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

WEDNESDAY, 7 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

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Amended 20 May 2013

The committee met at 9.03 am.

MONTALBAN, MS MELANIE, Managing Lawyer ACT, Environmental Defenders Office Ltd
BRADSHAW, MS FRANCES, Senior Solicitor, Environmental Defenders Office Ltd

THE CHAIR: Good morning. Thank you so much for joining us today. I declare open the second day of hearings of the Standing Committee on Planning, Transport and City Services inquiry into the Planning Bill 2022. Before we begin, on behalf of the committee, I would like to acknowledge that we are meeting today on the lands of the Ngunnawal people. We respect their continuing culture and the contribution they make to the life of this city and this region, and we understand that sovereignty was never ceded.

This bill was referred to the committee on 21 September 2022, and the committee decided to inquire on the same day. The committee has received 63 submissions, including yours—thank you—and these are available on the committee website.

Today we will be hearing from 10 organisations: the Environmental Defenders Office, the ACT Commissioner for Sustainability and the Environment, the Property Council of Australia, the Curtin Residents Association, the Reid Residents Association, Friends of Hawker Village, the Ginninderra Falls Association, the ACT Rural Landholders Association, the ACT Conservator of Flora and Fauna and the Minister for Planning and Land Management.

We are recording our hearings today and they are being transcribed for Hansard. They are also being live streamed, so we may have an audience out there. If you take a question on notice, please say, "I will take that question on notice." Using those words helps our secretariat to track down the questions and make sure that we can get our report in on time.

We have Ms Melanie Montalban and Ms Francis Bradshaw from the Environmental Defenders Office. Thank you for joining us. Thank you so much for your time and for your submission. I will start by checking that you have had a chance to read the privilege statement and that you understand and agree to the rights and responsibilities contained in that statement.

Ms Montalban: Yes.

Ms Bradshaw: Yes. I have read and understood.

THE CHAIR: Great. We have a limited amount of time, so we have a very busy hearing schedule and a lot of material. We have received your tabled opening statement. Thank you very much for that; that will go into our record. We have received your submission and we have also looked at the government submission to the original bill.

We might proceed directly to questions. We will check in before we finish this session and just make sure that there is not anything that you wanted to tell us that we have

not covered, so we will make sure that we have a good opportunity to cover things.

I will kick off with the first question. We have heard quite a lot of evidence from different stakeholders about third-party merits review. There are quite mixed views about third-party merits review. Some people think it should be severely curtailed; some people think it should not be. Can you tell me what your views are about giving third parties the opportunity to review government decisions in this planning space?

Ms Montalban: Yes. Thank you for your question, Ms Clay. As you are aware, we have approached the Planning Bill from the point at which it promotes the right to a healthy environment and environmental justice. One aspect of the right to a healthy environment is procedural justice. To be consistent with that, there would be broad or open standing provisions and third parties should be able to seek review of all key planning decisions at the ACT Civil and Administrative Tribunal.

I refer you and Mr Parton to recommendation 32, which is on page 44 of our appendix. We were concerned when we were reading the bill that there were restrictions on third-party appeal rights and that the bill only provided for a limited number of decisions. But it explicitly exempts a number of matters from third-party appeal rights.

Where third-party merits review is not available, judicial review by the Supreme Court may be available. However, for multiple reasons, this is not a feasible option for many because proceedings can be lengthy and complex. There are cost barriers, and the outcome may be the same when you are seeking judicial review, in that the decision-maker can ultimately make the same decisions. So merits review is really incredibly important to be available for third parties.

THE CHAIR: Can you just run through that, because I think this is an important point. Judicial review looks at whether a decision was made with correct process, but merits review and ACAT actually allows somebody to look at whether the right decision was made; is that correct?

Ms Montalban: That is correct.

THE CHAIR: Yes, so in an outcomes-focused planning system do you think it is important that there be merits reviews so that somebody can look at whether a good planning outcome was made in that decision?

Ms Montalban: Definitely. Third-party appeal rights are particularly important if you are going to have an outcomes-focused planning system because there is a lot of discretion in an outcomes-focused planning scheme, which is something that we are concerned about as well.

MR PARTON: And that shines through. Can I say, it is a superb submission.

THE CHAIR: It is good, yes.

MR PARTON: I sat down to read this and I said, "How many staff do these people have?"

Ms Montalban: Two of us.

MR PARTON: This is just an awesome submission.

Ms Montalban: Thank you.

MR PARTON: That is not me saying that I agree with everything in it; I am just saying it has been exceptionally well put together. But what does shine through—and I am sorry for barging in on that conversation—is this constant suspicion or fear of how the discretion will play out in the outcomes-based scenario. You guys have talked about quite a number of examples from other jurisdictions within Australia and outside of Australia. Do either of you wish to talk about the examples in Queensland and in Colorado?

Ms Montalban: Yes. we have also spoken to our colleague in South Australia, but she mentioned that that system has not been in place for long enough to really comment. I guess one thing to bear in mind is that the overseas examples are examples of outcomes-focused systems, whereas Queensland, and the one proposed here, are probably more hybrid outcomes-focused schemes, with some elements of it being rule based.

I think there is a real fear that that level of discretion will allow proponents or developers to challenge. It will be easier to challenge when you have fewer restrictive rules and there is the possibility that, without those rules, it is difficult to predict how a decision-maker will make their decisions. So it is unclear if there will be consistency in decision-making, and then it will be likely easier to appeal as well.

THE CHAIR: In this hybrid outcomes-focused system that the bill presents, is it more important that we have checks and balances, like open standing for third-party review in greenfields? We have heard a lot of different ideas about governance. To summarise all of those ideas, I would say the one consistent thread would be that people are uncomfortable with all governance roads leading to one decision-maker, one reviewer, and one person who considers all advice and decides whether or not to follow it. Do you think some of those checks and balances of splitting that governance and retaining third-party merits review become more important?

Ms Montalban: Definitely, yes, because there are more checks and balances on government. It appears as though the success of an outcomes-focused scheme is heavily dependent on its implementation, and if it is poorly implemented then there should be provisions to allow third parties to review those decisions.

THE CHAIR: Sure.

MS ORR: In the case of the discussion on merits review and judicial review, and the discretion within an outcomes-based planning system, we have heard evidence about what has been described as vexatious litigation—which, arguably, you would also have more opportunity for within an outcomes-based system. In reflecting on the comments you were making about the need to be able to appeal, how do you propose to balance the desire to make sure that we are not just tying up vexatious claims within the courts?

Ms Montalban: Overall, my position would be that the benefits of having open standing would outweigh any detriment of vexatious claims. My experience is that vexatious claims are actually very rare. I think we did some research into how many decisions have actually been appealed, and they were quite minimal in the current system. I do not know if you have anything to add, Frances.

Ms Bradshaw: Yes. I agree with what you have said. Off the top of my head, I cannot recall the research that you are referring to. There has been research into the EPBC Act by GreenLaw and other academics debunking the theory of vexatious litigation for EPBC Act decisions. That is publicly available research. I agree with what you have said about the benefits of having open standing and being able to review a wide range or, ideally, all key planning decisions as outweighing the risk of vexatious litigation. There are procedures that can be put in place to vet applications that are made to a tribunal or a court before it even goes to a member. So that can be put in place.

Ms Montalban: Yes, like a show cause hearing.

Ms Bradshaw: Exactly, yes.

Ms Montalban: Yes. There are procedures that can be put in place. At least in the Federal Court, from memory, you can have things called show cause hearings, where somebody has to show cause that there is actually merit to the application. I should also mention that lawyers have duties to the court and tribunal that we do not take on matters that are unmeritorious.

MS ORR: That might be the case for lawyers, but you do not always need a lawyer in some of these review panels.

Ms Montalban: Yes.

MS ORR: I am interested, then, to get a better understanding of the thresholds and the tests you would see as reasonable that could be in place to make the system less susceptible to vexatious claims.

Ms Montalban: I cannot actually recall the test for show cause hearings. Can you, Frances?

Ms Bradshaw: No. I would have to take that on notice if you wanted me to look that up.

MS ORR: The other thing we have had quite a bit of evidence on is the pre-DA consultation. Committee members can correct me if I am wrong, but we have had a lot of evidence saying that people would like to see that maintained and that, where it does create a consensus, it is a very valuable tool—noting that not everyone buys into these processes with a view of getting to consensus; there are some people who will always be outliers. You have given the show cause example. One of the questions we have had had is: how can we better enliven the pre-DA consultation? How would you see that fit in—

THE CHAIR: Do you mind, Suzanne, if I bring it back to my original question and finish and then maybe we will move to pre-DA for your question? Is that okay?

MS ORR: Yes. It is actually still on the litigation.

THE CHAIR: Sure. I just had not finished.

MS ORR: Yes; that is fine.

THE CHAIR: Okay. Regarding some of the fears we have heard about litigation in ACAT, we have asked people if ACAT were differently resourced, if it maybe had better, different, more planning resources to hear matters, that would make a difference. That would mean, presumably, that good quality decisions would be being made and also that they might be getting made a bit quicker. Do you think that would make much of a difference to the process?

Ms Montalban: Definitely. Presumably, that would be the case. If you better resource the tribunal with members who have that expertise then presumably the decisions that are being made are likely to be the correct, preferable ones and potentially not appealed further.

THE CHAIR: Yes. In the bill as it is constituted, we have actually got quite a lot of limits on standing already, haven't we? You have to show material detriment and you have to be an interested person, so there are already quite a lot of tests in there, I think.

Ms Montalban: Yes. From memory, yes, it is quite restrictive in comparison to other jurisdictions. I think, Frances, we have a New South Wales example in there.

Ms Bradshaw: Yes, that is right. New South Wales is an example of jurisdiction that has an open standing provision that has worked very effectively. Under the Environmental Planning and Assessment Act 1979:

> Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

We would be advocating for something similar in the ACT.

THE CHAIR: Great. Thank you.

MS ORR: Going back to the question of the thresholds in the test, we have had a lot of discussion around pre-DA consultation and building a consensus. My question goes to the core of: if there can be a collaborative process and it can be shown that there is a collaborative process beforehand but you still have one outlier who does not like it, how do we essentially get to this point? Because it is far more subjective in an outcomes-based system, we have something that is generally permissible to the majority of people but there might be one or two people who want to put it through a court's appeal.

That is the sort of situation I think we are dealing with, because vexatious is also an

interpretive term. People will have different thresholds for what they see as vexatious. I know, through my years in this place, that a lot of people would classify that as vexatious, whether it strictly is under the law or not. How do we start to get this point where we are not just relying on litigation or legal action to start to prosecute individual perspectives?

Ms Montalban: The high level response is that the principles of good consultation would require consultation to start at a very early or formative stage—beginning those conversations early and then having the community feel as though their concerns are heard. That includes being given sufficient information about the proposal and sufficient time to consider it, to have their views heard. It includes seeing that those views have been taken into consideration and that they have some weight, and seeing how their views have been taken into consideration in a statement of reasons. For me, pre-DA consultation is part of a longer process that should be taken into account. If there are outliers who disagree with a proposal, it is probably well within their rights to have their views heard, as part of the community. I cannot think of anything else.

Ms Bradshaw: I agree with you. More can be done as early as possible by decision-makers to allow people to participate in decision-making and to give these people the opportunity to have their say—and to listen to what they say and to actually respond. That can be done at an early stage. That is one way to potentially avoid litigation down the track.

Ms Montalban: Yes. I think that people can feel frustration in the current process and perhaps want to challenge decisions because they feel as though they have not been heard. If they are able to air their views early then it might actually limit or reduce the number of appeals.

MR PARTON: In your submission, which I have already been glowing about, you registered concern with the fact that the bill itself, although it refers to desired planning outcomes—good planning outcomes and desired outcomes—does not really specify those. I think we received your submission on 17 November. At the time that it was written, the district strategies were not available and there was a suggestion that the desired planning outcomes were to be included in the planning strategy, the district strategies and the Territory Plan. I want to ask whether, having seen those additional documents, there is enough clarity in those in regard to definitions of desired planning outcomes or whether your original point still stands: that a bill such as this should have included within it a very, very clear definition of those outcomes.

Ms Montalban: To be perfectly honest, I have not had a chance to review those documents—

MR PARTON: There is a lot on. We get it. We understand.

Ms Montalban: in relation to this planning inquiry.

MR PARTON: You can't do everything.

Ms Montalban: No, but I think our position remains the same. I think that if you are going to be using those words or phrases they should be defined in a legislative

instrument like this bill, rather than in policy documents.

MR PARTON: So your recommendation, in the first instance, is that they should be clearly defined in the bill but, additionally, that the outcomes-focused provisions should be—as you have put quite well—appropriately balanced with mandatory provisions and technical specifications. How do we do that? Is that not heading back to where we started before this bill was written? This bill is a repositioning. Are you not just suggesting that we head back to where we were?

Ms Montalban: No. I think it would be in some ways the middle ground between the current system and what is being proposed. The current system, I understand, is quite prescriptive and this bill seems to fall at the other end of the spectrum, being quite subjective and flexible. I think there should be some balancing between the two and that there can be mandatory rules within the bill or regulations.

MR PARTON: In your associated recommendation 3, on that point, you suggest that the bill must include strong compliance monitoring. Is the office of the belief that compliance is not up to scratch in this space, that many of the problems that we have are based around a lack of compliance? Can I read that into that recommendation?

Ms Bradshaw: I do not think we are in a position to be able to answer that from our experience. Our recommendation is more aimed at the new system that has provided a start.

MR PARTON: That is fair.

Ms Bradshaw: To have an outcomes-focused system it is important to have adequate monitoring and compliance in that sort of system.

THE CHAIR: Can I just check on compliance? This bill removes the ability for an individual person to take a controlled activity order, which is a means of compliance. Do you think this bill would be better if it allowed controlled activity orders?

Ms Bradshaw: I understand that under the bill the territory planning authority can make a controlled activity order but it is not open to an individual to—

THE CHAIR: No, but individuals can do that now. So if they think something is not compliant they can apply and have that enforced. I think it is now being locked down to the planning authority.

Ms Bradshaw: I am actually not sure what the current system is. My understanding was that individuals could make a complaint about a person conducting a controlled activity and that a person can also apply for an injunction against someone who has breached a controlled activity order. To compare the current system to what is currently proposed, we would have to take that on notice and get back to you.

MS ORR: I have a supplementary based on the mandatory provisions of technical specifications. I just want to get a better understanding of what you are advocating for. When you say to put it back into the bill, are you essentially saying that all territory code and territory specifications should now suddenly be in this bill? They would not

all currently be instruments that might be under the bill. Specifications come through various things, including nationally agreed standards. I am not sure where you are drawing the line. It seems like that could become quite problematic and quite big if it was taken as a blanket statement.

Ms Montalban: I do not think we are advocating for bringing back all the current rules into this bill, but we would be suggesting that there should at least be some specific mandatory technical requirements. Where they sit, I do not think we can say.

MS ORR: Can you give me an example of what you mean? Technical requirements can mean a lot of things. Is there an example you can give, just to clarify?

Ms Montalban: Not off the top of my head.

Ms Bradshaw: A technical requirement might be that a building must be a certain height or that a fence needs to be a certain number of metres away.

MS ORR: That would not necessarily be in the current bill. That would need to be in the codes for the areas and within the Territory Plan. I guess the bit I am trying to grapple with is: are you saying it should now be put into the legislation? That could make it quite cumbersome and difficult to change.

Also, it makes it a very one-size-fits-all across Canberra, which, from a design perspective, can be very difficult to reconcile if you do not take into consideration the factors of the block. That is where the balance comes from—that it is not necessarily in the head bill but it is still supported within the codes and within the Territory Plan. I guess I am just trying to grapple with where you see it going wrong now and what the problem is that you are trying to fix.

Ms Montalban: I probably have to think about that.

MS ORR: Sure. Did you want to take that on notice?

Ms Montalban: I will take that on notice. Can I ask, in terms of taking things on notice, when you would expect answers by?

THE CHAIR: Five days.

Ms Montalban: Okay.

THE CHAIR: We are reporting on 22 December. We would very much appreciate your time, your expertise. Just do anything you can. That would be marvellous, but nobody should cancel a holiday for this. That is where I am heading.

I will start with a fresh line of questions. We have heard quite a bit of concern that the bill maybe does not deal with climate change enough—that there is not enough climate change mitigation covered in there and also that there is not enough protection for biodiversity in there.

I am very sorry that only two of your 35 recommendations were picked up in the bill.

That has been noted. You have got some great recommendations in there on both those topics, in 14 to 16 and 17 to 21, I think. If we were going to amend this bill so that it did better deal with the change in climate and reduce emissions and so that it did better protect biodiversity, should we just follow those recommendations? Is that the nub of it: that we just need to amend it along those lines?

Ms Montalban: Yes. In addition to those recommendations, the later recommendations are in relation to the objects of the act and the definition of ecologically sustainable development. I think all those things combined would better protect the climate and biodiversity.

THE CHAIR: You flag concerns with the definition of ecologically sustainable development. Can you tell me how you think it should change?

Ms Montalban: Yes. We thought it could be improved upon. I could draw your attention to recommendation number 8, which starts at page 12 of our first submission, or the appendix. We have listed the principles of ESD. The current definition only incorporates the precautionary principle and intergenerational equity—and, to some extent, the biodiversity principle and the environmental values principles—but it does not include the prevention of harm, intragenerational equity and the polluter pays principle. We have provided some additional ESD principles that we think should be included: achieving high levels of environmental protection, the non-regression principle and the resilience principle. We have written our suggested definition of ESD. That starts at page 13. That is how we think it should actually be drafted.

MS ORR: When you say page 13—

Ms Montalban: At the bottom of page 13 of the appendix, the attachment.

THE CHAIR: You mentioned the objects. A number of people from different points of view have suggested that the objects maybe could be improved but are quite sound. A lot of people quite like those objects but say that they are not particularly toothy; they do not have a lot of impact in the rest of the bill. We did have one submitter suggest that legislative interpreting would mean that those objects would have weight. Do you feel that those objects have been properly embedded in the legislation or do you feel that that is just a wish list that is sitting outside the bill and it is not going to have much impact?

Ms Montalban: I think probably the latter. It is quite weak. I did notice that there was a change on that between the initial draft bill and the one that has been presented to the Assembly. I think in subsection (3) it now refers to mandatory considerations by decision-makers. That is an improvement from the original wording. That they should consider those things now, I think that is a good improvement. We also provided how we thought the objects should be defined, but we did have issues with the extent to which the objects are considered throughout the bill and by decision-makers.

Ms Bradshaw: I think at the moment you could, and we certainly would, try and argue that the objects should be taken into consideration when undertaking key planning decisions under the act. Not only have we recommended our own suggested definition of the objects; we have also suggested that there needs to be a mandatory

requirement for decision-makers to actually take the objects into consideration when making decisions. At the moment there are some provisions that allow decision-makers to take the objects into consideration, but not for all key planning decisions. There are some that are left out, and it would probably be more simple if there was an additional provision in the legislation that required decision-makers—

MS ORR: Can you, just for clarity, Ms Bradshaw, tell me which decisions, in your understanding, do not have to consider the objectives of the act? It was certainly not my read of the bill.

Ms Bradshaw: Yes. Absolutely. For example, when the minister makes a decision under section 73(2) on whether or not to approve a major Territory Plan amendment, that is an example of where there is no requirement to take the objects of the act into consideration. Another example is when a decision-maker other than the territory planning authority decides under s 182 whether to approve a development application; there is no requirement to consider the objects of the act when making that decision.

MR PARTON: Does it specifically state that?

Ms Bradshaw: No. It is an omission. From recollection, there is a broad requirement for the territory planning authority, when making decisions, to have regard to the object, but there are some provisions in there for decision-makers other than the territory planning authority to do things, and for those two key decisions that I have explained there is no requirement to consider the objects.

THE CHAIR: DAs strike me as a fairly critical omission—

Ms Bradshaw: Absolutely.

THE CHAIR: being probably the most frequent and one of the biggest regular planning decisions that get made.

MR PARTON: Can you give me the reference again to where they are? I think this is worth pursuing.

Ms Bradshaw: Yes.

MS ORR: In 73(2) and 182. Yes, I think it is worth pursuing. I am still not quite sure I agree with your interpretation, but we will just put it to the government. I think that is fine. They can answer that.

MR PARTON: Yes. I think the questions need to be asked, but, yes, I am with you. I am still unclear as to whether—

MS ORR: Yes. I think just because it is not explicit does not mean there is that interpretation. ACTPLA is an independent authority. Anyway, we will find out the answer when we speak to the government.

MR PARTON: Yes.

Ms Bradshaw: If I could add, there is an example of a jurisdiction that does have a provision that requires the objects to be taken into consideration. It is South Australia, in section 13 of their Planning, Development and Infrastructure Act 2016.

THE CHAIR: Thank you. That is very helpful.

Ms Montalban: It may have been the drafter's intention that the objects are meant to be considered, but from our interpretation it is not clear.

THE CHAIR: Thank you.

MR PARTON: I have gone to your recommendation 13. There were a number of community councils and community groups yesterday that expressed, not quite as articulately as the text under your recommendation 13, that we we were sold the fact that the whole framework was going to be redone, it was going to be simpler and less complex, and it would be, in essence, more accessible to people. You have certainly got a suggestion here that it is not, that there is an assumption that the people who are dealing with planning matters have the time and resources, the knowledge and the understanding of legal processes and other things.

In terms of the simplification of the planning framework, your suggestion is that this has not been achieved. Planning is a very complex matter. How do you achieve that? Maybe that is too tough a question. You are concerned about the access to procedural rights for people who are outside of that expert tent. Could you expand on that concern?

Ms Montalban: I guess, from our experience, having legal training, we, ourselves, struggle with the Planning Bill and planning law more generally. If those that are meant to have expertise in this field still struggle to read and follow this bill, we would assume that someone without that education and training would also struggle to read and understand the bill itself. It may be that the way to make it more accessible might exist outside of the bill—the way that it is communicated to community or the resources that are provided to people so that they can understand it.

I would suggest that there be resources written in other languages; having things available at the office, rather than having all the information online; perhaps outreach to community organisations; and holding information sessions. They are being held, but I am not sure of the extent that they are accessible. All the ones that I have seen are mostly online and in English. Off the top of my head, I cannot think of what provisions, exactly, in the bill, would make it more accessible. Any ideas, Frances?

Ms Bradshaw: No. I agree with your comment about accessibility perhaps being more about implementation, rather than anything in the bill. There is a provision in the bill that requires there to be a website and there are various provisions about certain information being made available online. Some documents associated with planning decisions are also made available in hard copy. Apart from those provisions, I think it is more a question of implementation.

THE CHAIR: We had a previous committee inquiry recommendation that said there should be a separately funded independent planning advisory service that would help

community members. You would not put that in the bill, necessarily. That is a government resource that goes with the bill. Do you think that would be helpful?

Ms Montalban: Yes, definitely. We are a fairly small office, comprising Frances and me, and we are not able to assist everyone that comes to us with planning inquiries. In fact, we are limited by only being able to advise or represent on matters that are in the public interest, so that excludes lots of queries that would be characterised as private matters. But we definitely see a need for that service here in the ACT.

THE CHAIR: I do have another question I would like to ask, but I just want to pause and see if there is something you would rather tell us that we have not covered. With our stakeholders, particularly people who have taken such care, sometimes we do not know what to ask.

Ms Montalban: I think that we have touched on pretty much, broadly speaking, our recommendations.

Ms Bradshaw: The only recommendation we have not really spoken about is free prior and informed consent of First Nations people. We have made a few recommendations in our submission about how the views of First Nations peoples could be better taken into account in decision-making. I do not know how appropriate it is for us to be able to comment on what should be done, but we have made some recommendations about what should be done in terms of best legal practice.

THE CHAIR: Thank you. We did hear from the Dhawura Ngunnawal Caring for Country Committee yesterday and they told us quite a lot. I am hoping we will come up with something useful. We will look at your recommendations carefully. My committee will indulge me to ask a second question if that is—

MS ORR: Only if it is the best question you have ever asked, Jo.

THE CHAIR: It is definitely the best question I have ever asked. I am interested in the process. We had a chat in our very first session with Mr Ponton, appearing in a capacity other than the chief planner, about whether people are given reasons for decisions. If it does not come up just in the legal context, it often comes up in the government consultation context.

I am curious to know your experience. You have now submitted twice to this review. You put in 35 recommendations on the first bill. Two of them were implemented and, presumably, 33 were not. Can you just tell me: what information did you get back from that? Do you think the information in the listening report, or that came to you, explained why the other 33 recommendations were not implemented?

Ms Montalban: No.

Ms Bradshaw: No.

Ms Montalban: To be perfectly honest, it felt as though our submissions had not been read.

THE CHAIR: Interesting. They were not really covered off in the listening report. We have heard from a lot of stakeholders that things were simply listed as not agreed or out of scope; there was no really good reason. Obviously, government will never accept everything. You get given competing things that you do not accept. But we have heard that people did not feel there were reasons given for why things were not done.

Ms Montalban: I did not receive anything.

Ms Bradshaw: Looking at the listening report, it provided the government's response to submissions that were made, but the submissions and recommendations were summarised into categories. We could see some categories that our recommendations might have fallen into, but it was not exactly clear. The response provided was pretty simple. It was "incorporated" or not, or "out of scope", and there were no reasons provided for that.

THE CHAIR: Interesting. And did that listening report get sent to you? You were a submitter. How did you see it?

Ms Montalban: No, I think we searched for it.

THE CHAIR: Interesting. Okay. Thank you. That was my best question ever, Ms Orr, I hope. I will check.

MS ORR: The jury is out.

THE CHAIR: The jury is out. I do not know if that is flattering or not. Thank you very much and thank you for the care and expertise you applied to this. It is very much appreciated. It is such a massive reform project going on, and we really appreciate your time. Our secretariat will get you the transcripts. If you can get any questions on notice back to us, please do, but, as I said, please do not cancel any Christmas leave for this. Thank you very much for your time.

Ms Montalban: Thank you so much for having us.

Ms Bradshaw: Thank you so much.

Short suspension.

LEWIS, DR SOPHIE, Commissioner for Sustainability and the Environment, Office of the Commissioner for Sustainability and the Environment

THE CHAIR: We will now move to our next witness, Dr Sophie Lewis, the Commissioner for Sustainability and the Environment. Thank you so much for joining us. It is lovely to see you again. Can I just check in and make sure that you have had a chance to read the privilege statement and that you understand the rights and obligations contained in that statement?

Dr Lewis: Yes; I have read and I understand the privilege statement.

THE CHAIR: Fantastic. We have a very short session today, so we are going to jump straight into questions, and we are going to start with Mr Parton.

MR PARTON: Dr Lewis, I wanted to reflect on an aspect of the Environmental Defender's Office submission, where they fairly strongly suggested that the objects of the bill should be re-written to provide that the overarching object of the bill is the achievement of ecologically sustainable development. That was their belief. I wanted to float that recommendation past you and see what your thoughts are on that.

Dr Lewis: I am happy to answer that. I have not specifically read the EDO's submission to the inquiry, so I cannot speak to that. But, in terms of your paraphrasing of the crux of their submission, I can speak to that. I would say that that sentiment came out through a lot of the submissions to the inquiry, including the one from my office.

The first recommendation made by my office is also around conservation of the natural environment, and that came through with the Conservation Council and various other smaller groups, such as the Canberra Ornithological Society and Friends of Grasslands—that is, that the current documents do not sufficiently consider environmental issues; the phrasing and definitions around ESD, ecologically sustainable development, are so broad and include provisions that are potentially in conflict with the conservation of the natural environment; and that the proposed documents are not sufficiently providing for stewardship of our environment.

My speculation would be that the reason that that is primary in the EDO's submission and their recommendations is that connection between people and our environment. If a planning system does not sufficiently consider the environment, then it is not sufficiently considering people, because of our connection to the natural environment and our need for a healthy environment around us as Canberrans to thrive in that environment.

MR PARTON: That is a good answer. Thank you.

MS ORR: I am somewhat playing devil's advocate, but should the Planning Bill encapsulate the environment or should that be in environmental instruments?

Dr Lewis: From the perspective of my office, we should have environment considered in all decision-making. The environment is so central within the planning system because of how important the planning system is for how we make decisions

around our city.

In terms of the current planning system and application of that within Canberra, there is very little opportunity for environment or sustainability to be considered within that. That determines where we live, how we live and how we potentially encroach on our natural environments around our city. That affects all aspects of human health and human wellbeing as well as the integrity of the nature within the territory. My firm belief—and I think that is what came through in our submission and various other submissions—is that, without an understanding of our natural environment and our ecosystems embedded within the planning system, we are unlikely to be able to preserve that natural environment.

MS ORR: Dr Lewis, can you just elaborate on putting in an objective or a principle? I appreciate that that would go, to an extent, to having the environment reflected in the Planning Bill. When you are dealing with something on a broad scale and something that takes quite a range—like, the environment knows no boundaries—and you are applying it to a block specific, how can you see the two, on a practical level, being married up? I am quite interested to actually know.

Dr Lewis: Sorry, can you ask—

MS ORR: I am going to the function of how that would work. We have heard from people that the objectives of sustainable development and ecological principles should be put in the bill. I guess my question is going more to the application of how you see that being applied within the places and the decisions that get made for planning proposals?

Dr Lewis: I guess there is two aspects to the value of that elevation of the environmental principles. One is that, whether you adopt the EDO's stance that that should be primary or whether it is one part of the set of objects, that signals how important the environment and sustainability is to the city. The other aspect is that it then allows you to apply that in a practical and functional sense. For example, my understanding is that, when it comes to the block or district level planning, there is very little capacity within the current system to consider the environment and sustainability outcomes.

So, while there are various other considerations that go into current planning around things like heritage and there is some capacity to consider water sensitive urban design, there is little consideration currently and within the draft Planning Bill to consider various other aspects of environment and sustainability in terms of either the block level or, as I said, how we look at native vegetation and species beyond the matters of national environmental significance.

As to how that would look at the smaller level or in a more practical sense, by having that elevated consideration of environment, it then allows that kind of lens to be applied throughout the system. For example, if a development application is made and that is then distributed through various government entities to consider the implications of that as it currently is, by having environment and sustainability so primary within the Planning Bill, you would have that lens across that that would allow us to consider what the implications of the development are, how it fits within the natural environment and how that sustains people within it.

THE CHAIR: Dr Lewis, you spoke in your submission about the state of lakes and waterways and some gaps in the DA approval process but also our compliance and enforcement. You mentioned that there was difficulty getting the right expertise in government to assess technical elements and to enforce technical elements about water sensitive urban design, and that we have got all of these great water sensitive urban design principles but it was not coming through in the system that we currently have. Can you tell me a little bit about those issues? We are going through this planning review and we have a new Planning Bill. What do you think we need either in the legislation or in terms of the resources that will go with the legislation to make sure that we are assessing things correctly and making sure that our compliance is correct?

Dr Lewis: This recommendation also, as you mentioned, referred to our *State of the lakes and waterways* report that came out of my office earlier this year. As part of that investigation, we identified that there were potential gaps in the assessment of those development applications around resourcing. That was that, when applications were made and they were being assessed in terms of these water sensitive urban design outcomes, there was not inherently the technical expertise and the time available to assess those to the level that they needed to be to determine whether those applications would meet requirements. So that was one aspect. We also identified issues around compliance and enforcement in terms of sediment and erosion controls around greenfield developments and also within the infill environment.

In considering the proposed Planning Bill, we recognise those resourcing and expertise issues in terms of assessment of development applications—noting that this is a huge volume of work. There are a lot of development applications that are made. That is resourced differently within different entities and different groups, but that is a huge volume of work that has to be turned around very rapidly and at times by people who are not experts or do not have the technical understanding to assess those against various benchmarks or measures.

In considering all the aspects that go into environment sustainability more broadly, not just water sensitive urban design, and looking at things like preparedness for climate change, resilience in terms of climate adaptation and all sorts of aspects of potential environmental impacts and outcomes, we noted that we really need to be resourcing the assessment of these applications because, otherwise, any changes that are made to the Planning Bill or in terms of the legislative framework are going to be redundant if we do not have scrutiny of development applications by people who are most able to determine what is going on in that application.

THE CHAIR: It sounds like we do not have enough resources at the moment, either in number of human beings or the right skill level. In an outcomes-focused system, are we likely to need even more in terms of human beings spending hours on this and in terms of skills?

Dr Lewis: In terms of the resourcing, that is a very broad statement. There may well be places that are very well-resourced, where they have the right people having sufficient time to review these applications. But that is certainly not the case across the board. If we are asking more of the system, because we are looking for applications that meet more criteria or meet more objectives, then that would

necessarily require more resourcing.

THE CHAIR: We have had quite a lot of conversations about the Chief Planner being able to approve a DA contrary to entity advice and we have had quite a lot of views from different stakeholders on that. Can you talk us through your views about whether the Chief Planner should be able to approve a DA that is contrary to entity advice and any limits you think should be placed on that?

Dr Lewis: If you refer back to the written submission that was made by the office, recommendation 4 states that the Chief Planner should not be provided with the power to approve a development contrary to entity advice. So we make quite an unequivocal statement there. The basis for that is that there may be potential conflicts of interest for the Chief Planner to have that power to approve a development, and that that should not be the case. That does not speak to the current person sitting in that role; that refers to that as a role rather than a specific person and that that is not a robust governance structure.

THE CHAIR: In our very first session of this hearing we had a bit of a chat with the Design Review Panel. Some people had suggested that perhaps they could have less of an advisory role and more of a robust role in looking at entity advice and saying here is what should happen on certain DAs. Unfortunately, Mr Ponton appeared in that session in his capacity as co-chair of the Design Review Panel and so told us that there was no role for the Design Review Panel to have an overriding role in that. You have mentioned governance, and a lot of people have mentioned governance. Do you think there is a bit of a general issue in the bill at the moment with certain roles being held by a single person that could actually be split out more usefully? We have entities but they feed back to the same person and we have a Design Review Panel which is staffed by the same person. Do you see risks there?

Dr Lewis: Broadly yes. Our written submission to the inquiry does speak to potential risks, and that is around the powers legislated within these roles. For example, we note that the Chief Planner can approve a development contrary to entity advice, including where the proposal is inconsistent with the advice of the Conservator of Flora and Fauna. We identified the potential for adverse environmental outcomes or impacts to occur because of that power to approve.

We did not make any specific recommendations about an alternative approach and whether that should be filled by a board or a change in specific powers assigned to different roles through legislation. We saw that as beyond the knowledge and expertise of our office to delve into the legislation or to understand the legalities behind that. But we do see that there are potential conflicts that can emerge from the current proposal.

THE CHAIR: Thank you. Is there anything that we did not get to that you feel that you should tell us?

Dr Lewis: No; I think I am satisfied with that. Thank you.

THE CHAIR: Thank you very much for joining us, Dr Lewis. We very much appreciate your time. We also thank you for your work.

Short suspension.

TANNER, MR CHRISTOPHER (KIP), Member, ACT Planning and Residential Committee, Property Council of Australia

ROHDE, MS ARABELLA, ACT Division Council President, Property Council of Australia

GROVE, MR ROSS MICHAEL, Acting ACT Executive Director, Property Council of Australia

THE CHAIR: We will now move to our next session. We have Mr Ross Grove, Ms Arabella Rohde and Mr Kip Tanner, from the Property Council of Australia,. Thank you very much for your time. We have received your opening statement. We are not doing verbal opening statements, because we have a very compressed hearing schedule and an awful lot of material to get through So we hope that is okay. I will make sure we pause before we finish to check that there is not anything that we did not get to that you think is very important that we discuss. Has everyone had a chance to read the privilege statement and do you understand the rights and obligations in that statement?

Mr Tanner: Yes.

Ms Rohde: Yes.

Mr Grove: Yes.

THE CHAIR: Excellent. I will go straight to Mr Parton for the first question.

MR PARTON: I would like to start with your initial recommendation. What you have said regarding the objects of the bill certainly lines up with evidence that has come from a lot of other individuals and groups—that is, that broadly you are supportive of the objects of the Planning Bill but that you have got some concerns about the lack of definition. You are recommending there should be a clear indication of how those objects are going to be implemented. Can someone talk me through the concerns that you have with how non-definitive it is at the moment?

Mr Tanner: Thee answer to that is that, as a community, if we have got a clear definition or clear aspiration of where we are going, then it makes it easier for everybody to work in the system together towards a common goal. If the outcomes are left to be a little bit too nefarious, then we can have people thinking that they are here and other people thinking that they are down here. When the people in the property industry put in a development application for something which is contrary to the community expectation, that is when we will run into problems and time frame delays et cetera. The more aligned we are with expectations, the better it is going to be for everyone.

MR PARTON: Does that translate, Mr Tanner, to the fact that the Property Council is of the belief that the objects of the bill should actually be more complex and should go to more detail in the objects of the bill so as to clearly define what it is that it is trying to achieve?

Mr Tanner: I do not think that we would specifically be asking for the bill to be

more complex.

MR PARTON: No; the objects is what I am talking about.

Mr Tanner: Yes. I think that there is a fine line between what gets defined in the bill and then what gets defined in the strategic planning, the district plans and all of the things that follow. When the submission was written, we had obviously not seen the district plans et cetera. So it was very hard for us to make full recommendations, I guess.

MR PARTON: It has been a very busy period, and this has made it much busier for people and this space. Since the release of those additional documents, have you been able to make an assessment as to whether there are clearer definitions that are contained in the district strategies and things that have been released since then?

Ms Rohde: No; we have not been able to go through the documentation yet to form a view on how that aligns. There is quite a lot of information that we need to go through and work through with industry, our members and our wider industry body partners that we are working through. So, for that answer, no. We have not seen how that is going to be implemented.

But on the comment that you raise around the need to see the clarity around the objectives, we have said that that is an important component within the strategic planning element. The reason for that is that we are dealing in items that are subjective. We have got a subjective matter and any design and any planning outcomes usually take the eye of the person who is reading it. So it is really important that those strategic documents and the Territory Plan clearly identify what that means and what that means to the intent of the strategic plan outcome.

MR PARTON: When we are sitting here in the middle of an inquiry into the Planning Bill, is it actually possible to make a full assessment of the planning bill without assessing those other documents in conjunction with it?

Mr Grove: I think there is a risk involved with how we sort of triage the suite of planning bills. You have got the Planning Bill but then you have got the Territory Plan. I come from New South Wales, and it is certainly our expectation that the parliament approves the planning bill but then there is a string of planning documents that cascades, and with each of those cascading documents you see more and more detail bolted on and you have got more and more opportunities to engage with government, both communities and industry. I think part of the strength of that process is that you get clarity over that time and you are able to triage different aspects of particular controls. That is something which is not unusual, but it is always going to be the industry's position that it wants a vision of where the territory is going so that it can act accordingly. So it comes through the fog as it clears over time.

Ms Rohde: I think the bill in itself is fine in terms of understanding around the objects. I think it puts more importance on us making sure, though, that in the next phase of this we get that clear understanding, an outcome and agreement around that next process.

Overall, it is important that it is realised that the Planning Bill has two roles. One is to form and shape the way that our community wants to grow in respect of development. But it also has a role to facilitate development to ensure that we are meeting community needs. It just enforces the importance of getting this next phase and getting agreement around the next phase and how that works. But I believe that bill itself around the objects and objectives is fine to go through in its form, but it puts more importance on getting the Territory Plan and the strategic documents and giving sufficient time for consultation, engagement and agreement around those. It increases that importance.

THE CHAIR: We are inquiring into the bill; we are not inquiring into the Territory Plan and the district strategies. But we hear very clearly what you are saying. Do you have a view on how long the consultation period should be from government on the district strategies and the Territory Plan? I think it is currently slated to finish on 14 February.

Ms Rohde: I believe that more time will likely be needed. Once we get through the different components, we will likely engage with government further in terms of how we see that going forward. But I would say that, this period, being December, and then January, it is a very difficult time for both industry and community to look through that material. But we will come forward if we believe additional time is required.

THE CHAIR: Excellent. Thank you.

Mr Tanner: I would add that we are going to be very interested in the transition arrangements as well. When we go from the current system to the new system, that is going to be really important to projects that are in train. Also, the current system is under constant review as well, and we are continuously finding little nuances and improvements that can be made for the current planning system as a whole. So I think that we would be kidding ourselves to think that on day one the new system is going to be perfect. It is going to need to be under constant review, because we are not really going to fully understand every single "and", "or", "comma" or whatever in the bill until we actually work through a project which, delves into the details of some of these things. So there is going to be a need for acceptance of continuous improvement as well.

THE CHAIR: Imperfection, yes; thank you.

Mr Tanner: Yes.

THE CHAIR: A lot of our witnesses have spoken on similar issues, but we have not actually spent much time talking about significant developments. I wanted to check in with the Property Council, because you covered this issue in your submission. You said that you did not like grouping the three different types in together. Can you just talk me through what you think needs to change in that concept of significant development?

Ms Rohde: It is the consequence of calling something a significant development. I think there is a community perception that, if it is a significant development and you

have got it grouped together, therefore the impact or the consequence of those components must be at least related or similar.

We have got a state development plan, an item that could be referred to the national Design Review Panel and an EIS. An EIS is a very significant component. I would say that the state development plans require their own type of referral system. But, at the end of the day, the Design Review Panel should be used as a facilitation element within the planning system. By inferring that something that is required to be referred to the national design panel is therefore a significant development and requires additional consultation, additional notification or additional decision is taking away from the objective that was first set up where it was to facilitate a design-led approach to help get it through the system.

We would see the need to actually break apart that and understand why there is the significant development grouping, what are the commonalities between them or dealing with them in different ways. We would want to encourage and facilitate people to refer items through the National Design Review Panel. But, if that comes with the additional consequence for information being submitted, notification or decision time frames, then it is acting in the reverse.

THE CHAIR: So it can accidentally be a disincentive if we do not get the actual framework right?

Ms Rohde: Correct; yes.

Mr Tanner: If we have a project which goes to the National Capital Design Review Panel and gets a glowing report from them saying, "This is fantastic," it then goes in as a DA and has an extended time frame for consultation, agency comments and decision-making, which is contrary to the original intention of the Design Review Panel.

THE CHAIR: Interesting. We had our first session with the Design Review Panel and we have heard quite a few things. There were a lot of people who were unhappy about the removal of pre-DA consultation and there were quite a few suggestions that pre-DA consultation could happen at the same time as the Design Review Panel and that pre-DA consultation might even perhaps be fed into the Design Review Panel. I do not know if you have had a chance to think about that general idea of reinstating pre-DA consultation but also maybe running those at the same time. If I have just chucked something new on you, feel free to say that you have not had a chance to think about it. That is okay.

Ms Rohde: I would say the intent of the Design Review Panel is part of the process and the time frames for which a development assessment needs to take place. The more that we put things into a pre-process, it starts to put the burden on extending the process overall. We are encouraging of pre-engagement. But to the point where it becomes a pseudo first step for the process, there is quite a lot of design development that needs to go in before it goes into a DA. But, ultimately, we would see the need for the design review process to be part of the overall assessment process and work within the time frames that the DA time frame assessment takes place.

THE CHAIR: Thank you.

MS ORR: We have heard from a number of witnesses that they would like to see the pre-DA consultation retained. Your submission argues a different perspective. I just wanted to get a clearer understanding of your reasons and your rationale behind why it is not working and why it should not be re-enlivened, so to speak, as opposed to just discontinued as a practice.

Mr Grove: I might just speak from my experience. I am on day seven of the Acting ED role in the ACT. My background is that I come from local government in New South Wales and I had been the Western Sydney Director of the Property Council. We do not have a pre-DA consultation process. We had DA assessment rights as councils for a significant amount of the time that I was involved in that space.

I think the capacity to create a conversation in the community and then change that conversation as part of that consultation, would be a very clunky thing for an assessment and approvals body to try and handle—certainly with larger projects. We see in New South Wales that industry players will independently consult and effectively collate the findings of that consultation and present that—not necessarily as part of the assessment material but as sort of an explanation of how they have got to a particular point to better inform people assessing the process. But I would be fairly reluctant to want to prescribe that in the planning system. As a newcomer to the ACT, I am actually kind of surprised that it is in a system, because of that clunkiness.

Ms Rohde: I think it is more so that when we do the pre-DA consultation it has not made much difference in terms of what happens when it goes out to exhibition anyway, and it is starting to become very difficult to demonstrate an effective pre-consultation period that ensures that the community are aware of that. Also, there is a risk that that that pre-DA consultation starts to almost go under a semi-automatic assessment process or gets notified in some way.

I think it is the prescriptive nature of the pre-DA consultation. We are supportive of pre-DA consultation, but the size or the scale of the development will likely undertake that anyway and do different levels of engagement. But I do not think the outcomes were necessarily hitting and achieving the objectives that it was originally set up for and it started to feel that it really was not making much of a difference in terms of how people felt or did not feel engaged. It was not until it became an active DA that we saw that engagement happening in place. Ultimately, one of the key aspects is that policy and policy decisions should not be considered at a DA process, and a lot of the DA and pre-DA consultation was often explaining why this was possible and the like and being more about a policy discussion.

Mr Tanner: Teaching the community about what the Territory Plan allows in a zone as opposed to having a conversation about the proposal. Also, the guidelines that are around the pre-DA consultation suggest that we are supposed to take to the community floorplans and elevations. It is actually quite a detailed proposal. Whereas in the early stage of things, if people in the community want to be consulted about what you are going to build, it is too late in the process for them to be having a say, because you have to design the building and take it to them.

So, if you were going to do pre-DA consultation and take the community on a journey through the evolution of the project, you need to start before you have got building plans, really. I think the guidelines are sort of suggesting that we do pre-DA consultation the week before you lodge the DA. In that case, it is a community information session; it is not actually consulting the community about what you are proposing, because you are obliged to put a DA in for something that is essentially the same as what you have consulted on with the community anyway.

MR PARTON: That is very similar to what Mr Lowe, from the Molonglo Group, had to say. He said it in a different way, but it is very, very similar.

THE CHAIR: That has been helpful, though. I think it is the guidelines that are the problem.

Ms Rohde: Yes. I think it is also the scale of the development and the extent that that is required. There may be a case for certain elements of pre-DA consultation for a certain scale or size or the like of a development. But at the moment it applies more generally, and I think that is where it needs further review or consideration. But, to that point, and to Kip's point, it is around the process and the need to do it and he issues that come out of it with respect to the guidelines and the mandatory nature of those.

THE CHAIR: Thank you.

MR PARTON: I am confused. One of your recommendations is: "The Property Council recommends the planning strategy is updated to reflect available housing supply evidence and population data," but, in the wider text to that, there is almost a suggestion that this is something that should just be considered at the point that the planning strategy itself is reviewed. What is the actual position of the Property Council on that?

Ms Rohde: Ultimately, there are two different contexts. I think it is the extent to which the planning strategic likely needs to be reviewed and the amount of time between that and how it then sits with the strategic nature.

I will go to the housing supply. This is one of the key elements—and I would like to talk to that point in a bit more detail. One of the aspects in terms of the bill is that it is very much written as though it is controlling the outcomes of development. But the role of the planning and the EPSDD is still to facilitate development in a way that it meets the needs of the community. One of the aspects we see is that when you read through the documents, it is about providing sustainable homes but it does not necessarily specify providing a sustainable supply of homes or the aspect of actually meetings those needs.

Sometimes those requirements may be at a tension with other elements or objectives of the strategy as a whole. We want to ensure that economic investment, supply and provision, the speed at which housing can be supplied or provided and employment opportunities are considered as part of any strategic review of the planning and the strategic plan overall.

We also think that the time frames between them is not allowing necessarily for a changing position. If we look back through the years, and the census data telling us all that, of a sudden, we had 20,000 more residents than expected, how can we update our overall government strategic vision to pick up on urgent items like that that come out and look at the housing supply crisis that we are having in terms of housing and rental? How can we make sure that we are also reflecting that strategic vision over current and key community issues? We do not want it to be so broad that it is just a coverall anyway. Sometimes we need it to be more specific and targeted to that language. So I think we are probably a bit conflicted in saying do not review it too much, but how do make sure we review it to pick up contemporary community issues?

THE CHAIR: Sure.

Mr Tanner: I would add that it is not necessarily just the housing. We could have a similar conversation in relation to the provision of industrial land in the ACT or employment opportunity areas.

THE CHAIR: Thank you so much. I am very sorry to say that we are now at the end of our time. We very much appreciate your contributions. It was great that you could come. We have had less involvement from the industry sector. So it was particularly valuable and particularly important. So, again, thank you very much.

Short suspension.

ALBURY-COLLESS, MS MARIANNE LOUISE, President, Reid Residents' Association Inc.
ELSUM, DR IAN R, President, Curtin Residents Association

THE CHAIR: Welcome to our next session of the Standing Committee on Planning, Transport and City Services and our inquiry into the Planning Bill 2002. Before we resume I will run briefly through some of our housekeeping rules. Phones should be on silent or off, if that is possible. We will keep our computer pings to a minimum if we can. We have COVID safe measures in place. That includes room limits, wiping our seats in between witnesses and practising good respiratory and hand hygiene.

If witnesses could speak one at a time that would very much help us to hear you and also help Hansard in recording. The first time you speak, please state your full name and the organisation that you are here representing; that also helps us with Hansard. We are recording our hearings today and they are being transcribed. They are also being webstreamed live, so we might have an audience out there, which is always very exciting!

Thank you very much for joining us. We have Dr Ian Elsum from Curtin Residents Association. Thank you for coming. And we have Ms Marianne Albury-Colless from Reid Residents Association. Thanks for coming back.

THE CHAIR: I will also check with both of you; have you both had a chance to read the privilege statement, and do you understand and agree with the rights and responsibilities that are contained in that statement?

Dr Elsum: Yes.

THE CHAIR: Ms Colless, if you could just say that verbally that would be great.

Ms Albury-Colless: Yes. Sorry, I said yes.

THE CHAIR: That is fantastic. Excellent. We have a lot of material to get through today, and unfortunately not very much time. I am shuffling around looking for my first question so I think I might pass direct to Mr Parton.

MR PARTON: I am happy to go. I have just been going through the Curtin Residents Association submission this morning. I am going to go to a specific paragraph, Dr Elsum, and that is that the bill gives the Chief Planner the power and responsibility to maintain the plan, make amendments and make decisions under it. Some amendments are notifiable instruments. Some decisions are explicitly removed from oversight by the minister or the Assembly or by ACAT. I sense some concern from your group over the "planning dictatorship"—I think that was the term used at a previous hearing. Is that too far or is that the position of the Curtin Residents Association?

Dr Elsum: The current system, I think, has lost the trust and confidence of the community. And our experience, I think, reflects that broader experience of other community groups. So, how would you restore the confidence and trust? The decision-making is a really critical part of that—seeing that there is a transparency in

the decision making, but also that there are some checks and balances in the system. If too much power or decision-maker rights have accumulated in a single individual or a single authority then I think we really do run the risk of a lack of transparency—things being done because it is just expeditious to do them. And that will just further decrease confidence and trust. If you want examples in terms of transparency, the Curtin Residents Association took the ACT government to ACAT because it was the only way we could find out what had been approved for a development application.

MR PARTON: And in the end you did get the information you were looking for in that instance, or not really?

Dr Elsum: We did. The court in fact had ordered the developer to produce plans so we could actually see them.

MR PARTON: I guess it is difficult for you to comment on this. Are you of the belief that the outcome would have been different or the same under the new bill?

Dr Elsum: Under the new bill my understanding is we could not have taken the developer to ACAT.

MR PARTON: Okay, yes.

Dr Elsum: This is an example of something where there was a huge amount of community interest and concern. For the first development application there were 600 representations, and we were told that less than a handful—so, less than five—were in favour of the proposal. The remaining 595 or so were objecting.

MR PARTON: This is the big one at Curtin Shops?

Dr Elsum: Yes. So, there was a huge amount of Curtin community interest and concern, and as I read the new Planning Bill, because it is more than 25 metres or 50 metres—whatever the distance is—away from the nearest housing, the community could not object.

THE CHAIR: I might continue with this. Ms Albury-Colless, do you have anything to add on this before I add a supplementary question to this?

Ms Albury-Colless: I concur with those previous comments. I will leave it there. Thank you.

THE CHAIR: The directorate has said that it is working on a new system to transform its website so that it will put up more information there, including notices of decisions. Do you think that would help?

Dr Elsum: No.

THE CHAIR: Excellent. Tell me why.

Dr Elsum: Maybe I should just go through what happened. The first proposal with the 600 representations was rejected; 18 months later the developer put in a new

application and it was an improvement but there was still significant concern with the impact on the group centre and the ACT community. So, there were roughly 200 representations again, I think. Then the decision came down—a building had been approved that was clearly different from the building that had been submitted as part of the development application.

MR PARTON: When you say different, what do you actually mean?

Dr Elsum: There was a number of conditions on the decision. If you look at the conditions you see that what had happened is that the developer and the directorate got together and negotiated a result. When the decision came out you got a list of conditions but we actually could not understand from the conditions exactly what had been improved, and therefore what impact that would have on community amenity.

So, in posting the decision on the website there was no advantage whatsoever. It's that lack of transparency. There was a huge amount—we got to see that because we went to ACAT; they had to provide the documents—of to-and-fro behind the scenes, and that lack of transparency.

THE CHAIR: Thank you. I might move on to a fresh question. Ms Albury-Colless, I think you put quite a bit in your submission about consultation. Can you tell me, I guess, your single biggest concern, or maybe the single best change we could make to the bill to improve on that.

Ms Albury-Colless: Well, yes. Use the word "genuine".

THE CHAIR: Sure. Tell me what that means.

Ms Albury-Colless: That you actually do not go in corralling the discussions from the beginning; that you do not have a desired outcome other than genuine understanding and proper listening to what the residents have to say. Particularly on the consultation that occurred on these district strategies, a lot of us got the feeling that the whole tenure was corralled into what the outcome was meant to be according to the people running the consultation—the people in the planning. I am afraid we did not think it was genuine and sincere. I do not know how many metaphors or synonyms you would like me to use, but basically that was that was the feeling. And, certainly, in consultation, yes, I understand that there is a lot of literature out there and best practice in terms of consultation. In "consultation" the prefix "con" means "with", so you tend to think that you are having a conversation with people about what are people's best interests and what their desired outcomes would be, so we do not really like being corralled in that sense. We also like proper reporting that takes into account the conversations that have been had.

THE CHAIR: Excellent. You are making a number of statements that many others have made during this inquiry. We have often heard the words "quality consultation", too. We have heard about the quantity of consultation, but I think people are more concerned about the quality than the quantity. When you talk about reporting, what should go into reporting after consultation? If it is consultation from government or consultation from developers, what should go in there? Do you want to see better reasons? What is missing at the moment?

Ms Albury-Colless: Well, really, it is a case of record-keeping. To me after a consultation, no matter with whom, notes should be made. I guess it is almost a translation of what has occurred. If it is a high-level conversation or consultation process, then a proper recording of it should be made. Often, we just go up and we put Textas on butcher's paper. I noted that in the consultation that I was at, in the Inner North district consultation—I noted that Rebecca Vassarotti was there; the Minister for Heritage—a lot of the material that was put on butcher's paper was not recorded in the final. And yet some of those particular points were actually quite important.

I made a note of that because I have been in voluntary consultation in the past and I just felt that this was not accurate. There needs to be an accurate capture of what was said. The pros and cons can be then added. Obviously, the government needs to have a look at what is possible and to see what can be included and what cannot be, and give reasons for what cannot be done. That is better practice consultation.

THE CHAIR: Thank you, Ms Albury-Colless. Ms Orr, do you have a question?

MS ORR: No; I think we are covering a lot of what we covered yesterday. I guess probably the question that I would usually go to is about the pre-DA consultation. We have had a number of people raise that, and I think that is one more interesting propositions. I think we covered this a little bit yesterday, so I will throw to Mr Elsum first to get his view around what opportunities you see for the pre-DA consultation. We have heard from a number of people who would like to see it maintained. Would you like to see it maintained, and what opportunities do you see for it to be improved if it is maintained?

Dr Elsum: The Curtin Residents Association believes it must be maintained, and it must be genuine. Our experience in terms of pre-DA consultations is that there are two parts. There is the community. There is also the ACT government and, in our case, ACT government and the developer. The ACT government did its best to facilitate consultation by establishing a community panel representing multiple groups in the community and the developer.

On the developer's side, this was clearly something that had to be endured. The developer was visibly angry when he found out the community was going to oppose what he wanted, and the developer's representative at the community panel treated the proceedings with contempt. He spent the entire time looking at his phone and not engaging.

So our experience is limited. It would be interesting for you to explore how widespread that type of occurrence is. I would say that the question is: how do you ensure that the developers engage? I think there is a role for the ACT government to improve, as well, but I would have to say that in our instance the community panel was a genuine attempt to improve things.

MS ORR: Yes. It is an interesting point, though, because we just heard from the Property Council, before the break. In their submission, they had said that the pre-DA consultation is not working so it should be discontinued. So they were one of the ones that were on the other side of the fence, I guess, from where a number of other people

have been. Through the line of questioning there it came out that their reasons for discontinuing it was that it was not working. They saw it as coming at not quite the right part of the process. If my understanding is correct, they were almost saying that it needed to come a lot further forward into the conversation, rather than right before you are lodging your DA.

Dr Elsum: I would agree with that. I think that just before is too late.

MS ORR: Okay.

Dr Elsum: But it also does require the developer to be open. I just think the developer in the Curtin case could have saved two years of their time if they had been genuine and open about consultation with the community.

MR PARTON: It is an interesting point, though, because sometimes what I have heard from the other side—from developers—is that if, indeed, your suggestion were adopted, you would end up with a committee—potentially of 400 people—which was deciding on the design of a project, and they are saying that they are not sure that that would work. But the situation that we have under the current regime is obviously that pretty much completed plans are presented to people for them to say, "What do you think?"—and tough luck if you do not like it.

Dr Elsum: The built form needs to be discussed. From the community perspective, our comments were on what outcomes we wanted. And those outcomes were not being satisfied by what the developer was putting forward.

MR PARTON: And I would just draw attention this. You have made some pretty strong arguments in your submission around pre-DA consultation, quoting the Chief Planner in a number of circumstances where he has been extolling the virtues of pre-DA consultation, and that it is difficult to see the change of position.

THE CHAIR: We might just check in with Ms Albury-Colless. Have you got something to add, here?

Ms Albury-Colless: Not exactly in relation to this, other than the fact that with Mr Fluffy houses in Reid—which obviously has some relevance to DAs, et cetera—the issue often was that the areas in which the Mr Fluffy houses were discovered—three plus 14—were in a heritage precinct: the Reid housing precinct. And, there, the development applications were somewhat fraught because, in many cases, it was more a certifying situation. I am afraid that in one particular instance—23 Dirrawan Gardens particularly comes to mind—the house that was being proposed by a developer, as it happened to be, was a perfectly good house that would have been absolutely fine in places like Gungahlin or in new developments, but the features of this particular house did not contribute, in any way, shape or form, to the streetscape.

Heritage, as it was comprised then—as in the council—okayed it. This was quite some time ago, before the current sacked Heritage Council. It caused an uproar in Reid. Basically, the proponents decided to sell it. It was just too difficult to get on with the neighbours. Now that was, if you like, a DA by resident reaction. That should not happen, so I would suggest that when Mr Fluffy houses come up—I hope no more

do—in residential areas that are heritage listed, a proper DA process is followed.

THE CHAIR: Thank you. That was very helpful. Look, I am terribly sorry to say that we have come to the end of our time. This was a brief but extraordinarily enlightening session. Thank you very much for talking us through, particularly, the consultation aspects. I think we have actually drawn quite a lot out of this. I do not think we have any questions on notice, so thank you for joining us and thank you for your time and submissions. Thank you, Ms Albury-Colless for coming to us. Thank you.

Short suspension.

COGHLAN, MS ROBYN, Secretary, Friends of Hawker Village
KELLY, MR DAVID, President, Ginninderra Falls Association
WEBER, MR FREDERICK, President, ACT Rural Landholders Association

THE CHAIR: Thank you all for coming. We have Mr David Kelly from the Ginninderra Falls Association, Mrs Robyn Coghlan from Friends of Hawker Village and Mr Frederick Weber from the ACT Rural Landholders Association. Thank you very much for appearing today. We have had a lot of submissions and a lot of interest in this inquiry. We genuinely appreciate it. Everybody is very generous with their time. I will just start by checking: have you all had a chance to read the privilege statement and do you understand the rights and obligations contained in that statement? Can I get a verbal yes?

Mr Weber: Yes.

Mr Kelly: Yes.

Ms Coghlan: Yes.

THE CHAIR: Great. We are not doing opening statements, but we have received your written material. If there are any statements you wish to table, please do so. I am going to jump in with the first question. Mr Weber, I would like to ask you an open question. We do not often hear from the Rural Landholders Association. We are very glad you could come. Are there any aspects of this Planning Bill and this reform, at the moment, that you think should be changed or are there any particular concerns, from your point of view, that we need to be looking at?

Mr Weber: Yes, definitely. The rural landholders in the ACT make up 15 per cent of the territory. Currently, the city sits at about 17. So we are a major stakeholder and quite an important piece of the puzzle for not just food production in the ACT but also conservation, natural resource management and biodiversity targets that the ACT government might have.

As you know, we have a long history, with a settlement period pre-dating the ACT government and the commonwealth of Australia. The Rural Landholders Association have been around for 110 years in various forms. So, for us, a lot of this stuff is bubbling with issues that have been raised over many years. What it really boils down to is looking at rural land as a land bank for the ACT and the urban growth of the city, or offsets to meet particular targets which are a requirement for development. For us, that becomes quite a challenge because it really undermines the importance of rural land in the ACT and what it can achieve, not just for food security but also for economic growth, employment and the environmental aspects. The rural landholders in the ACT are really big on sustainable agriculture. We are really fortunate to be here today to be able to speak to everyone.

THE CHAIR: Thank you for coming and thank you for that statement. It strikes me that, probably, a lot of your concerns might be covered in the Territory Plan at later stages of this review. Is there anything that has leapt out at you that is glaringly wrong in the bill that needs to be fixed or do you think this is more a matter that you need to

keep engaging with the government on and the government needs to keep engaging on with you?

Mr Weber: I think there are quite a few elements that are being overlooked, particularly with the district strategies, outside of the key nine areas identified. Areas outside of the city landscape areas, like Tharwa and west of the Murrumbidgee, are excluded from the district strategies. That creates a lot of issues around future development applications and planning in those areas and what is actually the plan and the strategy around there.

Within the district strategies, there is a lot of concern as well. The current land use has not been clearly articulated, supported and identified. What you see is maps where they classify rural land as open space or as future change areas. That is really problematic because it does not communicate the work that has already been done on a lot of those rural properties and the value that they bring to the city, not just through the points that I articulated earlier but also through maintaining that cultural landscape, which stems back thousands of years to First Nations. That is something that is really important too: to have a look at those multiple layers of heritage, socio-economic and economic to put a higher value in the communication of the Territory Plan and district strategies for rural land in the ACT.

THE CHAIR: Thank you very much. That was extremely helpful and quite different to a lot of the evidence we have received. It was unique, so that is great.

MS ORR: I will stick with my theme of the day, the pre-DA consultation. Can I get your views on whether it should be retained and how it can be improved?

Ms Coghlan: We would support pre-DA consultation if it was seriously taken on board, instead of just being brushed off as: "Well, that is step 1 done and now we can move on to step 2." That, quite frankly, is how we have come to see it over the years.

Mr Kelly: We also think pre-DA consultations are a good idea and should be retained. It would save time and developers' costs.

MS ORR: Okay.

MR PARTON: Mr Kelly, your submission, among many others, has indicated that the minister should go through a process of demonstrating the case for a territory priority project—that they should not just have the power to declare it.

Mr Kelly: Yes. I think that there should be cost-benefit analysis of all options before they can decide on a territory priority project. Otherwise we do not know whether we are getting the right solution or the best value for money.

MR PARTON: Have you given any thought to how the bill would be amended to reflect that, or is that just a broad view?

Mr Kelly: It could just be stated in the act that a cost-benefit analysis must be done.

MR PARTON: Are there others on the panel that have any views about the

identification of territory priority projects?

Mr Weber: I do, yes. I think there needs to be fair warning and fair compensation. Often the rural landholder is the last person to find out that their property might turn into a future development site, be it a suburb or a conservation area or an industrial landscape. Allow as much time as possible for them to mentally prepare, because people have a strong affiliation with the land that they are on. I do not think you will find a farmer who does not care about the environment and their farm. Allow them the time to move on and to prepare financially. Also, reward them appropriately. What the ACT government currently gives rural landholders as compensation is considerably less than for land across in New South Wales, and that is if they have a 99-year lease. If it is a short-term lease, it is pretty much nothing at all.

MR PARTON: All right.

THE CHAIR: With the territory priority projects, do you have a view as to whether they should be available for both public and private projects, or whether they should only be available for public projects or maybe for certain types? Is it okay to be broad or should it be limited?

Mr Kelly: I suppose some private projects might be big enough that it would be important for alternatives to be available, yes.

THE CHAIR: Some of the examples that have been raised so far in the hearing are social and affordable housing, private schools and private hospitals. I do not know if you have any views on those.

Ms Coghlan: I would think that consultation on public housing projects would be desirable, in the sense that it is going to be part of the community and it is worth getting input from the community to discover certain aspects that might not have been considered previously, just to improve the outcome.

THE CHAIR: Yes; absolutely. Excellent. I might start with a new question. I will direct this one specifically at Ms Coghlan, but I invite anybody to weigh in. I think you raised some concerns—and this has come up quite a lot—about the minimum mandatory rules, the standards. I do not really want to go into the language of rules and criteria because we have got a different system now. You raised whether, under the new bill, people will have good certainty and good planning decisions on things like setbacks, solar access, green space, plot ratio in variation 369—all of those things. You have put a bit of thought into that. Was that part of the concerns that you have raised?

Ms Coghlan: It certainly is our concern, because what we have seen so far in terms of densification, and also in the creation of new suburbs like Whitlam, is that it has not been designed with thought to the factors that are important in relation to global warming. The other day I was looking at aerial images of a part of Weetangera which has been subject to considerable development. The difference in the green coverage today, compared to 15 years ago, is quite significant. What were single dwelling blocks are now five dwellings down the block and occupying most of it, with a driveway all the way down one side and then a very tiny area of about four feet along

the other side, which is the back of all the units. It is hard to see how that qualifies as being environmentally friendly.

THE CHAIR: Yes, or climate resilient. I think we would be in agreement. We have recently brought in some new measures. We have brought in variation 369, which is that plot ratio one, and there are some other things on the way. There is the Urban Forest Bill. There is some tree protection legislation on the way.

Ms Coghlan: Yes.

THE CHAIR: If those things were implemented and enforced well under the system, do you think that would assist with those concerns?

Ms Coghlan: To some extent. But the 40 per cent plot ratio for green space will severely limit the way that a block can be developed. It has to be a single block that is adequate for the purpose. That will then impact on the other rules about how many dwellings are on a block. We could see considerable conflict in that. We think it is desirable, but it does not fit with the need to provide more housing.

THE CHAIR: Thank you.

MR PARTON: Ms Coghlan, you are not the first one to raise this—and I will be questioning the minister and the chief planner on it—but you are perplexed by the use of the word "prosperity" in the object of this act.

Ms Coghlan: Yes.

MR PARTON: Why? As it reads at the moment, in this new bill, "The object of this act is to support and enhance the territory's livability and prosperity." Why is that a concern?

Ms Coghlan: Well, I guess I do not understand its use in that context.

MR PARTON: Yes.

Ms Coghlan: Prosperity, to me, means financial benefit, ultimately, in some respect. What we are talking about here is basically redevelopment in a way that will accommodate a growing population. If we must have a growing population then we have to do it in a satisfactory fashion to ensure that we do not contribute to the global warming problem. It is a conflict, really, between the two items. And the whole point of prosperity I do not understand.

MR PARTON: I will seek clarification in the hearings later on today. On first reading, I think you are struggling, as others have, with: is it about prosperity of individuals, is it about prosperity of the territory's budget bottom line or is it about prosperity at a higher level?

Ms Coghlan: I did not like to say that.

MR PARTON: I have noted your query and I will do my best to get some sort of

answer on it today.

Ms Coghlan: Thank you.

Mr Kelly: Is sustainability mentioned there as well?

MR PARTON: Yes: "promotes and facilitates the achievement of ecologically sustainable development".

Mr Kelly: Okay. Good.

Mr Weber: I find that, as I raised earlier, it is very city-centric, the Planning Bill. It is focused on Canberra and the ACT is just where Canberra is located. But, in actual fact, Canberra is just a city within the ACT. If this is a Planning Bill and territory or district plans that represent the ACT then it needs to be a bit more inclusive and not just focused on city outcomes.

Also, with that prosperity, there needs to be further research done into the economic value of agriculture and the employment potential. Whenever they look at change areas, such as in east Canberra, the possible change area for employment, it is just focused primarily on industrial development and Hume. That does not necessarily meet any of the outcomes around sustainability. It also does not take into consideration the economic cost of climate change and the effects of flooding and things that might happen in the future.

MR PARTON: Excellent. Thank you.

THE CHAIR: Excellent. That was great. Thank you. I am going to ask a question probably to you, Mr Kelly, but, again, anyone who is interested can answer. We have heard some concerns about estate development plans and third-party appeals. Do you have any views on the role of third-party appeals in that system?

Mr Kelly: That is appeals from—?

THE CHAIR: The ability for people who are not directly involved in the matter to lodge an appeal—not the developer and typically not one of the parties.

Mr Kelly: Right. Like people in the immediate neighbourhood?

THE CHAIR: Yes. Often the people who are doing that are neighbours and residents, and also environmental groups.

Mr Kelly: That is right, yes.

THE CHAIR: It is often environmental litigation.

Mr Kelly: Yes.

THE CHAIR: Do you think it is important to retain that ability?

Mr Kelly: I think it is, yes.

THE CHAIR: Yes. What is the role of that? What is the risk if we trade that away, do you think?

Mr Kelly: Often an environmental matter is about something that is in an area adjoining a suburb, and it affects everybody. It might be a natural resource that is used by lots of people in the district. It is important that all those people using it have the right to have a voice in development in any such area.

THE CHAIR: Yes. Thank you. It strikes me that this is quite an interesting session. We are hearing from a lot of the voices who are not usually involved in planning, like our rural landholders and our environmental groups. I think it has been a valuable discussion.

MR PARTON: Can I go to a topic that we have discussed with a number of other panellists over the last couple of days, and that is offsets. Mr Weber, you have made mention of offsets and how difficult they are for rural landholders—the position that they are put in in regard to catering for them. Mr Kelly, in your submission you have suggested that they are ineffective and subject to corruption.

Mr Kelly: Yes.

MR PARTON: Not a fan?

Mr Kelly: Not a fan of offsets, no. There was a program about them, with the Australia Institute the other day, in which they concluded that offsets should be a last resort only and not something that is used with basically every development to justify it.

MR PARTON: Mr Weber, I would be interested in getting further thoughts from you because you are at the other end of this. Your members are at the other end of this in terms of having to deal with it. Talk me through how that plays out.

Mr Weber: Yes. We are hopeful that there can be some real change in this space. Hopefully, through biodiversity payments and schemes at a federal level, we can see the ACT government adopt the rural landholders to maintain that land and reach particular targets around biodiversity and conservation. Pay them accordingly for their time and, as a result, the farmer can continue their livelihood there and the land does not have to become an offset.

In a lot of cases it is: lock the gate, throw away the key, and the land is rested and deteriorates significantly, and the biodiversity and everything is not front and centre. It is not a lack of willing. It is that budgets are finite. In a lot of cases a rural landholder can probably do a better job than the public sector because they have got the resources. If they have got the appropriate knowledge and they are held accountable, through Accounting for Nature and different software, then they could do a pretty good job, I think.

MR PARTON: Right. Good answer. Thanks. Ms Coghlan, do you have anything to

add to that?

Ms Coghlan: I have always thought the offset situation was a bit of a lurk. I much prefer what is being offered here.

THE CHAIR: It sounds much better, doesn't it? Yes.

Ms Coghlan: Yes.

THE CHAIR: We are at the end of our session.

MR PARTON: I thought you were going to say "our tether" there, for a moment.

THE CHAIR: I think many people are. Thank you very much for coming in. These were some really interesting perspectives and some that we had not had fed in yet. It was really valuable that you could come in. Thank you so much for your time. We really appreciate that people are very generous with their time. Thank you for coming. I hope it has been valuable for you too.

Mr Weber: One thing I might add is that the rural landholders in the ACT are aware that they live on the outskirts of the capital of Australia, so it is not necessarily a question of whether land will be taken or not; it is about how much and at what cost. There really needs to be integration into these planning changes around where the primary agricultural areas are and boundaries put in place to ensure that development does not go over a particular point. At the end of the day, rural land, even though it is privately owned, is a public good, so it is really important that the public understands that it is for their best interests, too. We are fully supportive of housing and everything like that.

MR PARTON: Excellent.

THE CHAIR: Thank you.

Hearing suspended from 11.31 am to 12.50 pm.

BURKEVICS, MR BREN, Conservator of Flora and Fauna, Environment, Planning and Sustainable Development Directorate

LARSON, MS ELIZA, Acting Director Conservator Liaison, Office of the Conservator of Flora and Fauna, Environment, Planning and Sustainable Development Directorate

THE CHAIR: Welcome to the public hearing of the Standing Committee on Planning, Transport and City Services for our inquiry into the Planning Bill 2022. We are recording and transcribing our hearings today and we are also webstreaming live, which is always very exciting. If you take a question on notice, if you can say, "I will take that as a question on notice," that assists our secretariat to track down the answers. We are not doing opening statements because we have very limited time. But, if there is anything else that needs to be tabled, you are most welcome to do so. I am going to pass over to Mr Parton for the first question.

MR PARTON: Thank you, Chair. Mr Burkevics, a number of witnesses have expressed concern at what they see as the watering down of the powers of the Conservator under the new bill. The Canberra Ornithologists Group specifically recommended a strengthening of the role of the Conservator, in particular, to ensure that your advice could only be overridden by the Chief Minister in extreme circumstances. We heard from a number of groups that they are worried that your advice can be dismissed by the Chief Planner without much reason that is visible to the public. I just wonder what reflections you would have on those submissions from others.

Mr Burkevics: Thank you, Mr Parton, and good afternoon, committee. I acknowledge those views and observations of the various groups. I think change is a very, very difficult thing, particularly a magnitude of change of a completely new bill from the previous Planning Act. I think it is fair to say that the roles of the Chief Planner are inherent in the act as explained as encompassing all matters in relation to planning, and I do note in the objects of the act that one of the key considerations of the act that would flow through the responsibilities of the Chief Planner is ecologically sustainable development.

Of course, as a growing city, we are at that juncture of hard decisions needing to be made that support the need for a growing Canberra and a growing infrastructure and, at the same time, protect the environment, nature and threatened species. We do note that in the act territory priority projects are considered by the minister. In relation to normal DA matters, that is a function, as it is now, of the Chief Planner. So there is a framework that currently exists to guide the Chief Planner in his or her decision-making around development.

The Conservator's advice is taken on board and, I am pleased to say, in the majority of occasions is encompassed into decision-making. It is a challenging position, but I think the Conservator's advice is absolutely taken into account in the new act.

MR PARTON: Although the view was not expressed in submissions, you almost got the impression that a number of submitters had formed a belief that somehow the Conservator and the Chief Planner might be at odds on some matters, that there would

not be agreement on some matters. It is difficult for me to ask some of these things just because it is. You obviously do not agree all the time. There must be some matters that you disagree on. Is there an effective mechanism to deal with that other than the Chief Planner saying, "No; this is my position"?

Mr Burkevics: As I have discussed with the team that I work with, who are incredibly professional, well-qualified and passionate people, the best outcomes for the environment often occur when we guide and inform early. So, if we are at conflict with a development at the end, to me that is showing that potentially the process of consultation has not been adequate. I certainly view that a great deal of different considerations need to go into decision-making around development—the environment being a significant one and a huge one—and our best opportunities are to guide and influence early in planning.

There are mechanisms at the moment for referrals on DAs. As I am briefed, there are no considerable changes to those entity referrals to the Conservator's office, particularly on protected matters and other DA matters. There will be times when there are differing views in relation to development. The responsible entity has to be guided by a great range of factors, including the needs of a growing city, economic benefit, community needs, community views and environmental values.

Of course, my role as the Conservator is to advocate strongly for those environmental and biodiversity values. I certainly view that the best influence of environmental and conservation advice occurs as early as possible, so in the end you end up with a development outcome that considers and protects those high-value environmental needs. I will just ask my colleague, the Conservator Liaison, for any other practical advice.

Ms Larson: It sort of depends on in terms of the facilitation in place. When there are contradictory views, it sort of depends on what the contradictory view is. There is a landscape review panel and that sort of thing. If we are trying to retain trees, for example, those sorts of advices can be overruled by the planning area on planning grounds. There are those sorts of panels in place to work out those issues. In terms of protected matters, though, I believe that the current act can only overruled by the minister.

MR PARTON: All right.

THE CHAIR: I am just going to jump in. I have been remiss. Can I check that you have both received and understood the privilege statement and that you accept and agree with the rights and responsibilities contained in that statement?

Ms Larson: Yes.

Mr Burkevics: Yes. I have looked at it, read and acknowledged.

THE CHAIR: Excellent; thank you very much. I am going to segue on that same issue of governance, because we have heard a lot about governance today. There is a view voiced that in an outcomes-focused planning system there is actually more discretion involved and there is therefore a need for greater checks and

accountabilities. A lot of people have identified the same problem and we have had many different solutions raised. One of them was that perhaps the Design Review Panel could be elevated and they could act more as an independent body that would be a bit more decision-making and could not be overridden. We have heard about an ombudsman, and we have heard that in other states they have independent statutory authorities. We have heard many, many different views. In a system that is moving more towards what is a good planning outcome, is there more of a need to have independent but expert assessment of what a good planning outcome is?

Mr Burkevics: There is certainly the opportunity for that mechanism to be considered. An outcomes-based planning system has a real opportunity for innovation and to guide the future needs of the territory in ways that potentially no-one has considered or indeed codes have not kept up with. Of course, though, in outcomes there may need to be times where decisions can be reviewed or are reviewed or referred. For example, there are provisions now that happen in relation to the Tree Protection Act, where decisions made are subject to review. I think it is a good process to have mechanisms that allow decisions to be reviewed under set circumstances. I think that is healthy, it is transparent and it gives the public confidence in the planning system.

THE CHAIR: Thank you.

MR PARTON: We have had so much discussion from a stack of panellists on environmental offsets. Granted these comments did not come from the MBA or the Property Council—they came from other groups. They were certainly questioning the benefits. Some were suggesting that there was virtually no benefit for environmental offsets. Mr Burkevics, do you have a view to express on that matter?

Mr Burkevics: I suppose my view is that "there is no magic fairyland to the destruction of habitat". I quote that from watching an episode of *Landline* recently where the same pressures are being experienced in Queensland—there is no magic fairyland. I think the offsets policy is the best that we have got to recognise a growing community, a growing city. What is important is that that offsets policy is modern and it reflects the protection of the values and particularly those species or otherwise that are at risk or will be destroyed as the result of a development. It highlights that, in moving forward, the offsets policy must be absolutely first class and that the absolute values are recognised as protected in the appropriate fashion, noting that there is a growing body of evidence to suggest that offsets are not the best outcome regardless.

MR PARTON: But sometimes that is all you have got. We had fascinating evidence from Frederick Weber earlier on from ACT Rural Landholders. His suggestion was almost to start a process of pre-emptive offsets—let us start a process where what we now refer as offsets is just done on a much wider scale than we are doing now because, surely, if it was done in that way, it would provide a better cover for us in that space and that it necessarily should not be linked to another development; it just should be something that we are doing.

Mr Burkevics: A lot of my colleagues within the division highlight the importance of mapping those high-value areas in the ACT—I know a lot of discussions and work have been done on that—and to make an early decision about what needs to be locked away very, very early so that the future planning can be best guided knowing where

those high-value assets are and that you cannot go. Early mapping, early planning and the understanding of connectivity between these areas and how that is best achieved will be absolutely vital.

There is a fairly large body of work for the ACT to continue with regard to mapping key areas that we know are going to be vital to protect and conserve our threatened species into the future. That way our planners have a very good understanding of those areas that may never be subject to any planning in the future—and, as you know, our reserves are a part of that system.

MR PARTON: In your role you must often find yourself at the crunch point of those extreme value judgement decisions that have to be made by governments and by communities about what we give up and what we retain and what we benefit by giving up this.

Mr Burkevics: That is a very good point. That is of course a decision that occurs under the Planning Act. My role is to provide advice on those areas, species and communities in the ACT that we must work to enhance and protect at all costs. Unfortunately, there are a growing number of those with less and less area available for offsets. We are seeing the tension now with developments in the last six months now taking off offsets areas that are now limited. There are no other offsets for some of the threatened species that we are identifying.

THE CHAIR: Mr Burkevics, in the new bill we have environmental impact statements, and these are used where there is a significant impact on a threatened species or threatened ecological community. We have another concept in the Nature Conservation Act; we have the concept of key threatening processes. We have recently listed a couple of key threatening processes—habitat fragmentation and tree protection—and there might be other ideas in there in the future. But those key threatening processes in the Nature Conservation Act would not trigger an environmental impact statement in the bill. Is that your reading of the bill?

Mr Burkevics: That is my understanding.

Ms Larson: Yes, that is my understanding. The processes that have been listed are not a trigger for an EIS. There is currently discussion ongoing about the best way to work that into the bill somehow so that it is more considered than what we currently can.

Mr Burkevics: I note, Ms Clay, that the bill does provide mechanisms for the Minister for Planning and Land Management to declare what are predicted matters. I think there would be absolute merit in looking at how some of that could potentially consider processes as well.

THE CHAIR: But if the minister declared a protected matter, that is not a term in the legislation; whereas, if it were a term in the legislation, it would automatically trigger. Is that correct?

Mr Burkevics: My understanding is there is a section in the legislation that specifically refers to the definition of a protected matter, and then that protected

matter is established by the minister as a schedule or a guideline, I think.

Ms Larson: Yes, disallowable instrument.

Mr Burkevics: Disallowable instrument.

THE CHAIR: We have the EIS scheme and at the moment we have also got strategic environmental assessments. Those have removed in this bill. Do you see any risks with that? We have still got an EPBC framework but we do not have a local framework for that anymore. That means that we would not be using any of that local knowledge and legislation. So we would not be using what is in the Nature Conservation Act and we would not be using local ACT species if we are purely relying on the EPBC Act. Is there a risk in removing that strategic environmental assessment process?

Mr Burkevics: I think it is fair to say that EISs play such an important role in understanding the consequences of a development. My understanding is that the EISs are still there for the majority of the referrals.

THE CHAIR: The EISs are, I think, but not strategic environmental assessments, which I think is a different one. I think the EIS system is there but it is not plugged into the Nature Conservation Act.

Ms Larson: The EIS does consider matters that are protected—not in the Nature Conservation Act. For example, something that is listed under ACT legislation but may not be listed at the federal level. So it would certainly consider those things.

THE CHAIR: Strategic environmental assessments tend to be broader than an environmental impact statement and they tend to take in more matters, more land, and they are longer in time frame. They are somewhat more holistic tool. They are not in this bill at the moment? Can you tell me why they are not in this bill?

Mr Burkevics: I think it is best for us to maybe take that on notice and come back to you with advice on how strategic EISs are applied as part of the role that is performed by the Conservator's office.

THE CHAIR: That would be great.

Ms Larson: That might actually be a question for the planning area. I am not aware of the reasoning behind why strategic assessments have been removed.

MS ORR: Picking up, what were you saying, Mr Burkevics, is this a policy decision that would not really sit with your area of responsibility?

Mr Burkevics: It potentially could be, yes.

MS ORR: I think the strategic environmental assessments are somehow tied in with national significance, are they not, Jo?

THE CHAIR: They are tied in with the EPBC but they could be used locally as well.

We have them in the current act.

MS ORR: Yes. What I am saying is that it is complex.

THE CHAIR: Yes, it is complex. If you take that on notice and, if the answer you bring back on notice is that this is a policy matter for the minister, that will be fine. We will also put that on notice to the minister. The reason I am asking for that is that we have to report by 22 December. So, if I do not put it to both parties, I may not get the answer that I need.

Mr Burkevics: Understood.

THE CHAIR: So we will be quite happy if you come back to us and say that this should be directed elsewhere. That is not a problem

Mr Burkevics: I am sure we can do that quite quickly.

THE CHAIR: Great. So the question on notice is: why are strategic environment assessments not in there and are there any environmental risks in not including those in the bill. That is the question on notice.

Mr Burkevics: Understood.

THE CHAIR: Thank you. I think, unfortunately we are out of time.

MR PARTON: There are many more things that we could ask but—

Mr Burkevics: One of the points that I would make in conclusion is that section 9, cultural heritage, may be an issue that needs to be underpinning the system. I will just draw to the committee's attention that cultural heritage as part of the section 9 and I think the objects is a key part.

THE CHAIR: Is there some additional information that you would like to draw our attention to under section 9, or should we just have a really good read of it?

Mr Burkevics: I think have a good read of it. Should there be other information, we would be happy to provide it. The principle of considering and enhancing cultural heritage should be an underpinning thread of the bill.

THE CHAIR: Absolutely agreed, and we did get some good evidence on that yesterday. It was quite robustly put, which was great. Thank you so much for your time. Our secretariat will come back to you with transcripts and track down the questions on notice. We do appreciate that, in your busy day, you have made time for this. Thank you very much.

Mr Burkevics: Thank you. We appreciate the opportunity.

Sitting suspended from 1.11 pm to 1.59 pm.

GENTLEMAN, MR MICK, Minister for Corrections, Minister for Industrial Relations and Workplace Safety, Minister for Planning and Land Management and Minister for Police and Emergency Services
PONTON, MR BEN, Director-General, Environment, Planning and Sustainable Development Directorate
BRADY, DR ERIN, Deputy Director-General, Environment, Planning and Sustainable Development Directorate

THE CHAIR: Welcome back to the final session today for the Standing Committee on Planning, Transport and City Services inquiry into the Planning Bill 2022. Thank you all for coming.

We are recording and transcribing our hearings today. We are also live streaming, and we do have an audience out there, which is always very exciting. If you take a question on notice, if you could use the phrase, "I will take that as a question notice," that will assist our secretariat to track down those answers and make sure that we can meet our very tight statutory reporting time frames.

I welcome our final witnesses today: Mr Mick Gentleman, our Minister for Planning and Land Management, and officials. Minister, thank you for bringing your officials with you to help us. Can I just check that everyone had a chance to read the privilege statement and that do understand and agree with the rights and the responsibilities in that statement?

Mr Gentleman: Yes.

Dr Brady: Yes.

Mr Ponton: Yes.

THE CHAIR: Great. We will proceed with the questions. We have very limited time for this hearing and it is quite busy, so we are not doing opening statements. But, Minister, if there is something else that you would like to table now or at the end of the session, you will be most welcome to do so.

I might begin with the first question. I actually want to have a chat about governance. We heard a lot from our witnesses and our submitters on governance. We had 65 submissions. Of those, 21 raised accountability, 16 were worried about centralisation of power, 10 wanted more oversight from the Assembly, 10 wanted more rights to review and five are worried about overriding entity advice. So that is actually quite a lot of written concerns. During the hearings we have also had a lot of conversations about governance with our witnesses.

I confess that I found it a little difficult as a committee member to meaningfully interrogate this topic. A lot of people have raised a single problem and people have come up with different solutions. One of those solutions was that the Design Review Panel might play a more senior role. When we put it to the Design Review Panel that perhaps the Design Review Panel could be an arbiter or perhaps come up with a final decision on what a good plan outcome is we got the answer back from Mr Ponton, in his capacity as co-chair of that, that it was not necessary-and that was a little tricky.

Similarly, there is a lot of concern about the Conservator's advice and other entity advice being overridden by the Chief Planner. In the previous session we had a really good chat with Conservator about that. But, again, it is a little bit tricky, because the Conservator reports back to the same person, to Mr Ponton, in his capacity as EPSDD.

Quite apart from weighing in on the value judgement of the governance concerns, I am finding as a committee member that scrutinising these governance arrangements that I am always running into the same issue. Have you got any comments on governance in this review?

Mr Gentleman: Sure. Thank you, Chair, for the question. I do not really see a change in the governance operation. This is a new planning bill and a new planning system, but I do not know that there would be much of a change in governance. If we look at the gestation of this, there is a bill in play at the moment that, of course, your committee is looking into. That is a normal process in the Legislative Assembly in scrutinising a bill for an act. The act would then, when completed, pass the Assembly, and everybody has to work underneath that as a piece of legislation. So I do not know that governance actually changes. There are no new or extra powers.

We have of course heard in questions from community members and in their submissions about extra powers for the Chief Planner, for example. I do not really see that in play. The minister still has the same ministerial responsibilities and is subject of course to scrutiny from the community and from the Legislative Assembly.

A new bill and a new system are coming forward, and it needs to because we have not had anything since 2007, apart from some tweaks. We know that the concentration of the previous act is much more about regulation than outcome. So we do need to proceed with that. I think good governance arrangements have been around planning for quite some time. If we are to compare ourselves to other jurisdictions, for example, I would say that planning probably has the most scrutiny I have seen of any jurisdictions in the ACT.

THE CHAIR: I will start by saying that, in some ways, the governance arrangements now are the same as they were under the current act. But we have been told repeatedly by stakeholders that you started this review by saying that we will review the planning system but governance is off the table; we are not reviewing the governance arrangements. Is that correct?

Mr Gentleman: Yes.

THE CHAIR: So, despite the fact that you have told all the stakeholders that we are not reviewing government, that is still the biggest issue that people have spoken to us about. So that is something to note. Even though that was not part of the review, that is still what everybody is talking to us about.

It is interesting that you say that we have better governance than other states. On the issue of governance there are lots of different ideas about what people would like to see. It is difficult to weigh into those, but we have got a few comparisons from many of our stakeholders. For instance, when I look at this table in the Woden Valley

Community Council submission, they have set out the different arrangements for planning in each state. It looks like only Queensland and the ACT have the kind of centralised power that we have. In New South Wales, Victoria, Western Australia, South Australia, Tasmania and the Northern Territory have an infrastructure agency that is separate. New South Wales, Victoria, Western Australia, South Australia, Tasmania and the Northern Territory have an independent board that play a role. Most of those other jurisdictions also have two houses of parliament rather than one. So is it true to say that the ACT has the best governance arrangements in Australia?

Mr Gentleman: I did not say that we had the best. I certainly said we have good governance arrangements in the ACT and we do operate differently. We are a unicameral parliament. We have an independent planning and land authority for decision-making. They have councils in other jurisdictions which do approvals for planning matters, and we do not have councils in the ACT. We are, as the Legislative Assembly, the main government and the council which does the delivery for goods and services—

THE CHAIR: Which means automatically that we are more centralised than the other ones.

Mr Gentleman: Yes.

THE CHAIR: The other thing that has come up in the governance conversation is that people are saying, not unreasonably, that in a more outcomes-focused system that is trying to deliver good planning outcomes—and that is quite a different concept to a rules, criteria and box-ticking system—we actually need better governance, more review and checks and balances and more independent review of those decision because the decisions will be inherently more subjective, and that is a good reason to look at the governance arrangements. Do you have a comment on that?

Mr Gentleman: As I said, this bill and change to the planning system is not about governance. It is a new planning system for the ACT. My view is that governance arrangements provide very good scrutiny for us in the territory, and I do not see that there is any need to change that. But I will certainly have a look at the committee's recommendations when you finalise your report and see whether we need to do any more.

MS ORR: Minister, can you actually run us through how, when the bill is implemented, the scrutiny and checks and balances and the opportunity for input will actually work as a process that will be enlivened by the bill?

Mr Gentleman: I suppose what we are seeing is the bill creating a new act for the territory with provisions to enliven better outcomes in the planning system. It responds to the growth of Canberra and, if you like, probably a little bit of the stagnation of planning legislation over the years. I did mention this in a public forum a little while ago. Originally, we had the Griffin plan, we have had the Y-Plan for NCDC, we have had the Garden City Variation, and now it is time for a renewal of that system in recognition of the growth of the city.

When I was born here in the ACT we had 20,000 people, and there are 450,000

people here now. We need to respond to that growth and provide better outcomes for those people moving to the territory. This is a really good start to doing that. I think we are on the right track in making these changes in response to a very strict regulatory system that we have had in place with rules and strict criteria. Rules and criteria will still have a place, but we need to be able to be a little bit flexible about the outcomes that can be arrived at for the growth of Canberra.

MR PARTON: I just wanted to say, Minister, that I am not quite sure how you can genuinely suggest that this bill does not change the balance of governance, in that the draft Planning Bill takes call-in powers away from the minister and gives them to the Chief Planner. It also says that the Chief Planner will be the decision maker with respect to territory priority projects, although of course the minister would be responsible for making the initial declaration of those projects. From so many submitters we have heard about the centralisation of power that appears to be going on here, and that the bill seeks to entrench the role of the bureaucracy as the prime arbiter, while minimising the role that the Legislative Assembly plays in any of this. So I do not understand how you could sit here and suggest that this does not lead to a change in governance.

Mr Gentleman: Mr Parton, I think you might be reflecting on a previous draft of the bill. I might just pass to the Chief Planner to go through some of that detail for you.

Mr Ponton: Yes. I think, Mr Parton, you are referring to the consultation draft of the bill, not the version that was introduced following the community consultation. If you were to refer to the introduced version of the bill, what you will find is that in response to the submissions that had been received, changes were made. There were a couple of changes. One was in relation to the declaration. That is not just the minister; that is actually the minister and the Chief Minister, jointly. That was to provide a greater level of scrutiny to that process, so that it was not just the minister. And then the minister is the decision maker for a territory priority project, so that is no longer for the Territory Planning Authority.

The original rationale for that, in the consultation version of the bill, was thinking about the political decisions and the independent planning decisions based on government policy, which we believe should be the Territory Planning Authority applying the policies of the government and the Assembly through the Territory Plan and various other policies. But, as I said, in response to consultation, the change was made both in terms of the declaration process and also the decision-making process.

In relation to other functions of the Chief Planner—we have had this conversation and I have talked about this before—and given that I am the Chief Planner, I might ask my colleague Mr Bennett to join us. He can talk a little bit more about this, but there has been no change to what has existed since 2003—as far back as I can think—in relation to the role of the Chief Planner. The Chief Planner has always been the Planning and Land Authority and has made those independent planning decisions. The Chief Planner and the Territory Planning Authority makes recommendations to government in relation to policy. That has not changed. But, given that I have answered these questions multiple times, and, clearly, I am not making the point, I might ask my colleague Mr Bennett to talk a bit more about that particular aspect in terms of this concept of centralising power in the bureaucracy.

Mr Gentleman: I will add something before. Sorry, Mr Bennett. The Chief Planner's role is retained under the bill as the statutory office holder who performs the functions of the Territory Planning Authority, and that is consistent with the functions that are currently set out in the Planning and Development Act. The only additional function of the Chief Planner under the bill is to promote the strategic planning of the territory, high-quality design and good planning outcomes.

Mr Bennett: I have read and acknowledge the privilege statement. Just building on what the minister and the Chief Planner have said, we looked carefully, in developing the bill, at the roles of the independent Planning and Land Authority. As the minister mentioned earlier, that was something that we saw as a very strong feature of the ACT's planning system. The independence of planning decisions from ministerial intervention or government intervention was a key feature that we wanted to retain. The way that is done through the Planning Bill is the establishment of an independent planning and land authority with the Chief Planner as the head of that planning and land authority.

But quite often in practice what happens is that the Chief Planner is not really involved in day-to-day decision-making; these powers are delegated down to delegates—officers within the Planning and Land Authority who perform these functions. So the bill is very clear on the role of the Chief Planner and the functions that the Chief Planner has under the legislation. And, as the minister just touched on, we have retained largely all of the functions that were in the Planning and Development Act and have just boosted the functions of the Planning and Land Authority in moving to an outcomes-focused system and referring to the promotion of good planning outcomes. That has been the addition that we have made to the functions of the Territory Planning Authority and the Chief Planner, but there is a very clear set of functions that define the role of the Chief Planner in the bill.

Mr Ponton: In terms of the delegation, as Mr Bennett said, decisions are made under delegation internally—I am sure you have heard my colleague Mr Cilliers talk about this in other hearings in terms of the way we structure the assessment team with the staged development process—and we have different officers, from a probity and integrity perspective, looking at various parts of the decision-making process. And then internally we also have a committee that considers particular types of developments, and that consists of colleagues from across government, who provide detailed advice in relation to these matters. So there are a number of aspects to this. There is what is in the bill in terms of the role of the Territory Planning Authority, how that is delegated, then administratively how you deal with those matters.

The other point—and just to be really clear, because I was at the original meeting with community and industry groups where we talked about the parameters of the Planning System Review and Reform Project—is that the matter of governance that we were quite clear about was that we were not going to look at removing an independent planning authority, because that was seen as a key and strong feature, in terms of integrity and probity, of the current planning system. And in fact, the ACT was considered to be leading in that when it first introduced—in 2003, I think it was.

Much of what Ms Clay has talked about, when you look at other jurisdictions, is

actually moving to similar types of models where you have decision-making against the provisions of a plan, the statutory instrument, not being made by politicians, because experience has shown that that can create some risks in the decision-making process. That is why you are starting to see that you take that to independent experts, but having been really clear about the policy being set by the government and the Assembly.

THE CHAIR: Yes. I will just confirm, though, that our independent planning authority, which has a number of branches of advice, all refers back to the same person. We have the Design Review Panel, chaired by a person who happens to be the Chief Planner, and we have the—

Mr Ponton: No, sorry; that is not correct.

THE CHAIR: That is not correct? No, please do tell me. I am new; tell me how I have got that wrong.

Mr Ponton: No. I have no involvement; my only involvement is that I have officers who provide secretariat support.

THE CHAIR: To the Design Review Panel?

Mr Ponton: To the Design Review Panel that is chaired by the Government Architect.

THE CHAIR: Right.

Mr Ponton: Who sits on individual panels for particular projects is also decided by the Government Architect. I have no involvement.

THE CHAIR: I apologise. It was difficult when we tried to ask questions of the Design Review Panel and they were answered by you. It was a little confusing. And we also have the entities like the conservator. Are they independent from—

Mr Ponton: They are independent. The Conservator has other functions that he reports to me on—in relation to Parks and Conservation, for example—but he does not report to me in relation to matters of the Conservator. That is direct to the minister.

Mr Gentleman: There are strict lines of separation, Chair, if I could just mention. In this we actually use those strict lines of separation, even in briefings in my office, for example. So, if there is a briefing where there might be an intersection between the Planning Authority and the Conservator, one side of that meeting will leave the office whilst we hear the other side of the meeting. So we stay with those strict lines of separation, and I think that is good governance, too.

Mr Ponton: To be clear, in terms of the questions that I answered on the Design Review Panel, that was in relation to administration, which I am responsible for—providing secretariat support and providing other resources to the Government Architect, should she require things such as we talked about: landscape architecture advice. I make sure those resources are available to her, but I did not get involved in any aspect of the deliberations or advice of the Design Review Panel. But I have

administrative responsibilities.

MR PARTON: But as the Director-General of EPSDD, they are under your umbrella. Although you can draw a line on a chart that says that specifically they do not report to you on this matter, surely as the head honcho of the directorate they are under your umbrella anyway and they are reporting to you?

Mr Ponton: I take probity and integrity very seriously, Mr Parton, and I can assure you—

MR PARTON: I know you do. I am not suggesting otherwise.

Mr Ponton: I can assure you that we make sure that for matters such as the Conservator, the Conservator reports directly to the minister and the only matters that I talk to the Conservator about are in relation to those matters, such as Parks and Conservation, for which I have direct responsibility. Likewise, the Commissioner for Sustainability and Environment sits within my portfolio, but this commissioner reports directly to the minister. I provide HR and finance support, but I do not have any other engagement with the commissioner.

MR PARTON: But, again, Mr Ponton, you have suggested that you are at arms-length to the Design Review Panel. I do not understand why you appeared in that hearing, if you are suggesting, in that session of the hearing, all you are supplying is secretarial support. Why—

Mr Ponton: Because I provide support to the Government Architect and the chair of the panel, and I was there to provide support to the chair of the panel and the Government Architect. There were questions that related to the admin side of things, which I answered. Can I just make it really abundantly clear that in terms of the administrative arrangements, that is a matter for government, and these arrangements have been in place for over a decade. So this is not new.

Mr Gentleman: Mr Parton, these are statutory positions that are set aside in law, and we do that distinctly to ensure that there is a separation that I have talked about. You know, probity and integrity is incredibly high in this matter, and this is why they need to stay in those positions, as I said, as a statutory position that is separate from the Chief Planner, for example.

MR PARTON: Can I just close by saying that if anyone has interpreted that I have somehow questioned the integrity of Mr Ponton, I would absolutely reject that that is the case.

Mr Gentleman: Yes.

MS ORR: We have heard a little bit from some witnesses that they do not like the idea of moving to an outcomes-based system from a rules-based system. Can you explain to the committee why we need to make this change and what will come from it?

Mr Gentleman: Well, I think it is really important. As I said, there has been a history

in the ACT where we have had a very strong rules-based system for many, many years. And we have seen some not-so-good outcomes out of it. What we find is that developers and stakeholders will look at the rules that are set in place and find ways that they can do a development that may well certainly sit inside the rules, but is not what the Canberra community is expecting. Therefore, we need to find ways to encourage those stakeholders and developers to bring better outcomes for us. Therefore, focusing the new system on outcomes rather than the simple rules—mind you, some of them still needs to be in play—will give an incentive to those stakeholders to do this.

And it could be not just in the built form, but the way we encourage people to move in and out of those constructions or sites, for example. We have talked about good outcomes that we have seen in other jurisdictions, where other than the simple rules has been taken into account, and we have seen some great outcomes in other jurisdictions for the community. So that is the base reason why we need to move away from a simple rules-based system, I think.

MS ORR: Added to that, a lot of the statements made by witnesses about the outcomes-based systems has gone to being able to properly scrutinise it to get those good outcomes. How does the bill enable the authority to do those assessments so that we are achieving the outcomes and those higher-quality outcomes that we want to be achieving?

Mr Gentleman: We will have some key elements in the bill: the new Territory Plan, of course, and the district strategies that we have talked about. This will also have proponents give regard to other parts of plans and strategies—for example, environmental outcomes, and focusing on people rather than what we see in a rules-based system. We heard this; this goes back to some conversations we had way back in 2018 and the Statement of Planning Intent for ministers, where we engaged with younger people across the ACT, who said to us that they are happy to live in a denser city as long as they are close to good transport, that their accommodation is safe and amenable, and that there is really good urban open space. And they are the people who will be living here in the future—and, of course, their kids as well—so we need to plan for that outcome and not just stick to the same statutory sorts of rules that we have had in the past.

Mr Ponton: I can just add something, Minister. The bill does talk about supporting material, Ms Orr. One of the key things that you will now have the chance to look through are the design guides, and we think that that is a really important document, because it is trying to find a way that—in words, diagrams and images—demonstrates what is meant by good design and good outcomes. I think that is what has been missing in the current system.

Once people see what is meant, they have a greater chance of being able to be informed and contribute to that process. I am quite excited about the idea of being able to actually introduce design guides, which we see in other jurisdictions. So, again, we do not operate in isolation; we do look at what is working elsewhere in Australia and the world. The design guides, I think, are going to be a fantastic tool not only for the assessment team but also for community and industry, tribunals and courts. That is going to be a critical feature of the new system.

Mr Gentleman: Perhaps I can give you a picture as an example. New Acton is a good example of good outcomes. If you were to look specifically at a rules-based system, you would not have seen a Nishi building under ACT government planning rules. So these are the changes that we want to see: innovation, opportunity for people to provide those better designs and outcomes for Canberrans.

THE CHAIR: Can I just check? We have heard concerns that things like variation 369 will no longer be mandatory. Will variation 369 be mandatory under this new system?

Mr Gentleman: It still takes place under the Territory Plan.

Mr Ponton: Yes.

THE CHAIR: It will still be mandatory to comply with?

Mr Ponton: Yes. What we have done—if I may, minister—is that we have gone further than 369 in the various documents that have been produced. The Urban Design Guide is referenced in the Territory Plan. We actually have a link from the Territory Plan to the design guide, and then there are particular provisions—and I think it is in the housing as well—now included in the plan itself.

THE CHAIR: Could you take on notice for me the provisions that specify that?

Mr Ponton: We can, but it will be relating to matters that are not part of the consideration of the bill; it is for the other component parts of the planning system review and reform. So, Minister, if you are happy for me to take that on notice, yes, we can do that.

MR PARTON: I guess this question is to the minister. I just want to know how it is possible, after so much discussion and so many submissions that have been received by individuals and community groups, that you could in this bill remove pre-DA consultation. Mr Ponton has said—Mr Gentleman has, as well—that he was intent on creating a bill that restores trust in planning, but you just seem to have ignored dozens of well-constructed views pertaining to pre-DA consultation in the formulation of this bill. So many submissions suggest that despite assertions that the bill improves the scope for community consultation, several of its provisions diminish that community engagement.

Mr Gentleman: I think the straight answer to that is that pre-DA consultation was not working. There was an expectation that was given to the community which was not successful. So the community thought that if we had pre-DA consultation their views would be taken into account by the proponent and therefore the original idea that a proponent may put would be changed by the views of the community, and it simply did not occur.

I think it gave the community a sense of what they saw as an opportunity to have a right to say what a proponent was doing, but really it did not work. It lengthened the proponent's engagement of course and meant that planning decisions were taking

longer as well. That is the main reason. We did, of course, listen to the community during the consultation on this bill and made quite a number of changes to the bill as we have just outlined earlier in our conversations. But, yes, that is the main reason for the removal of the pre-DA consultation.

Mr Ponton: Could I just add, Minister—if that is okay, Chair—that in relation to our review I introduced pre-DA consultation. I thought that if it was done well it would be a great opportunity. For the reasons that the minister has articulated, when we reviewed what was happening it did not seem to be hitting the mark.

Particularly, what we were finding was that a proponent would have an idea that they would take to the community that might be pushing the boundaries a little bit. Immediately, I would be inundated with correspondence, as would the minister: "How could you, Chief Planner, allow somebody to come and talk to us about this concept when it clearly does not meet the requirements of the Territory Plan?" People were starting to think that this was government consultation, and that was proving challenging. It was one of the real challenges and risks, and then we were being asked to put a stop to it because people did not like what they were seeing.

What we have tried to do is to build into the act the consultation principles and then there are guidelines. The minister can expand on those. If people are going to think that that stage and that consultation is government run then let's put it into the government-run process. That is what we are essentially saying. We consult and engage on DAs. Correct me if I am wrong, Mr Bennett, but we have also increased the time frame for that so that we are allowing people more time to engage in that process.

This does not does stop the proponent from engaging with their local community before they lodge their DA. It is not that we do not believe in early engagement. In fact, I absolutely encourage it in terms of the only additional power of the chief planner to promote good design outcomes. I would certainly be out there and encouraging industry to do exactly that. Talk to your communities early.

But in terms of what I can control, I will do that through the DA process. I will give extra time under the bill. Hopefully, that will start to deal with some of the confusion and angst that was being created. It was unnecessary angst and it was really just coming down to the fact that proponents would go out and people would think it was government. We tried to explain this. The minister may want to attest to this. He and I and the DA team would get the representations and say, "We don't know anything about this.

Mr Bennett: There are a couple of improvements that we have made to the Planning Bill, compared to the Planning and Development Act. One is that we put into the object of the bill that community participation in the planning system is a fundamental object of the bill. That is something that we, through our review of the legislation and through our engagement, were very keen to reflect—that the community has a fundamental and very important role in the planning system. Through the bill and through the different parts and components of the planning system there are a range of opportunities for public consultation that are mandated by the legislation.

One of the other things in removing that explicit process about pre-DA consultation,

as the minister and Mr Ponton talked about, was that the technical process that we forced proponents to undertake was not quite working. What we have replaced that with is principles of good consultation. We have provided really clear guidance about what good consultation looks like. We have said that when people are required to undertake consultation under the bill they must do it in accordance with the principles of good consultation.

Through the bill there are several places where we specify that consultation with the public is required in the development of planning strategies. I will just touch on some of those. In developing the planning strategy and district strategies, public consultation is required in preparing all draft major amendments and some minor amendments to the Territory Plan.

In preparing a draft review report of the Territory Plan; in the draft EIS application process; in the development application process; in a proposed declaration for a territory priority project; in preparing the revised offsets policy; in preparing offsets policy guidelines; and in preparing draft land management plans—all of these processes in the bill have explicit public consultation requirements that need to be undertaken in accordance with the principles of good consultation, which are in the bill. We have really recognised that and tried to entrench the requirement to consult and the framework for how people should consult but not be so explicit about having a technical process that a proponent must follow.

THE CHAIR: Could you perhaps take on notice to give us the sections in which industry is mandatorily required to consult, including on DAs. I heard a long list there and I did not hear the word DA. If you could take that on notice and provide advice, that would be very helpful.

MS ORR: While we are on the objectives, some witnesses have put to us that the objectives do not carry through or do not apply to all parts of the bill. Can we just clarify whether the objectives do apply to all parts of the bill or not?

MR PARTON: The specific sections I think were section 73(2), section 181 and section 49(2), raised by the Environmental Defenders Office.

MS ORR: I have a different list. They said 73(2) and 182 in the hearings.

Mr Ponton: If we look at the good planning principles, which are in section 10, that says,

> To achieve good planning outcomes, a person must consider the object of this Act—

So there is the link—

> and the following principles of good planning in developing planning strategies, plans and policies …

If you follow that link, if the government is preparing a Territory Plan variation or the Territory Plan or the district strategy or a new planning strategy then the objects of the

act have to be considered and all of those good planning principles need to be considered and reflected in those documents.

It would then follow that a development application, if it complies with the provisions of the Territory Plan, will comply with the objects of the act because the Territory Plan, having been developed, needs to be consistent with the planning strategy and also the objects of the act. It is section 10(1) that I would argue is the link there. It does not need to then be reflected in every single section where you might be doing something, because it is actually reflected at the very beginning of the legislation.

MS ORR: So it underpins the whole legislation.

Mr Ponton: Exactly—the whole legislation and anything that flows out of the legislation. I heard some evidence earlier today and yesterday that perhaps a DA should be assessed against the objects of the act. That would certainly be easier if we did not have a Territory Plan and we assessed everything against the objects. In terms of people being concerned about how broad that could be, I would suggest that that is incredibly broad. There are some admin law principles that Mr Bennett might want to explore a little in relation to that, in terms of the principles of certainty. We are actually trying to provide for creativity and innovation, but with a degree of certainty.

Mr Gentleman: It still cannot be inconsistent with the act.

Mr Ponton: Indeed; absolutely.

THE CHAIR: Can I just confirm: does that mean that DAs will not be assessed in accordance with the object of the act?

Mr Ponton: They are if they are assessed against the Territory Plan, which they are required to be because of the reason I just gave, which is that under section 10(1) in developing a plan—that is, the Territory Plan—the government has to consider the object of the act and has to consider the good planning principles. On that point, if you are suggesting that there might be a desire to assess something against the objects of the act, I will now hand to Mr Bennet to talk about those admin law principles that I think would be important for the committee to understand in terms of the issue around certainty.

Mr Bennett: I might just also touch on the thread, from the object of the act all the way down to a DA. As Mr Ponton talked about, we have the object of the act. We have said that when preparing the planning strategy and district strategies you must consider the principles of good planning and the object of the act. So there is a connection from the object into strategic planning. Our Territory Plan, our statutory planning document, must give effect to our strategic planning outcomes. So, as we go from object to strategic planning, there is a connection from strategic planning into the Territory Plan. And then DAs are assessed against the Territory Plan.

In terms of providing certainty to applicants, to decision-makers and to the community about when someone puts in a particular application what will they be assessed against and what does that mean, we have considered that we need to provide certainty to people as to what those rules are and what they mean. What we have said

is that a development application needs to be assessed against the Territory Plan, and the Territory Plan itself has that thread back to and connection back to the object. So they are in-built and reflected in the provisions of the Territory Plan, but the provisions of the Territory Plan provide the further detailed guidance and requirements that are consistent with the object of the act. That provides people who are lodging applications, and decisions-makers and the community, with the certainty as to what someone will be assessed against and what they need to do to achieve approval and have things be able to proceed through the planning system.

Mr Ponton: Two more points. Section 47 of the bill, in terms of what the Territory Plan needs to do, is clear that it needs to promote the principles of good planning. So, again, there is that link back. If there was a suggestion that an assessment against the object of the act would be necessary for a DA, keeping in mind everything that we have just said, then we would need to understand, "Well, what is the hierarchy?"—because you actually need a hierarchy—"And would it be the objects?"

Let's look at the object. I will just pick one. It talks about the object of the act being to support and enhance the territory's livability and prosperity. Notwithstanding what is in the Territory Plan, a decision-maker potentially could then say, "If the hierarchy is the act, I think this development would actually achieve that particular aspect of livability. Therefore, notwithstanding anything else, I will approve this." I do not think that is what the community would be looking for. I think they want the certainty of those provisions that are in the Territory Plan that reflect all of these other things. Just a word of caution: if we were going down that path I think that it may not achieve what people are hoping that it would.

THE CHAIR: In our outcomes-based system, can you define for me what a good planning outcome is and tell me which sections we see it in?

Mr Gentleman: Yes. The example I gave earlier was the Nishi building and precinct.

THE CHAIR: That is an example. Is there a definition of what is a good planning outcome? We have a lot resting on good planning outcomes.

Mr Ponton: I said—

Mr Gentleman: Yes, there is some phraseology in the—

Mr Ponton: Section 10.

Mr Gentleman: Yes.

THE CHAIR: Section 10 defines what is a good planning outcome. Can you just tell me what that is?

Mr Ponton: It outlines the good planning principles and it defines each of those principles.

THE CHAIR: So a good planning outcome is one that meets the planning principles?

Mr Ponton: It goes back to that conversation about the fact that, in development policy, we have to consider good planning principles, and the object flows through. Things such as the design guides will be providing a lot more detail in relation to what we mean by a good planning outcome. At the high level we have section 10, which outlines the good planning principles. It defines what they are. It says we have to consider those in developing plans, policies and strategies.

As we work down, if we think about cascading to more and more detail, we get to what I would say is the last piece of the puzzle, which is those design guides and the Territory Plan proper, which articulate what we mean by a good planning outcome. I would encourage you to have a look at the explanation of intended effects, which actually goes to some lengths—in words, at the moment—to explain what is meant by good planning outcomes against the various elements. In developing those, as I said, we have looked at the provisions of the bill, and section 10 in particular.

THE CHAIR: We have heard quite a lot of concerns about the definition of what is a good planning outcome and the ability for people to have certainty about what that is. Have you seen those same concerns? Have you got a reflection on that, given that it is not so much a definition as a large structure of things?

Mr Ponton: Going back to what I said earlier—and the minister or Mr Bennett may want to comment—it is about showing people. Yes, we have got the framework in the bill. We have made sure that we have articulated that from a legal perspective. But then it is about showing. Again, those design guides are really critical in terms of showing people what is meant. They will have words that articulate against solar access, public open space, access to services. All those things will be articulated in words, but then we will have photographs, diagrams, images to actually show people what we mean. There will be different ways of doing that. We are trying to do as much as we can to help communities understand what is meant by a good planning outcome. Again, I encourage people to look at section 10 and then look at the documents that are currently out for consultation—in particular those design guides and the explanation of intended effects. Mr Bennett, did you want to add anything to that?

Mr Bennett: I think what we picked up through the consultation process and through our stakeholder consultation in developing the bill was: how do we define good planning outcomes? We have explicitly said in section 10(1) that to achieve good planning outcomes a person must consider the object of the act and then the following principles of good planning. We have provided that umbrella definition.

As you touched on, it is a broad concept and a framework for how to achieve good planning outcomes. That then flows on and influences the strategic planning work that we need to do. Good planning is based on evidence, is based on assessment of need, is based on the detailed planning studies that we do that work out what we need to achieve for the people of Canberra, and then the delivery of those outcomes within that framework. The act sets out, in the object, the principles of good planning. That is what we consider will be achieving good planning outcomes.

Mr Ponton: I also suggest that what we have done—and the community has views on how we can do this better—is to articulate that in the legislation, defining the terms

so that it is really clear. We are making sure that there is that thread, through the policy documents, right through to the Territory Plan. Having the images and diagrams and explanations of what we mean in the design guides and in related documents is a far cry from what we have now, which is: if you meet the rules, hopefully, you will get a good outcome.

Mr Gentleman: You can have it, yes.

MS ORR: We have had quite a bit of discussion from witnesses on how and the extent to which the environment and sustainability is encapsulated within the bill, in the objectives. I think some of the explanation you have just provided on how the objectives flow through answers it. Can you give me further clarity on how environmental principles and sustainability principles are underpinning development practice in the ACT, under the bill as proposed?

Mr Gentleman: Yes. It is a very important question. It is something that I think is front of mind for all Canberrans as our city grows. We have heard discussions on matters of new development in greenfields sites, and we need to make sure that all of this is considered when we are looking at future growth. I will ask the directorate to go through some of that detail with you and how that is embedded.

Mr Ponton: Thank you, Minister. I will start off and I will hand over to Mr Bennett. In terms of the object, I heard some evidence that perhaps it was a little bit longer than the object of the current legislation. That was the intention in trying to capture some of those additional things around environment and sustainability, and then expanding on that in the principles of good planning, unlike the current legislation. I think South Australia and Queensland may have some of those principles of good planning. It is picking up on sustainability and resilience principles, natural environment conservation principles. We define those again and that is then fed through, with those links that we talked about earlier, to all the other documents that are a result of the legislation itself.

We have gone to some lengths to make sure that we have picked up on all of those other things that planning considers. Sometimes people might think the concept of planning is a bit narrower than what it is. I am talking to you, Ms Orr, so I am sure I do not really need to say this, but planning is much more than development assessment. Planning policy looks at environmental issues; it looks at climate issues; it looks at transport issues; it looks at a whole range of things.

That is why there are subsections in the profession itself. There are urban planners, there are environmental planners and there are transport planners. That is because there is so much that planning touch.es We have tried to bring all of that together in the planning legislation, also acknowledging that there are other pieces of legislation that are the responsibility of other ministers, such as the Nature Conservation Act, that will provide further detail in relation to those particular aspects. We need to make sure that it all talks together and links together. Mr Bennett, anything that you would like to add?

Mr Bennett: Thank you. I will add some explicit references to take you through. In the object of the act we have put in the concepts of livability, prosperity and wellbeing.

We felt that these all had environmental undertones to them. The environment is a fundamental part of livability and wellbeing, and prosperity needs to occur in the context of respecting the natural environment.

Section 7(1)(b) of the object talks about the need to promote and facilitate the achievement of ecologically sustainable development. That is a fundamental, core concept of the legislation. That needs to be done consistent with planning strategies and policies. In the provisions that talk about the planning strategy and the district strategies, there are explicit references to the ability for those strategic documents to pick up other ACT government policies and strategies—for example, the climate change and nature conservation strategies.

MS ORR: Yes, I was actually going to ask about this. How does it change from what we currently have to what is proposed? How does it change what can be picked up on, in the sense of those broader strategies across government?

Mr Bennett: We have made it really clear—as Mr Ponton said—that the planning system can do a lot. It can plan for transport, and it can plan for development, but it can plan for the natural environment and for climate change resilience adaptation outcomes as well. So what we have done is provide that explicit hook and reference for the planning strategy to have a broad view of policy outcomes, and to pick that up and have a place for it within the strategic planning system and strategic planning. Then, once it is in our strategic planning documents, it then has a place where it can flow into the Territory Plan and really influence development outcomes as well.

I also just wanted to touch on section 7.3, which is still the object of the act. Obviously, when we are trying to write an object and we are talking about the planning system there are so many concepts that we are trying to squeeze into one sentence. We have done our best in the initial provision to refer to higher-level concepts of liveability, wellbeing and ecologically sustainable development. But then in section 7.3 we have tried to go that next level down to be really explicit about policy areas that are really important through the planning system to help achieve the object of the act. And that is where we bring in explicit reference to the ACT's biodiversity and landscape setting, including integration of natural, built, cultural and heritage elements, talking about a sustainable and resilient environment that is planned, designed and developed for a net zero greenhouse gas future, using integrated mitigation and adaptation best practices and considers food and water security—and, also, in planning for population growth, that we are planning in a way that is sensitive to those aspects that make the ACT a really attractive place to live, and the natural environment is part of that.

So, we have written the higher-level object provision, but we have sought to then provide this extra level of detail about things that are really important. And this is where we have picked up explicit references to the environment, climate change and adaptation.

Mr Ponton: Just for abundant clarity I will add to that. It is really important to note that in terms of bringing in all those other government policies and strategies, the current legislation does not allow us to do that. The new bill does allow us to do that. And I think, again, that that is a significant improvement.

THE CHAIR: Mr Parton.

MR PARTON: I will just ask this question, now that we are on it, because I said I would ask. A number of submitters asked questions about the use of the word "prosperity" in the objects of the act. Friends of Hawker, and a number of others, did not understand the significance of the word "prosperity" and whether it referred to the prosperity of—dare I say it?—the developers, individual Canberrans, the ACT government budget bottom line, or even a more esoteric view of prosperity.

Mr Gentleman: I think Mr Bennett was going through that.

MR PARTON: Yes, he certainly started to do it, and I just specifically refer to prosperity. I am looking for a succinct answer because we are getting to the end of the session.

Mr Ponton: I will do my best. And I might ask Dr Brady, to come to the table, too. I know that Dr Brady has some information that she can share with you. But on this particular matter, with respect to the word "prosperity", we have looked at other jurisdictions. As I have said before, South Australian and Queensland legislation—I have heard other submitters make reference to those pieces of legislation—use the term "prosperity". New South Wales is starting to use the term "prosperity" in their regional plans in particular.

It flows from United Nations sustainability principles, where prosperity is talked about as a key concept. Dr Brady might talk to you about the other principles—all of them, begin with P, as I recall—and then articulate a little bit more about the UN principles and why they exist, and why we have incorporated that into this modern legislation. We have not just looked locally; we have looked national, internationally and so far as the United Nations in terms of trying to get this to be the most advanced piece of planning legislation in the country.

THE CHAIR: Can I just ask a supplementary and direct question on that? I gather that "prosperity" is used in other jurisdictions in their regional plans, but I do not think we usually have "ecologically sustainable development", as defined in this act, in other jurisdictions. That has stuck out as something quite unique here. That we have got the achievement of economic—

Mr Ponton: We can talk to that. But the first question, unless you want us to skip the prosperity question—

THE CHAIR: No, stick with "prosperity".

Mr Ponton: We will go to prosperity and then we can answer the issue of ecologically sustainable development.

Dr Brady: As Mr Ponton referred to, the United Nations sustainable development goals, in the 2030 agenda, referred to five goals: people, planet, prosperity, peace, partnership. Their use of "prosperity" is:

> We are determined to ensure that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature.

So, from our perspective, we are using "prosperity" in a similar way, that incorporates people, wellbeing, nature, economic development. So we are using it more in the broad way, similar to the sustainable development goals.

MR PARTON: That is sufficient for me. I do not know if there was anything else you wanted to pursue there.

Mr Gentleman: I do. In the UN habitat description, it says that "prosperity", as defined, is a social construct that materialises in the realm of human actions. It deliberately and conscientiously builds on the conditions prevailing in the city at any time despite its size or location.

MR PARTON: Going through some of the community submissions, I landed at the Gungahlin Community Council, who suggested:

> The Planning Bill is almost impossible for the average citizen to comprehend, and no serious attempt has been made by the Directorate to make it "relevant" to Canberra residents.

The submission said that "the Planning Bill was presented without the new Territory Plan or district strategies," which made it hard to comprehend in the initial stages. But Peter goes on to say that it was presented as a bill that would restore trust, but also make planning more accessible to Canberrans. Certainly his assessment, and certainly the assessment of a number of other submitters, is that, on that front, it has failed.

Now, in the hearings, I did say that planning is really complex. How on earth would you make it more accessible? I do not know if this question is to Mr Gentleman or Mr Ponton. Have you failed in terms of making it more relevant and accessible to regular Canberrans?

Mr Gentleman: Thanks, Mr Parton. The bill is a draft, and it is before us at the moment to gauge community impact. This is why you are having these hearings—so that we can hear from the community. We certainly take these comments on board. It is not a draft, but this hearing is looking at how it can amend the bill, I suppose.

MR PARTON: It is much more than a draft, Mr Gentleman. To respond to that by saying the bill is a draft just seems—

Mr Gentleman: When I say that, I mean that we can make changes to the bill in response to what the committee will put to us.

MR PARTON: But surely, Minister, you have a view on whether it has made it more or less accessible. Are you suggesting that this submitter is correct in that it has failed on this front?

Mr Gentleman: Well it is not over. I mean, the bill is a part of the change that we are

doing. So the bill takes its place, then we go through the plan, and of course the district strategy. So it is an entree into the rest of the work as well.

Mr Ponton: And if I could just add a couple of things. In terms of making it more accessible, we have been really carefully about the language that we have used. We have tried to use really simple language. There are additional provisions at the front end, in terms of explaining what we mean, in terms of certain concepts—again those definitions we talked about and the good planning principles. We have actually gone to explain all of that in as simple language as possible.

We have done some things for people who might only engage really quickly—simple things like a really short video and getting that out there on social media, so that people get the key concept in a 30-second bite or a five-minute bite, depending on what they are looking for. We have 13 fact sheets, as I recall, to help people understand, and for us to explain particular parts of the legislation we had six information sessions on the bill to help people understand the key concepts. There were a number of presentations, and many opportunities at the environment and planning forum which Peter Elford attended. I also know from the Combined Community Council's media release that there is a suggestion that there are more sections in the act, so it must be more complex.

I will just, for the record, point out that we stop at section 519, and there are 81 sections that are not included for future amendments. Then we kick off again at 600. From 600 on there are transitional provisions. So in terms of trying to make this as consumable as possible, we really have worked with our communications and engagement experts to think about how we can make this as accessible as possible.

The fact that we got over 300 submissions on the legislation says to me, when you look at what governments ordinarily achieve in this type of activity, that the message has gotten out there. I know that we are not here to talk about district strategies and the Territory Plan, but in the first couple of weeks of the engagement we have had 22,000 downloads. That is not visits; that is people actually taking the time to download the documents, which would suggest that people are hearing the message and that they are engaged in this and are reading through. I see that as a measure of success, and that, in terms of getting people interested, we have done the job well. It is unfortunate that Mr Elford has taken that view, but if the committee has a view on how we can do things better and differently next time, I am happy to hear that.

Our people certainly do reflect on and review any engagement that we undertake to see how we can do things differently. But, as I said, we had all of those fact sheets, we had a policy paper that explained the key concepts, we had the videos, we had the sessions, Q and As, and social media—a whole range of different things that we employed to try to make it as accessible as possible. But, importantly, in the structure of the bill itself we actually thought about that as well, and the language.

THE CHAIR: Mr Ponton, thank you very much. I am afraid we are at the end of our time today. So on behalf of the committee I would like to thank you, Minister Gentleman and officials, for coming.

The committee adjourned at 3.02 pm.