What we are talking about are elements of the landscape that have taken hundreds of years, and you cannot easily substitute those trees by planting a few new trees when a development happens. The removal of these trees is now really a key threatening process in the management of our remnant areas of flat country in the ACT.

What has happened in the past is developments have been done piecemeal, and the requirement to address the protection of those trees is done piecemeal. It is done virtually tree by tree, and patch of ground by patch of ground. What then happens is you end up with all sorts of compromises made about protecting an asset on the landscape that is hundreds of years old and cannot be replaced easily, and many individual trees are either removed directly as a consequence of development or inappropriately protected within the development, because of the constraints of the development, which means that down the track the trees disappear one way or another. They become dangerous because they have been left in a way that is not appropriate to the tree, or they die, or for whatever other reason they get removed from these small areas.

Our emphasis and our view about how this bill should be put together is that it needs to identify at the very outset, when greenfield proposals are made, that the existing large remnant trees in those areas should be seen in a holistic way across an area, and the planning should start with that. Then, as progressive developments occur, that will have already been identified, and we will not be fighting, essentially, tree by tree in a development process, which produces results that are time consuming, expensive and, in the end, does not protect the individual assets of those places.

These trees take hundreds of years, possibly longer, to actually get to a point where they reach their value for birds and many mammals, et cetera. Our emphasis is to get away from this piecemeal approach, this small area of land approach, and to take a more holistic view. I do not think I have answered your question explicitly, but that is the principle.

MR PARTON: I think you have to some extent, but I would also suggest that, based on your answer and based on a couple of lines in your submission, you do not have a great deal of faith in the use of offsets in development applications. You are a little bit worried about the outcomes that are created there.

Mr Hermes: I would say that the Canberra Ornithologists Group has a mixed understanding of how the offsets actually work. We do not feel we entirely understand how they work and how it is done, except on a very micro scale, and how it works over a longer period of time. Offsets might be part of the solution, but they are not part of the solution we currently think is well understood and well used.

The other point about it is that offsets may, in fact, be used where we are comparing apples and oranges—where you are, in fact, taking an area where you have a very significant, isolated, woodland tree landscape and offsetting it against a steep hillside somewhere, which is valuable in itself from a natural history point of view and from a protection point of view, but it is not protecting the type of habitat that is being removed from the landscape as part of the development. We would not think that offsets would be necessarily excluded, but we are not entirely sure that they are all of

the answer at this point.

MS ORR: We are talking about these remnant trees and these older trees. Mr Hermes, can you explain to the committee just how difficult it is when you remove a tree to replace its value and for that to be done by something else in the landscape?

Mr Hermes: It is easier to use an example. I go back to the gang-gang cockatoo. If you have cut down a tree in which it has been nesting in for the last 50 years and that tree is 250 years old, you are not going to have that bird nesting again on that site. What could you possibly do on that site? Well, plant a tree and hope that that tree develops the same characteristics in 250 years time for the birds to be able to nest there. You could do that. You could do this extraordinary activity which has happened here and there where people have cut down a tree in one place and moved it to another in the hope that that tree provides the same sort of thing. That is, again, a pretty inadequate solution.

Birds are what we know about, so birds are what I have to talk about. Some species of birds are very catholic in their tastes. They will take a hollow here, a hollow there. It does not make much difference. A tree of this sort of general description will be suitable. We are learning that gang-gang cockatoos are Goldilocks birds. It has to be so. It cannot be this; it cannot be that. It just has to be so. We are only just understanding that. It could be one of the reasons why gang-gangs are an endangered species in the ACT. That could be part of the problem. Once you have removed those particular identified trees, you do not have them and you cannot have them, potentially, for a long time, despite planting a forest of new trees somewhere else.

MR PARTON: Ms Sharp, I note that the Friends of Grasslands submission offered similar views on offsets.

Ms Sharp: Yes. We believe, in the same sort of way, that you cannot really replace A with Z. They need to equate. You do not actually gain by destroying an area and protecting another area, because you have lost that area, so we have real concerns about that. We also believe that there are far too many instances where offsets are used without considering the other elements of it, which are to avoid it or to mitigate the impacts.

MR PARTON: So it is last resort: better than nothing but not by much?

Ms Sharp: Yes.

THE CHAIR: The Nature Conservation Act now has this concept of new threatening processes in it, and that includes habitat fragmentation, so it is moving towards this wildlife corridor notion and the loss of mature trees. Those are not currently a trigger for an EIS in the Planning Bill. Do you think that is a problem? Should new threatening processes be a trigger for an EIS?

Mr Hermes: We would like to see that considered, yes. While we are talking about what we would like to see in the bill, we have actually set out in our proposal a number of very specific things. From the point of view of giving advice to this committee, what we have done in our various submissions is that we have been very

explicit about the sorts of things that we would like to see. We would encourage the committee to go to our submissions to government over the bill and to have a look at them in precise detail and make sure that those elements are in the bill in that form and, if they are not, for the committee to consider using them as recommendations.

THE CHAIR: Excellent. Thank you very much. Ms Sharp?

Ms Sharp: I am just trying to remember the question.

THE CHAIR: Feel free to say what you want to say, rather than answering the question. I was wondering whether our EIS trigger was right in the bill, because it does not follow the same sort of track.

Ms Sharp: Yes; thanks for that. I think that one of the really big issues, concentrating particularly on grasslands—and there is over 67 per cent of natural temperate grasslands, so they naturally traverse outside the reserve system—is that a lot of the remaining ones are quite small, but they are very important. They are important grassland species. The fauna that tend to occur in them are small. The iconic grassland species are tiny, so they tend to get ignored, but they can occur in quite small sites. So fragmentation of those sites is a real worry when they cannot move across to other areas.

One of the things that I think relates to the EIS is that it is not only what is in a site but the cumulative effects of multiple projects, or the after-effects. There was a proposal at Throsby that I thought had all gone through and things had been agreed, and then they needed a drain that came in later and it was going to take out yet another area of land. In a sense, you can look at it as if that is nothing in itself: if you have got a very small piece, it is not so significant. When you put them together it is a massive impact on an area that is down to one per cent of its original extent.

THE CHAIR: Thank you. The bill, as it is currently constituted, does not really take into account that cumulative impact, does it?

Ms Sharp: No, it does not. Our understanding is that it recognises connected native wildlife habitat but does not actually identify whether that is during as well as following construction. Also, it needs to be within the subdivision itself or in lands adjacent to the subdivision and it needs to prevent those cumulative impacts. To me, the strategic approach to spatial planning is extremely important so that you get that overview of what is there. You talked about the connectivity-type projects, so that you have the ability to have a look at it whole, to see what is fragmented now and how to improve that so that they are not as fragmented.

Ms Henderson: My understanding is that the current bill has a clause in it which allows for strategic assessments, and that is now being recommended. It has not been utilised. But having some mechanism, as Sarah was saying and as Neil said, to actually look at the bigger, larger impacts of projects would be a very useful thing, because that way you would pick up all sorts of different bits and pieces. The way it happens at the moment is that, as Neil says, we get a DA. The trigger might be: yes, it is going to take out five hectares of EPBC listed woodland. Everyone says, "That is pretty insignificant." And then around the corner there is another one, and then over

the hill there is another one. Our view would be that if you can look at those at an earlier stage and go, "What are we trying to do with this bit of land, this area?" and then look at all of the impacts, that does not stop the need to do specific DAs but you have actually, through your strategic assessment, outlined a broader framework of what needs to be protected, where things can go and the impact across the ecosystem.

THE CHAIR: Thank you. I think in the bill that we currently have—I have read two versions of it now, and it is quite big—there are strategic assessments in the EPBC Act but I do not think there is a strategic environmental assessment in the Planning Bill anymore, I think that concept has been removed.

Ms Henderson: That is right, yes.

THE CHAIR: It sounds very much like there is a strong need to have that strategic environmental assessment in the planning legislation.

Ms Henderson: Yes, and there is strategic assessment at the commonwealth level generally. The environmental community here in the ACT has been an advocate for the strategic assessment. It is like Gungahlin, and Molonglo to a lesser extent, because that was one of the first ones. The problem with that is that it has only happened when an EPBC matter is triggered. Therefore, you need to have, in our opinion, an ACT set of triggers as to when you do an ACT strategic assessment.

THE CHAIR: Thank you. That is very helpful.

Ms Sharp: That is a considerable concern of the Friends of Grasslands, too—that it is taking the nationally significant species into account but not at a territory level.

THE CHAIR: Yes, and there are different triggers for the ACT, the nature conservation triggers.

Ms Sharp: That is right, so there is an inequality and there is a disparity between the two acts, the Nature Conservation Act and the Planning Act.

THE CHAIR: Yes. Thank you. That is very helpful. That matches the analysis we had done in our office.

MR PARTON: Mr Hermes and Ms Henderson, your group's submission suggests a strengthening of the role of the conservator. It specifically says to ensure that their advice can only be overridden by the Chief Minister and only in exceptional circumstances. That is quite a strengthening of the role. Talk us through how you support that.

Ms Henderson: The provision has changed slightly between the current act and the proposed one but not substantially—and we can provide examples if you would like—but quite regularly the Chief Planner goes, "Thanks for your advice. I am required to ask for your advice and to look at your advice in certain situations, but I do not have to abide by it and I can overrule you." In our view, that just means that the environment quite often is being overridden.

The Conservator is the second or third down in the hierarchy of the department. They are also a public servant as well as having their statutory role, and we see that causes issues. Essentially, the Chief Planner is also the boss of the Conservator. We feel that the Conservator needs to be an independent entity completely and separated from the directorate. We also feel that their advice has to be taken into account unless there is a very clear process for when their advice is, "No; we are not going to do that," for whatever reasons.

Mr Hermes: As a consequence of that, we have put up an idea as to how that might work to elevate the decision-making process. Given the nature of the decision that might have been overridden, our amendment would have it such that it would have to be a significant matter and put the decision-making in the hands of a person that ultimately will have to make the decision—not just a bureaucratic passing of the decision sideways. We have come up with an idea of how this might work and we think that that would certainly mean that that final decision would be made at an appropriate level.

THE CHAIR: We had a discussion this morning with the Government Architect and Mr Ponton, in his capacity as he appears on the design review panel, for our very first session. Similar ground got covered, not specifically with a Conservator but with what happens when the Chief Planner gets different and conflicting advice from the different referring entities—for example, from the Conservator, the Heritage Council; there are a lot of different referrals in there. Mr Ponton told us—and I do hope very much that I am not misrepresenting his comments—very clearly that reasons are always given for decisions when the advice of the Conservator or some other entity is not followed. Is that what happens? Do you usually find that there are public reasons given for decisions when that advice is not followed?

Mr Hermes: We do not have the answer to that.

Ms Henderson: I think we will take that on notice.

THE CHAIR: That is fine. The other idea that got bowled up because it came through in a few submissions for various officeholders was: what if the design review panel was empowered a bit more to implement these advices from different people and it was harder to override? Have you sort of had any thoughts about that?

Mr Hermes: What we have tried to do in our recommendation is capture the idea of the problem we see. If there were other mechanisms to capture that idea, we would be open to seeing how they worked. At the moment we feel that the overriding capacity is significant and happens frequently and we would like to see that balanced. Whether there is another mechanism for doing it other than what we have suggested, we would be interested in seeing that.

The Canberra Ornithologists Group is very cautious and very careful about when we comment and make observations about interests that we know about. We do not just make comments about the development of every playground in Canberra. We are conscious that our experience and expertise is valuable in certain circumstances and that we can give valuable advice on certain things when they become significant enough that they should be noticed. If we feel that that advice is sidelined in the

decision-making process, we have not been able to contribute in a way and at a level where it has mattered. So the question would be: why would we bother, having been careful about giving the correct advice and then having it ignored?

THE CHAIR: So you are giving advice to the Conservator?

Mr Hermes: We give advice often in a range of ways and make observations and contributions, as we are today in a variety of areas. We do not come to all of these sorts of sessions. We pick and choose where we can make an impact. We think that the Planning Bill is an important place for us to have our voice heard. But in other places where make a contribution, it may be heard, it may be sought out but then it is relatively easy to dismiss it.

THE CHAIR: Thank you for making the time for today's session.

Mr Hermes: That is fine, yes. I hope you noticed Mr Parton's note about making something fly.

MR PARTON: I am always thinking.

Mr Hermes: I did actually notice. I hope everyone else in the room saw that one.

THE CHAIR: He keeps himself entertained. Ms Sharp, in your submission, you have raised quite a lot of concerns about future land use. Do you want to talk about that? Have we covered that? I sort of feel like we have not really spoken about it.

Ms Sharp: Thank you for that. I do want to talk about that. A key concern for the conservation biota is the uncertainty of future land use. So that is the premise of where I am starting from. We feel that, for many reasons, that biota is very important. It is not only important in its own intrinsic right. I think that that is the sort of more traditional way of looking at it. It is also obviously very important for sustainability, for climate change and for wellbeing. There is much more emphasis now going to its importance for wellbeing.

We were particularly concerned that the submissions by a number of the environmental organisations that put in about the lack of information about the natural landscape and the natural environment in the draft planning bill was not reflected in the final. It was not identified, and it is not in there. I note that a number of people put in exactly the same thing—that the objects do not include anything about the territory's natural landscape setting. There is one mention in terms of the principles, but it is not followed through in the rest of the bill.

We believe, going further than my statement about the need for additional assessment when land for potential development, that high conservation areas should be exempt from development. They need to be addressed and identified upfront and then left alone. That to me, is part of strategic planning, where you have actually got areas of land—and the district plan is obviously the approach and where to do it—at a scale that is relevant, so that you can identify where those areas are, whether it is connectivity, whether it is remnants of high value or whether it is some other value like a group of mature trees. If that gets identified upfront and it is on the table, you

look at it as a constraint to development but you also should be seeing it as an enhancement to development.

I have been involved with the Conservation Council to prepare a paper, which I know some people are aware of, for the biodiversity network. We were looking at a proposal where you are identifying these areas and then you are recognising them under an IUCN category. There is one that is called "other effective area-based conservation measures". It does not mean that you are taking away an existing land use. It could still be open space. It could still be a centennial trail. It still could be an urban lease. But it has this overlay that actually says, "It is a conservation area. We are acknowledging it as a conservation area," and it will be managed alongside things like recreation, for fire mitigation or whatever—that these moves together."

THE CHAIR: It sounds almost like an overlay or a zoning type.

Ms Sharp: This is getting too much into the Territory Plan that I have not really looked into. I have to say that some sort of an overlay equivalent to a PC, the nature reserve or the national park that has a primary objective for conservation but has other objectives and the land has other uses, yes

THE CHAIR: I might ask one more technical question, if that is, okay. Feel free to tell me if it not interesting or not relevant. There are environmental significance opinions, and the territory already does a scoping document on that. We have heard some criticism from various organisations that no-one gets to see the scoping documents and there is no input into the scoping documents; so, of course, the environmental significance opinion comes back but it will not have the right things in it if the consultant was not given the right scoping in the first place. Has that come up at all in any of your fields?

Ms Sharp: Again, I will probably get back to you on that. There are a lot of issues whole issue about the data collection, the information and the way the EISs and the environmental significance orders are put together. I believe the Conservation Council submission goes into that in quite a lot of detail.

THE CHAIR: Yes, they did—quite a bit.

Ms Henderson: We are looking at a report at the moment relating to a development in Denman Prospect. The way the consultants have put together the report, it had throwaway lines like, "This is all okay. But, although we are keeping mature trees"—they are proposing to keep additional mature trees—"Superb parrots will not go there because it is too close to the urban edge"

Mr Hermes: Far be it for us to say whether or not a question from you is interesting, Ms Clay. The position that the Canberra Ornithologists Group took when we looked at all of this is that the Conservation Council really addressed a lot of that in their proposal, and that captures the sorts of issues that we also had. We do not try and do all things all the time. So we defer to their wider experience on that. But, yes, we have had a specific experience in Denman Prospect about that sort of thing where the answer that came back did not answer the key questions and the scoping could have been better. That is correct.

THE CHAIR: Yes, interesting. Would the scoping had been better if it had consultation involved in the scoping, do you think?

Mr Hermes: Probably. Mind you, we are not looking to get extra work for a volunteer organisation.

THE CHAIR: No; understood, and reasonable enough. It is a shame that we did not have Conservation Council, but we do have their submission. They put in quite a detailed one, which was great.

Mr Hermes: I bet they did.

THE CHAIR: And point taken, that you have some very specific recommendations. Thank you for that. We will go through those carefully when we are forming our report.

Mr Hermes: Thank you.

THE CHAIR: Mr Parton or Ms Orr, do you have any further questions?

MS ORR: No.

MR PARTON: No; I will just sit here on the perch.

Mr Hermes: I absolutely anticipated that from Mr Parton.

THE CHAIR: We have the submissions. Is there anything else that we did not cover?

Mr Hermes: No; I think we are happy with our submission. We are happy to have been able to reinforce the idea about our recommendations. We are very happy with where we are at this point.

THE CHAIR: Thank you. Ms Sharp?

Ms Sharp: The only comment that I would like to make to finish off is that we are very concerned that the looser element of the planning process, where it is looking at the outcomes, may—and it is a "may"—mean that the rules are not strong enough or are not defined enough in the Planning Bill to guide what actually happens on the ground and that, in terms of the natural environment and the landscape process, there is not enough guidance there in a number of cases. I am saying it is a "may", but we are not convinced that, when it comes to applying the Territory Plan and the district strategies, there will be enough guidance in the planning to recognise the natural elements of the environment and the landscape.

THE CHAIR: It is certainly a concern we have heard in various different fields throughout the day. That was probably a bit of a theme. Before you go, I am just going to test something to make sure I understand it. We did talk about landscape architecture quite a lot this morning. But I think when you talk about landscape, you are not really talking about landscape architecture; you are talking about

environmental ecologically—

Ms Sharp: In the first instance, I am talking about the whole area of land, whether it is built on or whether it is not. In an ecological sense, it is the connectivity between it. The classic around where I live is where you have got urban open space and little walkways between areas and it leads to an area of woodland. You move across into CSIRO land and there is grassland and there is woodland. It goes up into horse parks, up near Hall. It goes up into a reserve, Kinleyside, which is also managed by grazing. Then you have got the Ginninderra Creek catchment. To me, the landscape, if you like, is all of those elements across there interspersed with houses. The houses are part of it, and there are mature trees within the residential areas. So, yes, that is the landscape, as far as I am concerned. So absolutely across tenure. Another thing that is extremely important is to consider land separate from tenure as to its ecological and other values.

THE CHAIR: Which is part of that connectivity.

Ms Sharp: Yes.

THE CHAIR: Thank you very much or coming in, for your detailed submissions and recommendations and thank you for your time. We get an awful lot of time and expertise from our groups in the ACT, and we very much appreciate it.

Mr Hermes: I might just say at that point that the Parks Service has commented in the past that if it were not for the Canberra Ornithologists Group they would need three extra staff to do the work that we can provide.

THE CHAIR: Having sat through the environmental volunteerism hearing earlier this year and having seen the costings coming out of the environmental commissioner for the value of the hours that we are getting, yes, we hear you and thank you for that.

Mr Hermes: Thank you.

THE CHAIR: It is excellent. Thanks very much for coming in.

The committee adjourned at 4.47 pm.