



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON PLANNING, TRANSPORT
AND CITY SERVICES**

(Reference: [Inquiry into the Territory Plan and other associated documents](#))

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 6 DECEMBER 2023

**Secretary to the committee:
Mr J Bunce (Ph: 620 50199)**

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 20 May 2013

The committee met at 12.00 pm.

ZEIL, MR JOCHEN, Chair, North Canberra Community Council

ELFORD, MR PETER, Treasurer, Gungahlin Community Council, and Convenor, Combined Community Councils of the ACT

WALTERS, MR COLIN, Chair, Inner South Community Council

CARRICK, MS FIONA, President, Woden Valley Community Council

THE CHAIR: Good morning. Welcome to this public hearing of the Standing Committee on Planning, Transport and City Services for our inquiry into the Territory Plan and associated documents, including 369. We will be hearing from community organisations, individuals, peak bodies and advocacy groups today.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event or who may be watching from elsewhere.

We are being recorded in Hansard, and we are webstreaming live and being broadcast. If you take a question on notice, if you can say, "I will take that question on notice," that helps our secretariat to track down the answers.

We welcome the witnesses. It is great to have you all here. Could each of you say that you have read and understood the privilege statement, and that you are happy to abide by that.

Mr Zeil: I have read the privilege statement and will abide by it.

Mr Elford: I have read the privilege statement and I am happy to abide by it.

Mr Walters: I have read the privilege statement and am happy to abide by it.

Ms Carrick: I have read and understand the privilege statement.

THE CHAIR: That was great. We are not inviting opening statements. We do not have enough time. We are happy to take any written statements, and we have received a few of those. You are welcome to table those if you have any. We are going to jump straight into questions. We do not have a long session and we want to make sure each member of the panel gets to ask some questions. If we can have one or two people answer, and if we can keep it concise, that will make sure we cover off most material.

We had a few people here who were concerned about appeals and compliance. I want to check in and ask what you think about this new outcomes-focused decision-making. With the discretion in there, are there particular concerns about how the appeals will run or how the compliance will run? Is there anything in particular that has come out since we have seen the Territory Plan and since it has commenced—for all of about eight days, I think? Is there anyone who wants to speak to that?

Ms Carrick: I am concerned that a resident may have standing to go to ACAT, but what point of law will they go to ACAT on? For example, overlooking and privacy, overshadowing and tree canopy have all been moved from the legislative side of the Territory Plan to guidance. On what point of law do you go to ACAT when you have a material detriment to your enjoyment of your property from overlooking, when there is no point of law that you can take to ACAT? It is about considering these things and then the government will say, “Well, yes, we have considered them.”

THE CHAIR: Is that really about whether you can appeal to ACAT based on the technical specifications? Is that the concern?

Ms Carrick: Yes. The technical specifications are guidance.

THE CHAIR: Yes.

Ms Carrick: Can you go to ACAT on guidance and appeal that the guidance has not been followed or applied?

THE CHAIR: Great. That is an excellent question. Is there anybody else who would like to weigh in on that issue?

Mr Walters: I agree with everything Fiona said. The point is that at the centre of all of this is a discretionary judgement for a good outcome. When we talk about outcomes, we are talking about projected outcomes here; there are not real outcomes. You do not see the real outcomes until the thing is built. It is a projected outcome, and it is the opinion of, I would say, a mid-range official in the planning department. It is going to be very hard to assemble grounds for appeal against a judgement like that because, as Fiona says, much of the detail of the concept is now discretionary. Someone has come up with a judgement that it is a good outcome. How are you going to appeal against that?

We are very concerned that this will put a great deal of pressure on the decision-maker. In the past, the decision-maker had to look at the rules and say whether they were complied with or not. Now it is his or her view as to a good outcome. There is going to be a lot of pressure from developers to agree that such and such is a good outcome. I think it even creates a corruption risk down the track, because you can just see a developer saying, “We have heard your daughter needs a bit of help with her studies in Sydney. We just happen to have a couple of empty apartments there. You wouldn’t like to borrow one, would you?”

What this lacks is a risk management framework. I have asked around; no-one can find anything in this documentation that amounts to a risk assessment or a risk management framework, which is standard international good practice for a big, complex change with a lot of moving parts like this. We think that it is absolutely essential. If you had it before you, it would bring a lot of these issues to the fore and it would compel the government to actually say how it is going to address them. That is a rather long answer, I am afraid.

THE CHAIR: No; thank you.

Mr Walters: If I have one strong recommendation to you, it is to ask the government: can you have a good risk assessment? It is not rocket science. And then go through that line by line and ensure that it includes very good monitoring of what is happening.

THE CHAIR: Thank you, Colin. I will just reflect that back: whether ACAT will be able to hear an appeal based on tech specs and the risk management framework, or lack of it. That was really helpful. Thank you. I am sorry to be so brusque, but we have a really tight schedule.

THE CHAIR: Would Peter and Jochen like to add anything?

Mr Elford: Nothing further to add to those points.

MS ORR: Picking up on what you said about the outcomes and wanting to have a rule-based system so that you, for lack of a better way of characterising it, have hard criteria there to make judgements against, this is about moving to outcomes when you do not have the hard criteria. I want to get a little more insight into how the system that has just been replaced, which is a rules-based system, is actually working. I have heard from a number of you over the years, in different hearings and on different projects, and there has been a lot of criticism of the quality of developments under a rules-based system. The part I am struggling with is that, on the one hand, we are not getting good outcomes under a rules-based system, based on a number of things that have been said in the past, so we are moving to an outcomes-based system, and the proposition that has been put to the committee is that this also will not return good developments. I guess the question is: if both are broken—

MR PARTON: What would you suggest?

MS ORR: Yes; what would you suggest?

Mr Zeil: The first thing I would suggest is to actually manage compliance with the existing rules. I have no confidence whatsoever in the current system. All I can see is that it is becoming more wishy-washy, compared to what was there before. I can give you examples of breaches of acts that were never followed up—

MS ORR: Are you saying more rules, Mr Zeil?

Mr Zeil: No; simply proper enforcement.

MS ORR: Mr Elford, are you nodding for more rules or are you nodding because—

Mr Zeil: Just enforce what you promised to enforce.

Mr Elford: Enforce the existing rules—compliance. The counterpoint is that in the last two or three months there is evidence that the directorate, under the old system, was applying the rules more firmly. Large developments in Belconnen and in the suburb of Casey, in Gungahlin, have both been rejected, in some cases twice, using the current system, where much greater, uglier and more inappropriate developments two years ago were approved. It appears that there has been much more rigorous compliance with the old system being applied.

I completely support Jochen's point that part of the disillusionment and erosion of trust the community has had in the planning system, which was highlighted at the beginning of the reform project, has not been addressed through the reform because we have not got any examples of how the new system will work. In the absence of having any experience with it, because it is barely a week old, I think it is very hard for anyone to comment on how it is going to be better. We have seen no examples or counterpoints: "Look, this development would have been knocked back because of these reasons in the old system, even though it was good, and now in the new system it is being worked through." There is just no confidence base.

MS ORR: Mr Elford, playing devil's advocate on that—

Mr Elford: Please.

MS ORR: You are saying that there are no examples of how things would be good. You could also say that there are no examples of how things are going to be worse.

Mr Elford: Yes.

MS ORR: This has been raised. I think Ms Carrick was the one who said it. There was a lack of confidence and a lack of trust in the planning department. Is the issue actually the system and what it does or does not do in the writing of the code? Or is the issue with what you said—with the directorate and with the people who are applying it?

Mr Elford: It is the latter.

MS ORR: Noncompliance; applying it.

Mr Elford: Consistency and rigour to apply.

MS ORR: Because a code is a code. You can write it 500 different ways to achieve the same thing.

Mr Zeil: We have acts now that are being broken by exempt developments and there is no oversight whatsoever.

MS ORR: Mr Zeil, I know you are very passionate, and we have heard lots about this, but Ms Carrick had her hand up and she was about to talk, so I might go to her.

Ms Carrick: I would like to say that, with respect to the old code—the Multi Unit Housing Development Code, for example—it did talk about design outcomes. It mentions the word "reasonable" many times throughout the document. In the old code, in addition to the rules, there was qualitative—

MS ORR: Yes; there were criteria.

Ms Carrick: There was qualitative stuff and we had good design outcomes. They were not applied often; it was just like, "It is the rules." So if they could not do

qualitative outcomes under the old code, when you were allowed to, what makes us think they will do good ones under the new code, which is all about qualitative outcomes?

MS ORR: That seems like a pretty good question to put to the government, Ms Carrick. I will note that one down. To be honest, what I have taken from this conversation is that it is less about whether it is a rules-based or an outcomes-based system and more about being clear on what it is trying to achieve and applying that.

Ms Carrick: No. The old code allowed for the rules, so it gave protections to the community—fundamental protections with overlooking, privacy, overshadowing and tree canopy. The old code allowed for qualitative outcomes as well, in addition. We had the rules and protections, plus we had the ability to have design outcomes and quality outcomes. Now we are taking away the rules. We are taking away the protections for the people and we are just left with—

MS ORR: Ms Carrick, can you run me through that. I think my understanding is that there are still mandatory requirements in there, which would be rules.

Ms Carrick: There are some fundamental things about site coverage and height. RZ1 and RZ2 used to have 8.5 metres in height. Now they are two storeys. I have a development near me that is eight metres for one storey. If we are allowed two storeys, how high is two storeys when it is right next to you, looking right down? Their living rooms are looking right down over you. So the controls have been seriously diminished.

MS ORR: Is it controls or is it certainties?

Ms Carrick: Both.

MS ORR: I know it is semantics, but there is a bit of a difference there. There have been a lot of codes and a lot of territory plan reviews that have come before this committee. Sometimes they have metres in height; sometimes they have storeys. It is not like we have not had a situation where two storeys would have existed in the past and not been a hard and fast “this must be this many metres”. That has always been possible. Again, it is going back to this idea that we do not know how it is going to play out, but how do we know it is going to play out badly?

I think the chair is going to try and wind me up; we do not have a lot of time. Ms Carrick, I want to come out of the detail and go back to my original point: we cannot say this is going to be good or bad because we just do not know, based on what is there, I think it is fair to say. I am still a bit confused. Are you for a rules-based system, as against an outcomes-based system, or are you indifferent to that? Is it just the case that you would like to see more enforcement of whatever system is put in place? I still do not have a clear answer for that.

Mr Elford: I would like to return to an earlier point I made: we do not know. The directorate has made no attempt to show how the new system might be deliver what the community expects as better outcomes. There have been no examples. I have mentioned this on numerous occasions. It is a case of: “Trust me. We will train our

people and it will be good.”

MS ORR: Mr Elford, is it fair to say, though, that there is a need to improve the trust with the directorate before you can take that leap of faith?

Mr Elford: Absolutely.

Mr Walters: I can make a point on that very point, which is that, if you think people do not trust the directorate, maybe look at the stats in the planning department’s annual report of DA approvals that went to ACAT; 46 per cent were varied or overturned. That means that ACTPLA only succeeded in 54 per cent of cases. That is a most terrible record. Most departments would be ashamed to own up to that, I have to say. That is a very good reason why people do not have a lot of confidence in the planning directorate.

MS ORR: I will pick up on that later, Mr Walters, because I think what the planning system sometimes thinks is permissible differs from what the legal system thinks. They are not the same systems and they have different ways of interpreting stuff. I think we are heading to a very different situation. But I also know that the chair wants me to line up my lines of inquiry.

THE CHAIR: We might come back to that.

MR PARTON: Apologies to Peter, Jochen and Fiona, because I am going with you, Mr Walters. I was wading through the feedback that has come from out in the community. Obviously, with the feedback on a legislative change such as this you are not going to get people writing in saying how wonderful they think it is. Most of the people writing in are going to be complaining. It is just a fact of life. So many of the voices against these changes come from Deakin and Yarralumla. You are over-represented. Why? Why are there so many people around you who are so up in arms about what has just happened and what is about to happen? Do you have a view?

Mr Walters: Yes. I think partly it is because we have done a very good job in raising consciousness locally. There is some self-interest in all of that because, if the new appeal system proves difficult, what tends to happen is that people do not know much about the planning system until they suddenly realise someone is going to put up a huge blank wall at the end of their garden or block out their light. Then they come to us. Under this new system they are likely to do that in greater numbers and at a time when our funding has been cut in real terms by the government, too.

If I could make one other point, just following on from that previous discussion, there is a piece of evidence you could ask the government for which might help you to assess how these changes are going to work out. Ask for an assessment of the changes that have been made to RZ2. You only have to go around some of the facilities and the shopping centres to see that there has been a huge amount of new building going on there. Ask the government how they monitored those changes and what is really happening in the RZ2 areas and that might give you some interesting evidence to go on.

Mr Elford: I am happy to add a very short comment. I think in the older parts of

Canberra the residents have a very strong and very well-defined sense of place that is perhaps not as strong in Molonglo or Gungahlin because the residents in those areas are relatively recent. They are often recent to Canberra or recent to Australia and their sense of place and their understanding of place is just less. The older suburbs, with older residents who have seen the trees grow, who have been part of the development, have a stronger sense of place. I think it is completely logical and rational that there are people who are more passionate about places they have been in longer, and they have the time and resources and desire to preserve what they perceive are the values of those areas.

MR PARTON: Mr Elford, you describe it as—what did you call it?—a sense of place.

Mr Elford: A sense of place.

MR PARTON: A sense of place. I am sure that—and I do not want to put words in his mouth; I know he is joining us later on today—Mr Maclean, for argument's sake, would describe what you see as a sense of place as "NIMBYism". How do you manage the two?

Mr Elford: The residents of Gungahlin, as a counterpoint, have a very strong sense of place, but it is around: "The roads aren't duplicated. I can't find parking. Traffic doesn't work. There aren't enough community facilities. We lack access to facilities. There isn't a sense of employment." These are characteristics in a new sense of place that has not built those facilities and services yet. If you are in the inner south or north Canberra, those facilities are well-catered for. You have the time and you have had the life experience to consider that the trees are important, the quality of the parks is important, because all those things have already happened. So, yes, it is about a sense of place, but it is a sense of place over time. There are a couple of dimensions.

Ms Carrick: Can I just say one thing on that and on Mr Maclean. Woden Valley Community Council supports urban infill, and so does Mr Maclean, but I think it is about how it is done. Does Mr Maclean say that, as we infill, the rights of the existing residents are eroded, that we are overlooked, our privacy is gone and we are overshadowed? We all understand that people need homes to live in and that there will be infill, but the question is about the protections, or the lack of protections, that are in place for the quality of life of the people who are living there, and that there is not material detriment in that their property value drops significantly because you have somebody overlooking you and looking straight in your windows.

Mr Walters: Could I add one thing, which is that we hear about the missing middle. In the inner south we have had a lot of change. Sixty per cent of the population—60 per cent of the dwellings, to be precise—are now apartments or unit developments of one sort or another. Only 40 per cent live in standalone houses. There is no missing middle in the inner south; it is the missing middle that is missing. I think you need to bear that in mind as you hear the debate about that going on.

MS ORR: I want to go back to Mr Elford. You were talking about a sense of place, which is a very important concept in the built environment. I slightly want to re-characterise what you said, so tell me if you agree with where I am going with this. I think there is a sense of place that everybody has because it is an aspiration you go

to. What you were saying was that the inner south might have a really good idea of what their place is but it is more that it is well articulated, whereas places like Gungahlin and Molonglo might still have the same aspiration—they want to live in a nice environment, with nice amenities and all these sorts of things—but they are still getting the infrastructure and the planning to get there. Is that a fair way to look at it?

Mr Elford: I think that is fair.

MS ORR: This is picking up on what Mr Parton was saying. In defining a sense of place, should that happen up-front, at the beginning of the planning, so that you know what you are working towards, what the aspiration is, or should it be left to a rules-based system for you to defend in court after the event?

Mr Elford: I think it is a simplistic question. I am wary of answering. If you care about sense of place, there needs to be a process inside government that is aligned to that sense of place—so that there is someone accountable for north Canberra or someone accountable for Woden in terms of being a good place. The district strategies talk about an urbanising agent, which I struggle to find a definition for, but it is someone responsible for place-making and the sense of place in a district.

I think that is one of the key elements that is lacking, for not just land-use planning, which is in theory what we are talking about here, but provision of services from all the other directorates and making the lived experience and the sense of place come together. It is less about what we were talking about, which was how do you convert a place. If you think a place is important, how do you actually implement it? What is the actual money spent, the positions employed, the people who are responsible for the outcome? Currently, we have nothing.

MS ORR: Can you agree that if you do not have that defined up-front you cannot work towards achieving it?

Mr Walters: Could I offer a comment on that, which is that the government makes an attempt to do that in this documentation, but the inner south strategy is 275 pages long and you need to read any number of other documents, which are often overlapping and repetitive, to actually make sense of that.

We will make Officeworks a fortune at this rate because you have to keep running back there to get more printer paper to print this stuff out. Even so, having done that, if you look at the vision for our district in the strategy document, it says:

... a diverse community that celebrates the best of the city's early history and embraces the opportunities offered by higher density living in new precincts ... a major employment area.

It is a list of components. It is as if you had asked about Mr Barr's character and you were told, "Well, he's got a head, two arms and two legs and a nice smile." That does not tell you much about his character.

MS ORR: I am sure he would be very chuffed to know he has a nice smile.

Mr Walters: Do you know what I mean? Most people would say about the inner south, “We like the green, garden city environment.” “Garden city” hardly ever appears in this documentation, but it is what most people really want.

THE CHAIR: Thank you for that excellent piece of transcription too, Colin. It is going to entertain us massively. I have a question that I know will interest Fiona and Jochen but, please, anyone, weigh in. We have heard a lot about solar access, which I understand is covered in the technical specifications. I do not know if the problem that you are highlighting is that you do not think the technical specifications have the right provision or you do not think they are going to be enforced.

We hear a lot of concern about—and I am worried about this one, too—trees, heat islands and climate change as we densify. We have that variation 369 carried on into the new plan, and we have seen some documents from government about where it is. It is in various bits. It is in the *Housing Design Guide*; it is in the *Biodiversity Sensitive Urban Design Guide* and the *Urban Design Guide*; it is in the tech specs; it is in bits and pieces, and I have seen an FOI document that matches it up.

I think the question is probably: is it hard to understand where those things are or does this system not give us the right site limitations, trees, green spaces and solar access? I cannot tell if we are worried about the fact that we cannot find them in the new system or if they are actually not satisfactory in the new system. Do we want to start with Jochen, with trees and green spaces?

Mr Zeil: I do not have much to say to that. As long as 369 is actually policed, that is okay with me. Maybe that is linked to NIMBYism. You need to take people with you in that massive change that is coming to Canberra. You need to convince them that it is actually an improvement; that it gives something back to the community and shapes communities.

Mr Elford: I would agree with that.

Ms Carrick: I would like to say that, with trees, there are various aspects that are now in the guidance. You listed off a range of guides. How will there be compliance with that guidance when it is just guidance? That is the question. It is a slippery slope. As developers get away with things—because they will; it is the nature of them; they want to get as much yield and as much money out of a block as they can—and as things slip through, which they will, and precedents are set, is it going to be a slippery slope of the quality of these things, when it is very difficult for the community to challenge them or protect their rights in ACAT?

THE CHAIR: Two great answers; thank you. It is really hard, when we are eight days into this system, to test this usefully. I am not going to pin anyone to this, because it is a really complicated new system. We do have provision for the trees and the green spaces and the solar access in there, but we are not sure about whether the provisions will be enforced—and there was good reason in the past to be worried about that. What questions could we put to government about the monitoring in six months and 12 months—not the monitoring in week 1? What do we need to watch for to see if these things are being enforced and policed properly?

Mr Elford: One of the key points—the number one point that all of the community councils agreed on in our submission—is that there is absolutely nothing that tracks the performance of the new system. There is nothing that measures its success. In the EPF, the community councils asked the directorate, “What metrics have you got for success?” The response was unclear at best. If I am generous, it was weak. It seemed to reflect that they would do their own internal reviews.

There was nothing externally so that industry or community could say, “You said the following, and look, these metrics are not being met. This developer chopped down a tree against an order,” and then there is some consequence. Previously, under the old system, trees that were explicitly identified as not to be chopped down got chopped down and the development just proceeded, and there seemed to be no consequence. The piece around a lack of metrics to prove that the system is actually working is a common, and the number one priority concern for all of the communities.

MR PARTON: Exacerbated, I guess, by the fact that you are talking about a discretionary outcome. In so many planning decisions there is an outcome which has been decided by an individual. I would give the example of Ms Clay and myself. I consider us to be both quite sensible people, and we are here at this hearing—

MS ORR: Why not me, Mark?

MR PARTON: I am going with Ms Clay and myself because we are probably further apart than you and I.

MS ORR: I won’t take it personally.

MR PARTON: But when it comes to one of us determining an outcome, my outcome would probably be different than Ms Clay’s—radically different.

MS ORR: I would throw it out there that I am probably different to both of you.

MR PARTON: I think that then that gets to your point of: how do you actually determine whether this system is meeting its objectives? I do not have the answer to that, but I think it is a really good question.

Mr Walters: If I could make a specific suggestion, it is this: turning to Fiona’s point about the slippery slope, it is about developers saying, “Well, they gave us an extra five metres in Belconnen. Can we have it in Woden?” and measuring the deviations from the old rules that are approved on the basis of good outcomes. That would give you a fairly solid basis to find out what is going on.

THE CHAIR: I like this. I am just going to reflect back what I have heard, which is very useful: if there was some sort of public reporting against the metrics—maybe in the annual reports or somewhere else—and if we defined what those metrics would be, that actually would help to see if it is working and also help to improve confidence, or the other way, if the reports are not good.

Mr Elford: Of course, and it should.

Ms Carrick: I have one other metric, too.

Mr Elford: It should also be useful for the directorate to know that they are doing a good job.

THE CHAIR: Absolutely.

Ms Carrick: Also, we have the Urban Forest Bill that plays into all this, and there is now a canopy contribution charge. The fundamental thing is that we will have trees. The developer will say, “I want to put my house there,” and then they can pay a canopy contribution charge and the tree could go in a green belt somewhere else. How often is that canopy contribution charge used? Is there a revenue budget for the tree unit to meet? Is there an incentive for them to approve the canopy contribution charge to meet their revenue budget?

THE CHAIR: Yes. Thank you, Fiona.

MS ORR: I want to go back, because I do not feel I have an answer to my question yet about place and whether we need to define up-front what it is we are trying to get to, or whether we just leave it a bit nefarious. This is, Mr Walters, picking up on what you said, which was that the strategy statement for the inner south is not what you would like to see there. What I took from that was that your sense of place is different to what is reflected in this strategy statement. Again, I put the question to you. I am trying to get a clear idea. Good planning practice would say that you have that defined right up-front—“What is the aspiration of the community? What is the sense of place they want to see?”—so that you can use that to inform all the decisions and get good outcomes as you are going down the process.

Mr Walters: What I would say is this: you are not writing a travel brochure here. It is not the most important thing about all of this. Some of the other things that have been discussed, I think, are a bit more important than anyone’s description of a garden city. We did a survey and we produced our own strategy document two years ago, and there is a lot of stuff there about exactly what people like. Some of it is reflected in the government’s catalogue, in the strategy document. I think it could be better. As I say, I think, for our people, it is something around a garden city with good amenities, but I do not think it is the most important thing about this stuff, to be perfectly honest.

MS ORR: Mr Walters, I actually have to disagree with you on minimising the role of the sense of place. When you move to an outcomes-based system, within all planning practices a sense of place is central and critical to the whole proposition of what you are trying to achieve. We might just have to agree to disagree on that point. That is fine.

In that respect, every judgement you are making on whether something is good or bad, from what you have just said, is going to come from a values proposition. You would like to see certain qualities achieved, such as a garden place. These things can mean different things to different people, which is why planners set out to try to define some of this stuff so that there is a consensus view that they can assess against. The point I am getting to is: you say it is not important, but actually, from a planning perspective, it is critical. How do we start to reconcile this? Is this you saying that you

do not think we need to worry about a sense of place; we just need a bunch of rules? That is fine, but then I ask: “What are the rules trying to achieve?”

Ms Carrick: Exactly. Can I make a point on that? Our district strategy, the Woden district strategy, is uninspiring. It lacks ambition. It is shocking. This goes back to the fundamental strategy: what are our town centres there for? Under the National Capital Plan, we had the hierarchy. The city was at the top. Then we had the town centres, the group centres. Ours is lost. We have lost our recreational precinct. We are losing our public spaces. We have got no culture.

When they talk about community facilities in ours, they are referring to child care, schools and places of worship in the suburbs. That is not the community facilities that we think of. We think about an indoor sports stadium and aquatic centres where we can meet and form connections and relationships. I think that it is fundamental to the district strategy. We do not get an opportunity to talk about our social or economic development. Everything is piecemeal, one block at a time. There is no holistic planning for our social and economic development so that we can have local jobs and local places to meet. We do not get to talk about that and it is not reflected in our strategy.

MS ORR: Do you think it is fair to say, then, that the sense of place, as defined in the current set of documents, needs to be better defined, in consultation and engagement with the communities?

Ms Carrick: Yes.

Mr Elford: Absolutely.

Mr Zeil: True, and there are examples. The neighbourhood planning exercise in north Canberra was a good piece of consultation.

Mr Elford: But that was outside the planning reform.

Mr Zeil: That was 10 years ago, and then it was dumped. It disappeared.

MS ORR: Can you run us through what was good about it, in two minutes?

Mr Zeil: It was a nearly year-long conversation with local communities—Watson, Hackett, Downer—about alternative developments, the development of group centres, needs for community spaces and so on. That ended up in brochures with design alternatives for high-density living, how to revitalise the town centres and so on and so on. And, after the summaries were presented, it was dumped—never looked at again. That was an example of good involvement of a local community. I think the district plans would form a good base to do that from, but the planners think it is done; it has been consulted on; this is it. The district plans would be an instrument to actually involve the community in these necessary discussions we will have to have.

Ms Carrick: The social and economic development of the districts—there needs to be ambition for them and there is not.

Mr Elford: Completely agree.

THE CHAIR: We have had some really interesting evidence, and I reckon we have got a few very useful points. Thank you so much for your time. I am really sorry about the constraints. I do not think we took any questions on notice today. If anybody has anything further to say, I am sure they can submit it to the committee.

Mr Zeil: Can we send in some stuff?

THE CHAIR: Yes; absolutely, you can send in stuff. James will email people to tell you if there are any time lines that apply to that.

Ms Carrick: I think we should just note that the planning strategy, the district strategy, the Territory Plan, the design guides and the technical specifications are all notifiable instruments. There are no checks and balances there, on any of it. We have no say in it, basically.

THE CHAIR: Thank you, Fiona. I am certain we will return to that point in another session, but thank you. Please feel free to submit anything you would like to. Thank you very much for your time and for your help in this. We will close this session.

Short suspension.

DENHAM AM, DR DAVID, President, Griffith/Narrabundah Community Association

BRENT, MR RON, Member, Dickson Residents Group

ALBURY-COLLESS, MS MARIANNE, President, Reid Residents' Association

HUBBARD, MR IAN, Chair, Ainslie Residents Association

THE CHAIR: Welcome back. We welcome witnesses from Griffith/Narrabundah Community Association, Dickson Residents Group, Ainslie Residents Association, and Reid Residents' Association.

For our *Hansard* record can you each state that you have received the privilege statement and that you agree to abide by the rights and responsibilities of that. We might start with you, David.

Dr Denham: I have read the privilege statement, and I agree with all the instructions that are associated with it. Is that alright?

THE CHAIR: That is perfect, thank you.

Mr Brent: I also have read the privilege statement and am happy to agree to all the requirements.

Ms Albury-Colless: I am in accord with the privilege statement.

Mr Hubbard: I too have read the privilege statement, and I am happy with the requirements.

THE CHAIR: Thank you very much. We are not taking opening statements, because we do not have much time, but if there is anything else that you want to say that we do not get to, you are welcome to put in another written statement and our secretary will tell you of any requirements for that.

We are going to start with Mr Parton, who did not get much of a go in the last hearing.

MR PARTON: Thank you, Chair. I am going to you, Dr Denham. We have already had, obviously, one panel in here, and there was quite a focus on rules: those that break rules; those that push the boundaries of rules, and how that is dealt with—compliance, enforcement, overturning. I would like you to tell us more about the five occasions when your association has asked ACAT to review decisions by ACTPLA that approved Housing ACT's supportive housing, and how that relates to this ongoing discussion.

Dr Denham: It is really a question of governance and compliance. Before I get into the details of that, I am just going to say one long sentence, if I am allowed, and that is that I think most community associations would think that the main problem with the old planning system is compliance and enforcement—and the rules could be changed, et cetera, et cetera.

What we have got now—and I think this was referred to by Peter. You have got to

have the goals for the rules. We have still got the 2018 plan, and, really, that has to be tied into the act, and then the Territory Plan should then be formed so that it does that. Now I will go on to the details.

MR PARTON: Yes.

Dr Denham: What happened was that there were five applications in the Griffith area by Housing ACT to construct three supportive houses each on the same block. When we looked at them, we did not think they complied, because as soon as you go to supportive housing, you need more room because they are for disabled people, and they need wider doors and they have got to have fewer gradients. There are all these rules in there which are designated just for that—in the planning rules—and they did not do it.

So what ACTPLA did was they approved this thing—all of them. But what they were doing was treating these people as second-class citizens and not giving them proper housing. That was our view of this. Now, as a result of that, Housing has changed their policy and the last two public houses in the Griffith area have been two on a block—no problem.

ACTPLA should have known what the rules were. It is not Housing's fault. ACTPLA are the responsible agent for deciding whether things comply or not and whether they are suitable or not, and they failed. When they fail when you have got rules pretty well laid out, it is difficult.

MR PARTON: So your concern is that now we are sort of being told that the technical specifications do not hold as much water. They are not quite as—

Dr Denham: Correct. That is how I read it now. There are very few mandatory things. I think there should be a mandatory thing, for example, for green space so it complies with the Greens' policy—good policy. What rules do you have that are mandatory in there to make that happen?

THE CHAIR: I—

MR PARTON: I know you are directing traffic here, Chair, and we are very short on time in these sessions, but is there is anyone else who wants to make a brief response to that? Otherwise, I can just go back to the Chair. Mr Hubbard?

Mr Hubbard: Thanks for that. I think all the points that you raise are really important—the importance of mandatory rules in the act and in the ACAT process itself. Ainslie has been to ACAT a few times. The only way that we can actually get over the threshold of getting into ACAT is to have the development not meet some mandatory rules. If there are no mandatory rules—if they are just a nice thing to have—anyone who tries to appeal will not be successful. Most people who go to ACAT to appeal a decision are not successful. The successful people are very few and far between, and it is because of that.

The other reason why most people are not successful in ACAT is because of the imbalance between the developer and their small army of professional advisers—

planning experts, all paid—versus a couple of volunteers from the suburb. When you watch that in process in ACAT, or you read the transcript from ACAT, you see that the committee members of ACAT really place a lot of importance on expertise. The problem is the community cannot afford to bring experts in because it costs too much money.

MR PARTON: But, Mr Hubbard, is it possible that a number of those appeals that are not successful are not successful because there is no genuine ground for the appeal? Is it possible that some of them were just wrong?

Mr Hubbard: That is a fair enough question, Mr Parton, but I do not think that is the reason. The reason is that the committee members of ACAT weigh up the expert opinion, which is delivered by the developer. That expert opinion has been with the developer from the start of the proposal and, to be frank, it probably costs a lot of money to get there. They have had an established relationship with ACTPLA from the beginning. They might have already been dealing with ACTPLA for two years prior to the actual decision, so it is very hard for the community to get in amongst that decision-making process. Say, if we had a relationship and made decisions about an issue for two years, and then someone comes in and says, “I don’t like your decision.” It is very hard to get that decision changed because it has already been established and agreed within that group.

I think that is one of the fundamental problems with the planning system at the moment: it is hard to crack into that initial relationship that has been built up between planning experts and ACTPLA. Quite often, planning experts actually drive the decision. You see in the decisions from ACTPLA that it is a cut and paste from the planning expert’s development discretion. So, I think that we have got to do something about that relationship, because once a decision is made, it is very difficult to change it, and with no mandatory rules, that is not going to be changed.

MR PARTON: Mr Brent?

Mr Brent: And directly to your point, I would like to present some evidence, as it were. I was part of a major challenge to the Coles, then DOMA, development.

MR PARTON: Yes, you were.

Mr Brent: I sat at one end of the table with some very good support from colleagues. There were three of us essentially from the community—none of us experts. At the other end of the table were two senior counsel, two firms of solicitors and probably close to a dozen paid experts. You wonder why communities lose!

We won that case, but we won it for one reason only: there were six, maybe five—it is arguable—breaches of mandatory requirements. There were, in fact, 64 breaches of discretionary requirements. Anybody looking at that would say, “That is enough to say this should have been rejected.” The discretionary requirements were there for a reason—you bend the rules here and there and you adjust these. Sixty-four breaches—no!

We were lucky because we were very brilliant, Marianne and I, in presenting the case!

But perhaps, more realistically, because we did have six mandatory rules that we could hang our hat on.

MR PARTON: I do not want to put words in your mouth, but are you of the belief that these changes are, in part, to stop actions like the one that you undertook on Coles at Dickson?

Mr Brent: Whether that was the objective or not, that is certainly going to be one of the consequences. I would argue that the development in Dickson is better for everybody, including Coles, quite frankly, but certainly for the community. It is massively improved for the heritage library, the heritage of the space and the community—the use of the facilities not overshadowing the main Dickson square and so on. I think it is pretty stark when you look at what was originally proposed and what we have got.

It comes to the point that is touched on here around whether 15 development applications taken to ACAT as against 4,056 lodged on the merit track is a problem. It is less than half a per cent. Significantly, we did not stop either of the two developments—that the Dickson Residents Group has taken to ACAT. Both went ahead, and we were supportive of both. We just wanted developments that were reasonable.

Ms Albury-Colless: Could I just add to that. A decade earlier, I think, there was the Raiders and Northbourne Oval saga, where the NCCC took action against the proponents who were, we thought, capitalising on basically what was community land around the Northbourne Oval to construct a monstrosity of a piece of architecture. We were not really particularly successful except that, in the end, a somewhat more aesthetically pleasing building was put there.

The parking is still around the edges, and we managed to get some roses planted, and they are looking very seedy at the moment, so it was not particularly successful. We were definitely outgunned because there were flanks of silks that tended to outgun us, but in the long-term we did what we needed to do. We did what we were obliged to do, and we did it for the right reason. Unfortunately, Northbourne Oval, a heritage listed oval, is somewhat unpleasantly surrounded by a car park and some rather ordinary buildings. It is a great pity that that was allowed to go on, but we did try, and I think we got some outcome, and it would have been worse if we had not made the effort to appear before ACAT. I think ACAT plays an important role, but it does need rules to work with.

MS ORR: I have just got a question following on from that on the focus on the rules. I think, Mr Hubbard, it was something you said a little while ago now, because we have continued to chat around looking at the rules for what is needed to be able to take—and I am paraphrasing here—a successful action within ACAT. I think that is a fair way to characterise it.

Is the focus on the rules that you have got in your submission and in the testimony today really aimed at having those appeal rights or do you see other roles for rules within the planning systems?

Mr Brent: I would certainly say there are other roles for rules in that they provide a more clear and explicit direction to the planning authorities. Part of my thesis represents, very heavily, what Ian was talking about, which is the inherent bias in the system towards developers, and that is in no way a criticism of the integrity or quality of the people working in the department. It is about the fact that a system that requires very substantial expertise, skills and knowledge is going to favour the people whose business it is to put in development applications and is going to be heavily biased against the business of people who are concerned about their environment and specific issues in relation to what is happening down the street.

The other of the developments that I was involved in that went to ACAT was one in my own street, Marsden Street, which involved putting what was originally supposed to be 12 units on two suburban blocks. We had lots of concerns about that, including the overspill into the street for parking, because there was inadequate parking. We won that case as well. The threat was that the development would not go ahead, which would have been unfortunate, because we are supportive of increasing population density in the inner city; that makes sense in the inner north. But, of course, that was the threat from the developer and the threat that a developer can always hold over a planning application process, and because of the importance of getting some of these developments through, it is an intimidatory threat.

The development went ahead, surprise-surprise, with eight rather than 12 units on the two blocks. The problems we had foretold still exist. This morning as I came through there were nine cars parked on the street immediately outside the development on both sides, leaving a narrow passageway in between. Had there been 12 units, half as many units again, and fewer parking spaces on the premises, that would have been 14 or 15 cars parked out in the suburban street. I guess what I am highlighting here is that we do not oppose developments, and in most ACAT applications, as you heard in the evidence about the last case, it is not about stopping the developments; it is about making them good developments. The risk is that the inherent bias in the system, which will always exist in favour of developers, is going to be exacerbated without clear, explicit rules.

THE CHAIR: Thank you, Ron; that was excellent. I have got to say, when I am looking at the good density developments in Canberra, the good examples I see tend to be block consolidations with two and three storey apartments or townhouses. They are actually not individual blocks, where somebody has put up a dual occupancy, and they are not even two blocks put together; they tend to be larger, and they are high quality. They tend to be that genuine—what I would consider to be—missing middle that we see in a lot of other cities. We have got a few examples of those around in Canberra.

I am interested in knowing whether you think that kind of development is suitable in your areas and whether you think this system is likely to lead to it, given that the major zoning change we seem to have is for “dual occies”, not things that will lead to that kind of high-quality block consolidation design.

Dr Denham: I have got no problem with that at all providing there is enough green space in the development. It is like dual occupancies on corner blocks: if you have got a big corner block you can design the two houses so that the 30 per cent, or whatever

it is that you want, is there. But that is the crucial thing: the greenspace. There were three houses in Narrabundah on two blocks and now there are eight, and none of them have got any daylight, or space or anything. But it must comply with the rules—

THE CHAIR: David, in this system they do have site restrictions for how much of the site you can build on, and then there are lots of other bits in the biodiversity design guide, the *Housing Design Guide* and then the technical specifications. I think that last one is for the solar access. Are you concerned to make sure that we have those things? Or have you looked at these things and said that they are not—

Dr Denham: I think the main thing is that there should be mandatory controls in the system—

THE CHAIR: Yes. So it is whether or not they are enforced—

Dr Denham: and they should come out of the plan that will replace the 2018—

Mr Brent: I was going to simply note that the existing system does actually accommodate those sorts of developments. A quick drive down Limestone Avenue, in my own area, demonstrates, I think, some very good examples of that block consolidation and good quality development. We do not actually need to get rid of mandatory controls to be able to achieve that.

I would also note, given that the technical guidelines are no longer mandatory, things like overshadowing, which are an important part of creating light and amenable environment, will disappear. And if we cannot maintain some of those things under the existing system, because it is stacked against good design, I think it is going to be more problematic under the new system.

Coming back to a question you asked at the previous session, I do think there is a need to be able to track the performance of the department to be able to monitor responses. I think there are some obvious measures: data on the extent to which there are deviations from the technical guidelines; data on plot ratios, tree preservation, overshadowing, permeable surfaces; data on the enforcement of breaches; data on the variants from old system outcomes. I think there are lots of really easy metrics that can be used, and I would like to see a forum such as this monitoring those metrics to see if the new system is actually working, because I would be pretty confident that the inherent bias towards developers will dramatically reduce the quality of developments.

THE CHAIR: That is excellent; thank you.

Ms Albury-Colless: I concur with that strongly, because I think without being able to assess, monitor, evaluate, implement and change, and have the metrics behind that, you will have a very flawed system ahead of you. Because, basically, you have got a policy here and you have to implement it, and if you do not have a way of checking its working progress and its end results, then I think that it is a free-for-all.

I would also say that I agree with what you have been saying about block potential. I think there is one part of Reid that could possibly be looked at in that regard, and that is on the Reid side of Limestone Avenue. I would probably say to be careful of

Kanangra Court—it does have architectural merit, despite what goes on in there at the moment, in some ways—and also, probably, to exclude Argyle, because it is relatively new. I think that those bits in the middle have become—and possibly this is a *modus operandi*, I am not too sure—rather shabby. I understand that Purdon group is looking at how this area of Reid and Braddon, on both sides of Limestone, might be looked at. And again, block ratios are so important. That green space is absolutely vital from a climate change perspective, from a biodiversity corridor perspective—all of those perspectives. We need the right ratios of green space to built form.

THE CHAIR: It sounds like making sure that there are the right ratios and that those ratios are enforced.

Mr Brent: Yes.

Ms Albury-Colless: Yes.

THE CHAIR: And similarly with solar access and trees—

Mr Brent: Yes.

THE CHAIR: Making sure they are right and that they enforced—

Ms Albury-Colless: Absolutely.

THE CHAIR: That sounds like it is probably more important than RZ1, RZ2, RZ3. If you have got the qualities right, and enforce them, that would probably lead to better—I am going to throw to Ian, because Ian has been patiently trying to jump in.

Mr Hubbard: Thanks very much for that. The other issue I think we have got, to be frank, is that now we have left this to the market to resolve. We have really said to builders and developers, “Here is an opportunity for you: please build this type of alternative housing, which slightly different to what we already have.” The problem with that is that the interests of builders and developers is to make as much as money as they can. If you are developing places like Turner, O’Connor, Ainslie and Reid, the land component of that deal is very expensive to start off with. One of the aims of some of these changes is to have affordable housing, for instance. The market is not going to deliver affordable housing. They are going to do what they have done in most places already, and that is to build a luxury townhouse, or what is occurring, potentially, on the Doma site in the foothills with very expensive townhouses and apartments with great views and a fantastic location—tremendous. But they are aiming at a totally different market to anything that is going to have an impact on the housing crisis that we are going through at the moment.

At the moment, in Canberra, house prices are just too high. The market is not working. It is not working for anybody who earns less than 60 per cent of ordinary income. That is the problem we have got—that none of these changes will do anything. We will hear later on, no doubt, that developers will ask for more concessions—taking away the stamp duty, getting rid LVC. All these sorts of changes which make the ability of them to deliver housing—not even affordable housing—easier. I think we have to be really careful about that.

I think that, as part of the monitoring, we should have a look at what housing does get built, because my feeling is that most of these blocks will be knockdown-rebuilds, and the knockdown-rebuild will either have a very large house on it or it will have one house which is 120 square metres and another house which is whatever you can squeeze on, given all the other good requirements of the amount of plot ratio, green space and separation from the house next door. Most of the complaints that we hear, or representations at the community association, are from residents that are having an oversized development built right next door impacting on them heavily. They are the ones that we get, and they are the ones we also go to ACAT about and have to argue on their behalf. That is really where most of the complaints come from: someone being really smacked about by a developer, who is really in there to make some bucks and then leave. I think, somehow, we have to be able to give greater protection to the current homeowner, and I cannot see any of that in the new Territory Plan—how the current homeowner can get any protection from an overdevelopment next door.

THE CHAIR: Thank you, Ian. I am going to pass over to my colleague, Suzanne, who has not yet asked a question.

Ms Albury-Colless: Could I just make a very quick correction?

THE CHAIR: Yes, please do,

Ms Albury-Colless: Because I think I was saying Limestone Avenue; I meant Ainslie Avenue. My apologies. I have it on the brain. That is where I weed, and I am very worried about, but I meant Ainslie Avenue, not Limestone Avenue.

MS ORR: A number of you were here for the last panel, so you sort of have a good idea of some of my questioning, and I wanted to pick up a little bit more on this sense of place and how that can be reflected through, particularly, the district strategies and in defining and guiding the outcomes that are sought.

The first question I have is this: do you think the new Territory Plan picks up on this sense of place well enough and do you think it is something that should be quite up-front? Mr Brent, it came through in what you were saying about the Coles at Dickson in that you actually wanted the development, but you just wanted it done in a certain way.

I guess the crux I am trying to get to is the role the sense of place can have in actually getting better outcomes without so much contestability within the system. You have said community members do not have a lot of expertise or time or enjoyment in contesting but feel they need to to get the good outcomes, and I have had enough developers and so forth in front of me saying they do not like the bills that come with it, so we know it is not working for anyone. How do you take the contestability out of the planning system and get this sense of place up-front so that we are not having these fights and we are all on the same page?

Mr Brent: I would offer three comments in response. The first is that, unlike some of those who spoke previously, I think creating some words around a sense of place is really important, and that is the first step. I would agree with the comments that were

made previously that the current documentation does not really do that very well. Jochen mentioned a very good model from ten years ago; that went nowhere.

Having recently been involved in the consultation on the garden city cycleway that is being proposed for the north, I have to say that is an example of how it can be done. I went along on the very first ride through the proposed route. There were all sorts of problems. We had people like me, who knew about riding bikes in that part of town and who knew what the intersections were like, where the trees grew and where the people backed out of drives. I think I am accurate in saying that every suggestion made—from Pedal Power, myself from Dickson Residents Group, and one of the other active people involved in the consultation—has been picked up. It is going to be a dramatically more usable, safe, effective cycleway as a result of consultation, because you talked to the people who know. I think that that has got to be critical to developing the words around a sense of place. Yes, it is tedious, and it is hard work, and you have got to listen to people who do not present very well and people like me who rabbit on too long and all the rest of it! But the result can be really powerful. That is the first point.

The second point, I think, is this: once you have got a sense of place, you do need to track the extent to which decisions comply. That can be done by putting some of that sense of place in rules rather than discretion, but it can also be done in terms of active monitoring and decision-making.

The third point is that you do have to have an appeals process. You do have to allow people who see flaws in decision-making to be able to react to that. I would like to see, ultimately, that ACAT becomes what it should have been, which is much less legalistic. As I tried to present evidence in ACAT, I was drawn up for asking leading questions. It was a tribunal; it was not a court! I am allowed to ask leading questions. But that has been lost in the evolution. I know Professor John McMillan has written a marvellous article on this problem.

MS ORR: I think reforming ACAT will continue to be a work in progress.

Mr Brent: Yes, but at least let's try to balance it out a little by giving the community something that they can grab easily, and that is a set of mandatory rules.

Dr Denham: Can I make a point a little bit different from this, and that is that in the new act for the territory, it says that one of the objects is a scheme for public participation. We all know that the main activities of community associations are when you get people building houses next door, and it is compliance and all this sort of thing—the governance and the compliance.

This present government has awarded a contract for an independent review of the ACT planning system governance, and there is no option for any community input into that. I think that is an absolute disgrace! I wrote to the head of the thing, and she said she let them know what my views were.

THE CHAIR: Good on you, David.

Dr Denham: I think it just seems crazy. You have got the thing in the act—an object

of the act! You can understand that one. This is the bread and butter for the community, and then you forget all about them. There is something really wrong there.

Mr Hubbard: The principles of consultation at the front of the act are really good. When you read through them, they are such a clear statement of what is good consultation, and then that is it. It is a lovely read, but where do we see that actually put into place? I think that is the problem. It is a page and a half of really good points of how you run one. I think that is an issue for us.

MS ORR: Do you think—

Ms Albury-Colless: I think—

MS ORR: Sorry; you go ahead.

Ms Albury-Colless: I was just going to say there is best practice guidance in terms of how to run consultation and engagement, and I do not often see it being practised. I come from the Murray-Darling Basin Authority, where the engagement situation was very much involved with farmers, irate communities, et cetera, and we learnt a lot in that situation. There is a whole heap of really good information out there about how to run best practice and how not to corral by using questions that guide to the answer that people already want at the other end. I find that is very, very offensive, when I look at the way questions are actually decided and there are no open-ended questions there so people can really give the right information to the people who are doing the planning, or whatever the activity might be.

MS ORR: I think the sentiment that is starting to come out from some of the answers goes to some of the sentiment we saw in the last session too—that it is a trust-building exercise between the directorate and the community. I would be interested in picking that up a little bit. I put it to Mr Elford—I was playing a bit of devil’s advocate—because he said, “We don’t know how this is going to work,” and I said, “We also don’t know how it is not going to work. It is a bit untested.” Do you think that is a fair observation? Is it perhaps a little bit premature to be making conclusive and definitive statements either way? But definitely there needs to be a little bit more by-in and interaction between the community and the directorate to get the potential and the promise that could come from this system to be realised.

Mr Brent: I am informed heavily by past experience—

THE CHAIR: Ron, I am just going to step-in for a second. I am going to inform the witnesses that WIN TV is here, and they have permission to film. We are a live broadcast anyway, but I just wanted to let everybody know that they are now filming. Is that okay?

Mr Brent: Okay.

THE CHAIR: Great; please continue.

Dr Denham: We have got to keep smiling!

Mr Brent: Exactly.

THE CHAIR: Yes, that's it. Don't scratch your nose!

MS ORR: I would have brushed my hair if I had known!

THE CHAIR: Continue—please do.

Mr Brent: I will draw on past experience, which is to have a look at what has happened through the erosion of trust by the approval of developments that clearly should not have gone ahead. I will go to the Coles/Doma development, which, as I said, breached five or six mandatory rules and 64 discretionary rules. Where does that leave any sense of trust? Is that a sound platform for assuming that the new system is going to improve things, when discretions are increased and not decreased, and when discretion was used so badly on that occasion? They were not just issues around not wanting it in our backyard; the issues were around wanting a development in our backyard that was good and that put sufficient natural light into the apartments, et cetera.

MS ORR: But in that proposal—it is less the pros and cons of the system. The system is somewhat irrelevant in some respects. It is how it is being applied and who is applying it. That is actually the core issue if I understand correctly. So, in that regard—

THE CHAIR: Suzanne, I might pass over to Mark.

MS ORR: Can I just finish my last question?

THE CHAIR: Yes, sure.

MS ORR: Sorry, because I was interrupted, I have lost my train of thought. In that regard, I guess what I am saying is that the system, somewhat, becomes irrelevant; it is about rebuilding that trust. So, going back to this proposition that we cannot really talk about the pros and cons or whether the old system is going to be better or not, it is more a case of a trust-building exercise, regardless of the system. Is that fair to say?

Mr Brent: I would say not entirely. I do accept the point. I think it is a good point, but I would layer on top of that: if under a system with more limited discretion there was evidence of failings in the system that led to mistrust, to give greater discretion and therefore more power into the hands of the developers, who are already in a very strong position in this whole equation, I think is going to become more challenging rather than less to see—

MS ORR: To rebuild the trust.

Mr Brent: To rebuild the trust; thank you.

MS ORR: Because you are coming from such a low point. But it is still a trust-building exercise.

Mr Brent: Yes.

MR PARTON: In the little bit of time that we have got left, I would love the panellists to just give their reflection on the public discussion that has been had—and we touched on it a little earlier—regarding the RZ1 “dual occy” scenario, whereby the second dwelling is restricted to 120 square metres. You have noted, Mr Hubbard, that so much of the work that the community councils do is around complainants, I am assuming mainly in detached dwellings, who have a development that is going on next door.

What reflections do you have on the restriction of the second dwelling to 120 squares in terms of there being enough incentivisation for people to actually take it up? Or will it just sit there, and no-one will do it?

Mr Hubbard: That is a really good question. It is hard to actually predict the outcome, but I can understand where government is coming from. They are trying to limit it to 120 square metres—

MR PARTON: It is exactly what you were talking about earlier, isn't it?

Mr Hubbard: because of the affordability factor.

MR PARTON: Yes.

Mr Hubbard: I do not think it is going to be taken up by very many people, to be frank, because you just do not make enough money out of it. My feeling is that it will be business as usual: knockdown-rebuilds and putting as much luxury-type accommodation onto these blocks. So, I do not think it will achieve what it wants, and it will not produce enough supply to address the housing crisis or shift the current, very high, prices of houses in Canberra. That is just a market problem, and I think that needs to be addressed in some ways.

I think a bigger issue, as well, in our inner city areas, is the ongoing privatisation of community land, and I think the committee needs to address some of the factors about that, because the new Territory Plan enables proponent-initiated changes to the Territory Plan for the first time. It also expands—an idea that interests you a lot, Mr Parton—the definition of what type of housing can go on to community facilities land. I think once you allow residential housing on community facilities land, there is no land for community facilities, because it is a much higher and more valuable use of that land as far as the market is concerned, so we lose the community estate, which is all our community facilities land. So, in the future, as the population increases in the inner city, we lose all those community land areas which would have gone to primary schools, health facilities and meeting rooms. The government, if they want to get that land back, will have to go into the market and buy at market prices.

At the moment, you will see developers asking for lease variations, discounts, concessions and all sorts of things to incentivise this. I am thinking, “Well, that is the ratepayer handing over money for the developers to take away community assets.” Those community assets underpin the financial performance of the ACT, whether it is from a ratings side of things or the future value of the asset, so we have got to be very

careful of that. I think the current changes to the plan are, in my view, a little bit sneaky around the definition of what is allowable on community facilities land, and you should have a look at that. We are really sort of selling out our community assets at the moment.

THE CHAIR: We are just about to wrap up. Does anybody else—perhaps one of our panel members who has spoken less—have anything else they would like to say before we wrap up our session? Marianne, I am looking at you! Did we cover it all?

Ms Albury-Colless: I really do think that one of the things that is missing here is the input or the impost of climate change, and I do not think that that thread is carried through these planning documents sufficiently. I do not think there is enough integration of the whole system that is there. I would like to see, as I mentioned and as other people have mentioned, much greater capacity for metrics to be applied.

I think the blue-green theme that runs through it is a great way of looking at it. I am very pleased that Canberra is recognised as the national capital, because sometimes I think the development that goes on around it is incredibly second or third or fourth rate, and I am really appalled at that.

I am very pleased that we still have, to fall back on, our entry into the ACT Heritage Register, which actually protects with “mandatory” requirements. That word is very important, and it is about what we can and cannot do in Reid and other areas of heritage.

The other thing that I find in talking about heritage is that it is “ad hocery” all the way through. I have seen multiple references to heritage, place, culture, nature and natural heritage, et cetera. I would like to see them pulled together in a much more coherent way, because to me it is ad hoc, and to me those sorts of things need to be addressed in the way the documentation flows.

Lack of integration—to me it is almost in a piecemeal manner at the moment. I would like it to be brought together in a much more cohesive way.

THE CHAIR: Thank you very much. I am sure we all would.

Dr Denham: One last sentence. This is my recommendation; you probably will not do it. You must incorporate mandatory controls to meet well-defined objectives, and that is the crunch.

THE CHAIR: Thank you, David; thank you, Ron; thank you, Marianne; thank you, Ian. I am not cutting you off. I am on a schedule that is not of my making. Thank you very much for coming in. We really appreciate your time and your contributions. If there is something else that you wanted us to know that you have not had time to tell us, our secretariat will let you know how long you have to submit anything further in writing. We very much appreciate your time.

Short suspension.

**JOHNSTON, MR RICHARD
TROBE, MR TONY
FIELD, MR TIM**

THE CHAIR: Welcome, Richard Johnston, Tony Trobe and Tim Field. Please confirm that you have received the privilege statement and that you are happy to comply with the rights and responsibilities in that privilege statement. We will start with you, Richard.

Mr Johnston: I am appearing as an individual. I am a life fellow of the Planning Institute of Australia. I am a long-term and experienced planner and an architect by original training. I have read the privilege statement and am perfectly happy with the terms of that.

THE CHAIR: Thank you.

Mr Trobe: I am a practising architect of nearly 40 years in Canberra and I am here under my own aegis. I am also happy with the privilege statement.

THE CHAIR: Thank you.

Mr Field: I am appearing as an individual and, yes, I have read the statement.

THE CHAIR: Thank you. We are not taking opening statements, but there is an opportunity. If there is anything that we do not get to today, you are welcome to put it in writing and submit it to us. Our secretary will let you know when that has to be done. I am going to start with the first question to Richard, but also to anybody else who wants to jump in. We have heard a lot this morning about the importance of solar access, trees, green space and variation 369 type requirements. Now that we have the new Territory Plan, we have not seen a lot of zoning change. I am nervous about whether we are going to get lot consolidation, low-rise apartments and low-rise townhouses on those bigger bits of land that actually give us really good-quality outcomes. I am a bit nervous that we might just get lots of small dual occies and lots of bitsy planning. Do you think we have the settings right for good missing middle-block consolidation with good-quality design, solar access and lots of green space on the bigger parcels of land?

Mr Johnston: No. I do not think the settings are right at all. To a large extent, that has been a carry-over from the previous Territory Plan, which did not grapple with these issues particularly well either. I think you are aware that I have personally written on the subject of how to actually do better infill development and referred to a book called *Greening the greyfields* by a couple of eminent professors from Melbourne and Perth about exactly this subject.

There is a lot of work going on in Melbourne particularly. The lesson coming through from all that is that you are wasting your time trying to do it on a single-block development. You really do need to go through a whole process, starting from good strategic planning, if you like—identifying where it is appropriate to try to get some substantial redevelopment happening, where the circumstances are right for that—and

you need to take local communities along with you all the way. It is a long and difficult process. I would have to say that, from the Melbourne experience, nobody has actually managed to finally bring it off yet, even though there has been an awful lot of research work and talk going on.

Block consolidation is absolutely critical after you have been through a planning process—as I say, starting from strategic planning and going down to more precinct planning so you are really looking at the particular characteristics of an area and working out what is appropriate, getting community sign-off on that and providing appropriate development controls around all that.

I have reflected back to the NCDC experience in 1970s and 1980s where they had some very simple redevelopment guidelines for the Kingston area, where there was some quite old housing. Only some of that has been preserved in heritage areas, but a lot of it was redeveloped over the 80s and 90s under the NCDC controls, essentially. The first one was: we are not prepared to consider redevelopment on a site of less than 0.4 of a hectare; something like four or five blocks is the absolute minimum.

All of that was done by private developers. The first one was the one where the big Kingston Tower is. But it is not only the tower; there are walk-up apartments along the Telopea Park frontage and some townhouses on Gosse Street, behind the tower. It is a major development. That was on a 1.4 hectare block. The developer managed, somehow or another, to put all those houses together—14 or 15 houses—and created a really excellent development with a nice open space in the middle of it. I have done analysis. The whole area was redeveloped under those guidelines in that period. The ones that really worked well are the ones that are basically perimeter buildings with a really decent hunk of open space in the centre, with a good ability to plant trees and make a really nice community space in the middle of those developments.

THE CHAIR: Thank you. That was an excellent answer. I am going to see if anybody else wants to comment on it. I am particularly interested in the idea of having minimum sizes for redevelopment. Does anybody else want to weigh in on how we would change what we are currently looking at—from what the government has released—to get those settings right?

Mr Trobe: I will step back a little bit. To start, the whole new interim Territory Plan seems to be focused on RZ2 and above. If you look at the numbers, 83 per cent of all the properties in the ACT have single housing developments, so I think the ball has been missed to some extent. There are no design guides being produced for the RZ1 zones. I was particularly involved with the NEAT housing competition 10 years ago, when I was the president of the institute, which brought up the whole idea about the missing middle. The government ultimately decided to follow through. I think a lot of this stuff has followed on from that.

My take on the new rules is that they are extremely timid and they will not produce a result. One hundred and twenty square metres is a blanket number for a single storey, and there is the LVC. Nobody is going to take that up at all. There needs to be a more nuanced thing. I am sure you have heard this from a lot of different people. I have not been here for all the other presentations, but—

MR PARTON: We have not heard much to this point. We have not actually discussed a great deal in this room today.

Mr Trobe: It is unworkable. Maybe make it pro rata. I would then go on to talk about the Demonstration Housing Project. I have been involved with that. The government has taken seven years to get this in place, and we have been involved with that as a follow-on from the NEAT housing competition. There were something like 50 applicants. It is down to four. I am part of that. We are now doing a demonstration of a triple occupancy on an RZ1 block—twice. What is the point of demonstrating a triple occupancy on RZ1 blocks if they are only going to allow 120 square metres as the rule? You are proving something works well and then you are not going to allow it. It seems a moot point that you would allow that. Something needs to be addressed about the nuancing of the rules. You would allow that in the demonstration case. But the 120 square metres, the LVC, the single storey—nobody is going to take that up. It is certainly not going to address the infill problem.

I think Richard is on the right track. A bigger global picture on consolidation is important. In terms of the interim plan, it has missed this completely, I think. It is like they have concentrated on the tail of the dog instead of the body, which is the suburban area, so I think there is a missed opportunity on that particular issue.

MS ORR: I have a supplementary.

THE CHAIR: We might first ask Tim if he would like to comment on this or if he would rather have more questions from the committee.

Mr Field: My concern with the whole thing is the balance. We are always juggling with some concepts of quality and other policy goals—my particular focus is the living infrastructure ones—along with urban consolidation, affordability, better design et cetera. My worry is that, irrespective of the structure of individual developments or consolidation, there is not enough rigor in the living infrastructure requirements. A finance guru once said, “Show me the incentives and I’ll show you the outcome.” Basically, you have all the financial incentives pushing in a certain direction, which is to maximise the yield.

RZ2, which has not received much attention—the loading or whatever you call it; the number of dwellings per given block—has quietly been increased quite significantly. On a 1,000-square-metre block, you can now build three townhouses rather than two, which is a nice little earner for people who have been land-banking. Again, that increases the pressure on anything to do with living infrastructure, where you have more driveways, more utility areas, decks and hard surfaces generally.

We are looking at, perhaps, precinct planning. Near where I live, a developer has bought four blocks and will develop those as a single entity. But again, with financial incentives, they would be able to put more dwellings on the block. The danger is that, unless the countervailing policies around living infrastructure are nailed down, they will just become a balancing item at the end.

THE CHAIR: I have a further supplementary on this and then I will hand over. We had a pretty good discussion this morning about living infrastructure, and that is

certainly something that concerns me a lot. I have seen, from FOI, where the old living infrastructure and 369 provisions are embedded in the new system, and they are in lots of different places. They are in solar access and tech specs, bits and pieces are in the *Housing design guide* and some pieces are in the *Urban design guide*. They are in lots of places. What metric could we ask government about to make sure that all these things are delivering the right living infrastructure? Is there something reportable or something that we could make sure we get?

Mr Field: If I were asked about a wish to come true, and looking at what we have looked at and where we are now in this whole process—we are not going to wind back to 2½ years ago—I think we need a living infrastructure assessment requirement. They are the mandatory things. This is simplifying it right down. Richard and I have talked about this. I think it needs to have two parts. One is a minimum planting area, and for RZ1 and RZ2 multiunits that is 35 per cent in the technical specifications, and there needs to be pre-planting of a canopy cover which, at maturity, goes to 15 per cent of the block. They are both in the technical specifications. The trouble with the technical specifications is—

THE CHAIR: Enforceability.

Mr Field: they are over here somewhere. There is nothing in the act that says the technical specifications have to be looked at. They are interesting guides, but they do not drive decision-making.

Mr Trobe: That is the point, though, isn't it—having a performance based solution? It seems to me that a lot of guides have come in and, basically, it is like throwing mud at a wall and seeing what comes out. That is the case for lots of potential unintended consequences of living infrastructure. Basing it on a 40 per cent footprint or areas for planting is going to force houses to have two storeys. That is an issue if you are ageing in place. There are a lot of other issues that I do not think have been thought through in terms of what the outcomes will be. We will only find out after this has all been in place for years and years.

MR PARTON: It is too late then, isn't it?

Mr Trobe: Of course it is too late then. A lot of that stuff has just been thrown at the wall to see what sticks. I think the intentions are good, but maybe the devil is going to be in the detail of what happens as it manifests itself in the suburbs.

Mr Johnston: I am probably repeating myself, but it does seem to me that this argument demonstrates why it is very difficult to do anything much on a single block. Inevitably, on an established block—say, in the inner south area—if you are trying to put a dual occupancy on it, you are probably going to end up knocking down trees, and you are not going to be able to do anything like replacing the planting area that was there before. It just does not work. You can do it on a bigger scale. You cannot do it satisfactorily on a single block.

MS ORR: There has been a lot of discussion this morning about rules versus outcome based systems, and some of the previous witnesses said that they are quite wedded to rules. I am particularly interested to hear from you, Mr Trobe—because you go to a

few rules in your submission that do not actually get good outcomes—to get a bit more of an idea, from your professional and practitioner background, about how rules will not necessarily always get great outcomes, where rules could be good, and how we can get better balance in an outcomes systems while still having those safeguards in place.

Mr Trobe: I suppose this goes back to the future, before the Territory Plan was brought in. Richard would know this: it was always a performance based system. The biggest objects of the Territory Plan, or the planning system then, were to achieve outcomes, and everything else could be related back to that. I remember going to ACAT and arguing for the top-order criterion and being successful in those sorts of situations. I think that has now lent itself to a very tricky situation. Now we seem to be in a hybrid situation where we are trying to have a performance based code but we still have the mandatory rules. I think you need to decide whether you are going to have a performance code or not.

The way it is set up now means that it is going to be a huge impost on the Planning Authority. I already have four projects I need to talk to them about, because I do not know whether I can have a wall that is 2.1 metres tall on the boundary, or whatever it is, that does not meet the numeric codes. But it is a performance based document. I cannot make a decision on it; the certifier cannot make a decision on it. All these things are going to go to ACTPLA for decisions, but they said that they do not want to have pre-application meetings, so where does that leave us? Nowhere. We have to take a gamble that it will be approved.

That whole performance based thing is going to increase, and the same is going to apply to trees and all the living infrastructure stuff as well. There will need to be a huge amount of extra resourcing within the Planning Authority. Partly, the reason why they brought all the mandatory rules in was to avoid going to ACAT over all these issues, as in the past. That is why Simon Corbell threw his hand in and said, “I am sick of all this ACAT stuff. Let’s just put some mandatory rules in place.” That is what happened in 2003. I can tell you. I was there.

MS ORR: It is funny you say that, though, because some of the previous witnesses said they want rules because that is how they get to ACAT.

Mr Trobe: That is right, but you have to have it one way or the other. That is—

Mr Field: It is interesting to note that, in knockdown rebuilds—the exempt single-dwelling developments—there is now a control which spells out that technical specifications have to be complied with if you want to be exempt, mainly because the private certifiers would have said, “How the hell do you certify against those broad—

Mr Trobe: “Nothing to do with us. It has to all go through to the Planning Authority.”

Mr Field: That would just fall apart, so they have made it quite strict. There is the control you have to comply with.

MS ORR: To drill down a bit more on that, there is another part to my question. I appreciate that that answered most of it, but there is one more bit. Some of the

feedback we got in the time I have been here says that the rules actually get somewhat perverse outcomes and not quite correct outcomes. You sort of alluded to that, Mr Trobe, in your comments about solar access, in that they are not necessarily good design outcomes or they are not necessarily trying to comply with the rules, and the codes do not necessarily get you in. From a designer's point of view, how often do rules end up limiting good outcomes or better outcomes than what they achieve?

Mr Trobe: I can give you a good example. I have a project in Hackett. The guy has built it himself. It is 300 millimetres outside of the height limit because he struck rock during the project, and now the Planning Authority are refusing to approve the project because the technical definition of a basement is not met. It achieves everything else in the code. I do not know—are they going to make him demolish this beautiful dual occupancy he has built in Hackett? That is the sort of unintended consequence. Everybody can say, “This does not make any sense,” but, because of rules—the same applies to heritage rules—you get into really odd positions where common sense does not apply anymore. You have to be very careful about the mandatory rules.

If you are going for a performance based system, what is the point? It is either one or the other. They have taken some out. They have taken the 50 per cent out, but they put down a 40 per cent footprint. That is going to squish the houses up. Bigger two-storey houses are going to be the go. I would like to talk about the solar fence rules at some point. All that sort of stuff is problematic. No-one has stitched all those little pieces together to see what the outcome is, which goes back to your original question: how can you assess what the outcomes are going to be in the long term?

THE CHAIR: Mark might have a supplementary.

MR PARTON: I am going to call it a mix between a supplementary and a substantive question. Tim, you seem to have a great fear about the tech specs and the way that this is all going to function. You pointed out in your submission that the technical specifications document is not part of the Territory Plan and that it can be amended without reference to the Assembly, and that that effectively means that ACTLA can change the basis by which a DA is deemed to comply. Those are pretty serious concerns.

Mr Field: It has been said that, if you put in a DA and you comply with the technical specifications, you will be given the tick. It makes sense to have a set of rules: “Just tell me what to do and I will do it.” But they are enacted documents—they have to be tabled—but they are not disallowable instruments and they can change them as they see fit. In theory, as we go along with this, if people feel they are too onerous they could reduce them. That is just one aspect. More broadly, the technical specifications, as I said, are not in the plan and do not have to be considered in considering a DA under the act.

MR PARTON: When we had a briefing from Mr Ponton, among others, on this whole scenario earlier in the week, Mr Ponton seemed—and I do not think I am showing any disrespect to him by saying this—frustrated that Ms Clay and I were focusing a lot on the technical specifications. The way that he explained it was that this is a different vehicle than the one before, but we are getting in it and trying to drive it in the same way as the last planning system. That is what people will do,

won't they, because that is what we are used to? Is it possible that Mr Ponton is right and that eventually we will just figure out that we have to drive this differently?

Mr Field: That is my answer. My experience as a cynical bureaucrat running decision-making programs over the years is that you end up falling back—both proponents and decision-makers—grasping for certainty. The decision-makers in ACTPLA are going to have a hell of a job dealing with this stuff. For every DA, I think there are 12 elements that they have to consider, all of them equal. Richard has pointed out that the housing guide has something like 140 items in it. God knows how you do all that, and you end up falling back to safe and secure. Some of that will evolve. They will be stumbling through the tribunals and the court to see how that goes, because, at the end of the day, time is money. If you are a developer, you will start falling back on cliches, if you like, because you know it will get a tick.

Mr Johnston: I think what will happen—and I am reflecting on what Tony and Tim said—is that there will have to be reinvention of rules and they will probably start by being de facto rules. There will be a huge amount of pressure put on the assessment officers in ACTPLA, as Tony said, and they are presented with a system which does not really give them a lot of guidance.

Mr Field: You go to a meeting and they cannot give you definitive assistance. They are just throwing the dice, basically.

Mr Johnston: It is going to be a shambles.

Mr Field: The notion of allowing ACTPLA to have some jurisdiction over rules has always been a bugbear. I have had meetings with Ben Ponton over 15 years. He was a client of mine. We used to meet to discuss the stuff that happened on the ground level in the industry, and it was very useful because there are a lot of things like basement rules, attic rules—you know all about that—and the rules about solar fencing and stuff that could be tweaked to make them better, but they have to go through a huge process to change it. Innately, they are very conservative, so they are not going to go rogue on this. You should allow them to have some jurisdiction in fiddling with the rules as they go along. You will get better outcomes that way. There may be the odd mistake, but I think that it will be a good incentive, generally.

Mr Johnston: The whole system has become far too complex, in my view.

Mr Trobe: Absolutely. It is a nightmare.

Mr Johnston: It was bad enough before they started mucking around with this, but they have just made it worse and more obscure, more difficult.

Mr Trobe: I was sitting in this room 10 or 15 years ago and we were going to bring a wheelbarrow in to demonstrate how big the Territory Plan was. Now we need two wheelbarrows to bring it in. I remember challenging Ben, saying, “Can't you make this simple?” I showed him the New York Plan; I showed him the Australian Constitution—all those documents. If you go to Eurobodalla, Shoalhaven, the Snowy Mountains, all their design codes are really simple little documents. He said, “I'd like to get it down to one page.” It has grown like a fat kid on chocolate cake, basically. It

has gone completely bonkers.

Mr Johnston: One of the principal objectives for this whole process is to simplify the planning system.

MR PARTON: I know.

Mr Johnston: They have totally and utterly failed.

Mr Trobe: The opposite has happened. I have been to at least six of the seminars and said, “I really don’t know where it is.” Even trying to find stuff like dictionaries and bushfire codes—all that stuff. Where is it all? You probably need three wheelbarrows.

MS ORR: As much as I am enjoying some of the imagery coming out of this conversation, I have one final question, if I could sneak it in. Mr Trobe, you mentioned that you previously worked in a performance based system prior to 2003, when these rules and the merit based system came in. How did you get guidance and certainty under that system?

Mr Trobe: It allowed pre-application meetings. You got something that stopped it stone dead. You have to put in a DA if you want to test something.

Mr Johnston: There were policies.

MS ORR: Would it be as simple as reintroducing those pre-application meetings?

Mr Trobe: Sure. It would certainly help. That is what you would have to—

THE CHAIR: I think we have pre—

Mr Trobe: No. Not for RZ1, which is, again, 83 per cent of all dwellings in Canberra. I know you want to wrap up, but there is one really important point I want to make about the solar fence legislation that I have been hanging onto, at some point before you finish.

MS ORR: Now is good.

Mr Trobe: This is a thing introduced by the Greens some years ago. Caroline Le Couteur brought it in. I know Caroline well. She brought the solar fence in with all the best intentions, and it has problems in terms of the relationship to boundaries. You could ask why anybody was afraid of the shadow that their fence caused. Probably not. Maybe it is overblown. We already had the strictest solar protection measures in place prior to that. We have changed that and put the solar fence in, and now it is worse. But that is okay; we can deal with that. You might want to put a garage on the boundary but cannot because it is too high—all that sort of stuff. It does not make any sense.

The thing that I am really concerned about, and this is such a big issue, is that, in a lot of suburbs now, at least 50 per cent of all houses—and I have a load of pictures here showing snapshots of the way that houses are being put in suburbs now. They all now

face north-south. Nearly all of them faced east or west, and that is completely disastrous. We talked about climate change. Somebody mentioned climate change earlier. We are now embedding this rigid north-south regime into the development of the suburbs. I wrote an article that was on the front page of the *Canberra Times* 10 years ago. I wrote another article. I spoke to the Greens, I spoke to the Planning Authority, and everybody blames everybody else, but this is still happening.

Go to Google and look at the suburbs. This is written in now. What they are trying to do is avoid the solar fence. The solar fence means that they have to push the house to the middle of the block, and they cannot do that, so the blocks have to be wider to make that work, and of course the yield does not come. The government does not like it because it does not get enough money, because the blocks are wider, and the infrastructure is slightly more expensive, so they say, "Let's just turn all the blocks around." So, forever, all the blocks in the new suburbs face the wrong way. They have a garage facing north and maybe one bedroom or a study, and that is it, and in our climate that is a total and utter disaster. Get your map out and look. It has been happening for 10 or 15 years and nobody has done a thing about it. You can have a look. I have given you the pictures.

MS ORR: On solar fences?

Mr Trobe: It is a total and utter disaster.

MS ORR: I probably have another whole inquiry worth of questions on solar fences—

Mr Trobe: Sure.

MS ORR: and good energy efficiency ratings. Mr Trobe, there is so much I could ask, but I am also a bit conscious—

Mr Trobe: It is my personal vent on things, and there is a paper for you.

MS ORR: I have one supplementary question to pick up on that line of questioning. You said that it is utterly disastrous for the ACT climate. That is an interesting point. I would like you to qualify why you say that.

Mr Trobe: You live in Canberra. You know what the summer sun is like—the western-facing sun. The basic principle of solar design is that you want your living areas to face north. It is 101 in design. Any architect, any planner—anybody with any sense at all—would realise that.

MS ORR: When you say, "living areas", you are obviously not talking about garages, but you are also not talking about bedrooms, which is a habitable room. You are actually talking about the living room and the kitchen.

Mr Trobe: You might have one bedroom and a garage facing north, and that is it, or you might have a living area at the back in some situations.

MS ORR: Under the current rules, you might have one bedroom there, but, if I

understand correctly, you are not talking about a bedroom; you are talking about the spaces that you would occupy the majority of the time when you are home, which is your living area, your kitchen and your dining room.

Mr Trobe: Yes; of course.

Mr Johnston: The fundamental problem, I think, is very poor subdivision planning—estate planning.

Mr Trobe: Exactly right. The same people keep running out the same stuff. I will not name names, but there is one person that I spoke to about this issue. He said, “I do about 80 per cent of these and the reason I do this is to avoid the solar fence issue.” That is it. This is far more important than most of the other stuff.

MS ORR: Just to make sure I have it correct, the solar fence is essentially just a boundary line to make sure that you have solar access.

Mr Trobe: It just means you should not overshadow your neighbour by more than an ordinary fence does. Well, come on—

Mr Johnston: It is purely aimed at stopping a certain degree of overshadowing of the neighbouring property.

Mr Trobe: But it is completely overblown.

MS ORR: I could keep going, but we need to keep to time, so I am sorry.

THE CHAIR: Tim, we did not get time to talk about an issue that you raised in your submission. It was on signs. We have received a response to a question on notice on that issue. I would encourage you to look at it and then, if you would like to, please put in a further written response if you think that answer does not cover the questions that you raised. I am really sorry we did not get to that issue.

Mr Field: That is fine. I made my statement.

THE CHAIR: It is one that we clocked and followed up on, and I am not sure whether we got there. Thank you very much for your time, Richard, Tony and Tim. We really appreciate your time and your expertise. That was great. I am so sorry we do not have longer today, but we actually covered a lot of really good issues.

Mr Trobe: I am happy to come and talk to you again. I have my stuff. It is on a thing. There are some links and a whole lot of articles I have written. Suzanne, I have done a couple with you over the years that refer to these issues and explain in a bit more detail. On the solar fencing, we will look at that. There are two articles on that. They are applicable. I encourage you to look at them.

THE CHAIR: Thank you very much. Thank you for your help today. It has been great. We have accepted those documents as evidence.

Hearing suspended from 2.01 to 2.21 pm.

FLANNERY, MS CIA, President, Australian Institute of Landscape Architects ACT

THE CHAIR: Welcome back to the public hearings for the committee's inquiry into the Territory Plan and its associated documents. We now welcome Cia Flannery, of the Australian Institute of Landscape Architects. Could you please acknowledge that you have received the privilege statement and that you are happy to comply with the rights and responsibilities in that.

Ms Flannery: I have read through the privilege statement provided and I am happy to proceed on that basis.

THE CHAIR: Thank you. Cia, in the interest of time, we are not doing opening statements. But you would be welcome to put in any statement afterwards if we do not get to it.

Ms Flannery: Okay; thank you.

THE CHAIR: I might jump in with the first question. As a landscape architect, have you appeared on the Design Review Panel and, if so, what was that like?

Ms Flannery: I have appeared on the Design Review Panel twice during its duration. As I referred to when I was last here, there is a shortage of landscape architect presentation on the Design Review Panel. That being said, I was quite surprised that, during the functioning of the Design Review Panel, the representation of landscape architects sits at about 80 per cent. So that is quite impressive.

In other jurisdictions where you have design review panels, there is an expression of interest process that goes into formalising the engagement of particular expertise that will form the design review panel. That never really occurred with our Design Review Panel. So it is not like they have invited people to be part of it; it is almost just by chance that you get called up, as far as I can see. I do not think that is really great.

When I have been part of the Design Review Panel or presented to them as a proponent, sometimes the people that are called upon as the landscape architect expert on the panel are not necessarily appropriate for the project which we are presenting. If there were a government landscape architect or a chief landscape architect that was part of the panel formation process, they would be able to better tailor the advice appropriate to that project. Similarly, because of my background, I would not necessarily know who the best architect would be to comment on retail architecture or institutional architecture et cetera. So I really cannot see how they can. As an institute, we have never been asked for our opinion. I think that is a big disadvantage in the process.

With regard to the structure, there is not much time allocated to reviewing the documentation. You are more or less limited to half a day, which involves the proponent presenting to you and then discussions. The projects to which the Design Review Panel are responding are normally quite large sites, and it would be good to visit the site and actually approach it from all angles, see what the connections are and see what the physical constraints are that appear on the site before you even go

through the documentation, in order to give a really balanced review of the process. That is not often warranted. So I think that is a disadvantage that they probably need to look to fund more in that area as well.

THE CHAIR: Thank you, that was excellent. You have given us a whole lot of tangible ways to improve the process. Landscape architecture is really important, particularly for Canberra and also as we move into a time of climate change. Getting that landscape element of the design is so essential. Are there any other ways that you think government could better embed landscape architecture in the planning system that are not in the current package?

Ms Flannery: Certainly. Especially going towards this outcomes-based system, it is of grave concern to me that there was only one registered landscape architect that was employed in the EPSDD, and that person has now moved on. I appreciate that there are people who have studied landscape architecture who are employed in the EPSDD, but no-one is a current member of the institute, which keeps you in touch with all the latest developments. It is your professional development. It keeps you across what is happening not only nationally but also internationally and in order jurisdictions.

This is of grave concern because of the subjectivity of design. If my peers are presenting plans in the development approval process, who is assessing those and how qualified are they to make those calls? And, if push comes to shove, in order to get a project kept on track in terms of timing and the costs involved in that, you might have to go towards what they approve rather than what you see as of higher design regard. That always takes more time, as quite often you cannot actually show or verify an exemplar project or what you are proposing because it has not been done yet, necessarily. So it is very difficult. You can sometimes be in a fortunate position of having a private client who is willing to invest that time and money with those projects, but they need to be incentivised to do that.

Going back to your question, I feel that it is obvious through the Territory Plan documentation that we have been presented with thus far that there was not that landscape architecture influence in the system. We all refer to the “bush capital”—and that is great. The way Canberra was planned in that bush capital form, it was built form and roads worked into the landscape. That has almost been reversed, because the Territory Plan talks to planning policies and built form and then the landscape is around those items. It is such a different approach to master planning.

Again, it is not linear. Landscape is organic, and you have the connections to the mountains and connections for biodiversity et cetera. If you think back to the suburbs of the 70s, where that collaboration between the professions occurred at the very outset of our master planning of our city, you see those great fingers of open space coming into those suburbs from the surrounding mountains and they become very valuable in terms of biodiversity, amenity et cetera to the suburbs themselves. Now it is almost like a border. It is quite linear, and we sort of get the roads working first around the garbage truck.

THE CHAIR: Wide enough, yes.

Ms Flannery: Yes. AILA align in so many ways with lots of the proposed ideals and

pillars that have been presented in the Territory Plan. But, in being practical and practising and implementing those, we see lots of hiccups and lots of missed opportunities that could have occurred had there been that input to the formation of that documentation. We understand that, because it is a living thing, quite often if you are local you can sort of understand the bio-urbanism, the ecologies, vegetation that grows here et cetera more than someone external. That is different to architecture and it is different to engineering. It is really important to have that local knowledge and input into those documents.

MS ORR: I want to pick up a little bit on this, Ms Flannery. I am interested in what you were saying around the application of the policy and principles—which in these documents are words; they are not practical design features in all other respects or applied design features. It was interesting hearing you picking up on the different scales that certain professions work at, and landscape work is on a much more regional scale—for lack of a better way of describing it. It is not that macro site specific that you get with architecture and so forth. In reading through your submission there is a lot of “We are not quite sure how to comment; we need to look at the detail a bit more.” Canberrans do like to essentially live in a landscape. That is what we have always done. That is how the city was designed: to be a city in a landscape. How do we continue to be a city in a landscape under this new planning system when we need to scale down and apply it—like on the macro and the micro?

Ms Flannery: Like the RZ1 sort of situation or densification of our—

MS ORR: I think densification more broadly. So not necessarily just RZ1—like the footprint in multi-developments is always going to be bigger than in RZ1 and those sort of things.

Ms Flannery: With the Territory Plan, some of our living infrastructure components have been carried over. That being said, because it is all new, my peers and I have not put it into practice. We have not actually seen if these layers of information and constraints are achievable on these blocks. I would love the opportunity to do prototypes of those different scenarios of housing typologies and densification to see if that metric is achievable or not.

MS ORR: So it is really coming down to simulating the application to make sure that the assumptions behind it hold up?

Ms Flannery: Exactly. Sometimes it is not about necessarily formalised percentages, which the living infrastructure model goes toward. You could have less green space on a block and it could be a lot more beneficial and a really great environment for that person or people or environment. It really comes down to the person making that call and who is assessing it, and it really is a case-by-case situation, as hard as that is.

For example, with deep root zones, to be honest, if you actually had a green roof on a building or on the garage, in shallow soils, that potentially could be a lot more beneficial to the environment than a deep root zone or a met zone site. The concern is that, because all these documents have been written almost in silo views or vistas--like biodiversity; a great concept, a great idea, climate positive; built form; street typologies and all that sort of thing—there has not been someone that has brought it

all together and cross-pollinated those thoughts into one logical document.

We have TCCS with their views, and a lot of the urban design guidelines in what they were proposing in terms of streetscape typologies and cross-sections are non-achievable because we still have restrictions on the size of verges and what trees we can grow in that space. Therefore, there is that conflict again through thoughts. The other layer of that is it is also the species of tree that we utilise. In those tighter spaces in, for example, lots of the estates, because a lot of the verges are becoming smaller and we are also now factoring in bike paths and shared paths, which are a lot wider than the old 1.2 metre concrete paths of the 70s and 80s into this cross-section, it does not leave much growing space for a tree. So you are not going to get the biodiversity because, on the list of tree types, there is like three, and they do not have a big canopy as a result. So that clashes with the canopy targets.

MS ORR: That is a lot on the micro application of it. Stepping back to the macro application of it and looking at our history, Burley Griffin's plan was for a city in the landscape. We have always had that very strong tenet of landscape. You made some comments too around the planning in the 70s when there were discussions early on with landscape architects at the table. Based on what you have just said, would it be fair to say that it actually needs someone to have that upfront and overall look at what the landscape of the ACT is in our urban areas as we move into the next phase of our development?

Ms Flannery: We really do. It is so key, and I do not know why it has not been implemented thus far—because, to me, it is a no brainer. This is not a new thing for us. This is what we do all the time when we look at a site. We look at the physicality of the site and look to see if there is any cultural significance. We look at the topography—determining cut and fill, balance et cetera—existing vegetation, scales and all that sort of thing, ecologies and mapping those things out. That is all part of our due diligence of what we do. There seems to be this thing now that everyone is working on it as a silo-ed topic. In answer to your question, Suzanne—sorry; I tend to go off course a bit—I think that if we had—

MS ORR: Let's just call it a stronger landscape plan or a dedicated landscape plan.

Ms Flannery: Yes; a stronger landscape presence in the whole planning, and it probably needs to go across different departments. In Sydney, for example, New South Wales, the Government Architect's Office has a senior landscape architect—like a principal landscape architect. So, whenever they are undertaking the greening of anything to do with Sydney City, that comes under their umbrella. Then then they know which—

MS ORR: And that can all go into design reviews with the way it is set up?

Ms Flannery: Correct. So then they know when it needs a landscape architect involved or not and what type of landscape architect et cetera.

MR PARTON: Ms Flannery, you started drifting into talking about densification, particularly related to RZ1 blocks. I would like to get your views on what has been outlined for RZ1 blocks, in terms of the 800 square metre blocks and the second

dwelling at 120 squares, and whether you have concerns about that actually achieving any extra density, any urban infill, at all.

Ms Flannery: I suppose the concern I have is that it is not a requirement as part of any development approval process to have a qualified landscape architect for the landscape plans. So I really do not know how it is going to pan out in the sense that, how will someone look at it with the right lens, factoring in the biodiversity, the sponge city concepts, the heat island, the canopy et cetera? This is all information that we are constantly looking into. So that is a concern, and I have a bit of apprehension with it, from that view. Really, to me, enforcing that it is a qualified landscape architect that prepares these plans, especially with the design outcomes focus system, is something really logical to have in place as a key component to the whole planning process.

I think it could be achievable if the right people are preparing the plans and the right people are assessing them. Like I adhered to before, the fact that sometimes the percentages aren't as critical maybe as the quality of the space that you are designing. Again, that fine tuning of those guidelines needs to be done by someone that is qualified and assessed by someone that gets it too.

MS ORR: Ms Flannery, there is sort of an inherent tension there in that what you are saying is that we should have good clear guidance but we also need to maintain a level of flexibility, because having a rigid rule is not always going to get the best outcome. It goes to one of the core issues we have got here of a rules-based system versus a performance-based system. Do you think it is worth trying the performance, given that the rules-based system we have had has not quite delivered what we are after either?

Ms Flannery: Correct. With my peers, one thing is: how do we make a qualitative approach quantitative? Within our profession, if we all looked at the same site with the same guidelines we would come up with completely different—

MS ORR: And you have got 10 different responses, yes.

Ms Flannery: So is one better than the other? Does one work and one does not? Maybe not. But it all comes to who is assessing it. That is critical. Another thing we would like to reiterate is that the institute appreciates that the internal reviewing will be occurring, so that hopefully some of those components are teased out. But we really see the need for this removed design review group of experts or professionals actually put into practice testing the system and keeping up to date with whether it is performing as it should and whether the industry has experienced certain hiccups through that process which is stopping them from actually obtaining a living infrastructure outcome. That communication really needs to occur.

MS ORR: When we ask about the review panels and NCA review panel, we are often told in hearings that there is a limit to what the ACT can make the review panel do. Would you say that it is time for the ACT to have its own review panel?

Ms Flannery: I think so. In New South Wales they have that set up and I know that in Queensland—because one of my peers is now sitting on the Brisbane Olympics, like

for a green Olympics—they have actually invested in the importance of having this panel of professionals involved. I am not certain if any of the NCA projects go to the Design Review Panel at the moment. So who are they answering to and where is that consistency in approach? Likewise, if we are looking at green spaces, open spaces and living infrastructure, even sites such as City Hill, Garema Place et cetera, I believe they should go to some sort of design review panel, because they are key to the makeup and amenity of our community as well to the environment. Things are going amiss through that process. So I think it would be very advantageous.

THE CHAIR: Cia, thank you so much for your time. That was fantastic. We are at the end of our session, but, if there is anything you think of that you wanted to tell us, please put it in writing to us. But you do not have to take homework away with you; it is not compulsory.

Ms Flannery: I know; I am sort of going through post-traumatic stress after the whole Territory Plan dump.

THE CHAIR: It was a lot for all of us. It has been a lot.

Ms Flannery: Thank you very much for the opportunity. We really appreciate it. I think that, collectively, we can all make it a better place to live.

THE CHAIR: Thank you.

Short suspension.

NASH, MR RICHARD, Managing Director and Head of Planning Practice, Purdon Planning

TANNER, MR KIP, Planner and Environmental Engineer, PLANIT Strategic

THE CHAIR: We welcome representatives of Purdon Planning and PLANIT Strategic. Could you confirm that you have read the privilege statement and that you are happy to comply with the rights and obligations in that statement?

Mr Tanner: I confirm that I have received a copy of the privilege statement and I am willing to abide by it.

Mr Nash: I have received the privilege statement and I am happy to abide by it.

THE CHAIR: We are not having opening statements. We do not have much time today, I am afraid. We are taking written statements. If there is anything that you do not get to, that you want us to know, you can pop it in afterwards. James will let you know what the time lines are.

I will jump straight in with the first question. I will see whether it is a sensible question for this group. We have had a lot of really good conversations today. We have not spoken a lot about affordable housing and whether it is a good idea to do things like inclusionary zoning in new developments. Would that be a useful conversation to have with the two of you, or would you rather that I asked about something different?

Mr Tanner: We would be very happy.

Mr Nash: Sure.

THE CHAIR: Obviously, we do not simply need more housing; we need affordable housing—in particular, probably, public and social housing. Do we have the right settings now? What could we change to do that?

Mr Tanner: We were forewarned about some of the questions that you might ask. We were having a little chat about it before. The challenge with delivering more housing at the moment is that a lot of it comes down to the economics of it; that is coming from the people we are working with. At the moment we are mostly relying on the private sector delivering housing, and the costs are going up. If the values go down, they will stop delivering. There needs to be a mechanism to either deliver public housing or make it economic for the private sector to deliver housing.

MS ORR: Is it even possible to make it economic for the private sector, given the disparity in the price ranges we are now talking about and the value proposition there?

Mr Nash: Possibly not through a territory planning setting. It will be more through—

MS ORR: Financial incentives.

Mr Nash: grants and financial incentives, and levers such as LVC and those sorts of

things would need to be adjusted.

THE CHAIR: What is your view on inclusionary zoning, from government land releases or from existing developments, where approval is given for a redevelopment, and there is a certain percentage set aside? We do that in some cases, but we are pretty patchy on it. Is that a useful tool?

Mr Nash: Reasonably, it does come down to build costs and those sorts of things. Generally speaking, if the cost is borne by the developer and they are able to build, those costs will be borne by the purchaser. If it is too expensive for the builder to do, the builder will not do it. Once again, it becomes—

Mr Tanner: I do not think there is a problem with it, as long as it is really clear up-front. If the government is selling land and you are going to have to provide X, Y and Z as part of your development, the government will just get less money for the land when they sell it.

MS ORR: Are there other ways to look at doing that, in the sense of other incentives—a bit of a carrot and stick type thing? You would have to include 10 per cent as affordable purchases, of all different footprint sizes—two, three and one-bedroom places. Government is tied to getting the best value for money, under the Financial Management Act, or whatever act it is. Is another way of doing it saying, “You can have an extra storey in your development,” or—

Mr Tanner: There have been experiments. There are already inherently some things like that in the Territory Plan. If you are doing social housing, you can consolidate RZ1 blocks. There are some circumstances where you can do a little bit more if you are providing social housing and those sorts of things.

MS ORR: Do you find that those get taken up and we get the outcome that we are after?

Mr Tanner: Not always. I was thinking of another one. A few years ago there were the LVC incentives; if you achieved certain green-star requirements, you got a discount on your LVC. You could apply that sort of thinking to social housing.

A policy like that will probably only be taken up by certain people under certain circumstances. It would be really hard to anticipate what the take-up is going to be. This is a conversation that everyone is having about the dual occies. Now you can do dual occies in RZ1, but is anyone actually going to do it? We do not really know, and we are probably not going to know for a while whether that policy is successful.

MR PARTON: The mathematics do not really work out, do they, at first blush?

Mr Tanner: I know that Richard has done an awful lot of homework on that. The answer is—

Mr Nash: Realistically, yes, you are correct. I think that serious developers will not pick up 120-square-metre buildings on existing blocks. The 120 square metres seems a bit arbitrary. Realistically, if we are looking at the statistics, with secondary

dwellings that are being picked up, we have about 2,032 out of 100,000 blocks that would be eligible. That is about two per cent that have been picked up previously, under the previous levers.

MS ORR: That is in the sense of what could fit on a 120 with the existing house footprint on the block?

Mr Nash: That is correct. As an example, in 1987-88 the average size of a new house in the ACT was 165 square metres. In 2021-22 it is 258 square metres.

MS ORR: Some might argue that is a bit big, though.

Mr Nash: It is a bit big, but a lot would argue that 120 is too small.

MR PARTON: What you are saying, Mr Nash, is that the government's suggestion that around 40,000 blocks would be eligible to take advantage of the changes to RZ1 zoning is the stuff of fairy tales?

Mr Nash: What I am probably getting at, just to summarise, is that by 2060, we would need 105,000 dwellings for an approximate population bump of about 331,000 people. Ninety-two per cent of urban land is residential zoned. Of that, 80 per cent is RZ1. RZ1 accounts for 74 per cent of all blocks within urban zones. We are basically saying that this policy lever, in my view, is not going to be picked up. We are still asking for all of the other remaining residential zones to do the heavy lifting for seven per cent infill into the ACT.

Mr Tanner: The number of 42-odd thousand RZ1 blocks being eligible is probably correct, but whether they will be taken up is a different matter. My view on it is that there is a big step that has been made to introduce the policy that you can do dual occies in RZ1. I think that the details of the policy are not going to lead to an awful lot of take-up. There will be some, but not a huge amount.

Now that the policy is in place, there is an opportunity to tweak the peripheral policies to actually encourage the take-up. As I said to someone the other day, if, on day one of the new Territory Plan, you got 10,000 DAs for dual occies in RZ1, the policy probably has gone too far the other way. You probably did not get any, so the policy is probably not strong enough. Now it is a matter of—

MS ORR: Is that the measurement metric: how many DAs did you get on day one?

Mr Tanner: I do not know.

THE CHAIR: How would you tweak it?

Mr Nash: I would probably look at the controls that have been introduced with the new Territory Plan. For RZ1 blocks with more than one dwelling, we are talking about a 50 per cent site coverage with a maximum of two storeys. We also have a housing design guide which controls what that second storey can do. Rather than having a “big brother, little brother” sort of arrangement with your housing, you could actually do a duplex with similar sizes that would accommodate a broader range of

the community. You would have the design levers to make sure that you are retaining the design character.

MS ORR: If you have a 900-square-metre block, you would halve it, to 450, put two buildings on it and allow it to go up to a second storey. You could still have a 120-square-metre footprint but—

Mr Nash: You still have your landscape, you still have your tree canopy cover and, as Kip pointed out, with the 42,000 blocks, not all are eligible. There is a bit of work that I have not done, and I do not think Kip has done it yet, to identify what those blocks would be.

MR PARTON: In a submission from the Australian Institute of Architects they went through and completed a preliminary review of blocks in three suburbs. For argument's sake, in Hackett, they showed that only five per cent of the blocks of that size were suitable for this sort of infill. In Gowrie, it was only four per cent; in Scullin, it was only six per cent. Of those three suburbs, there were 1,457 blocks over 800 metres square, but only 155 of those would have been suitable for development. When you start to look at the mathematics of incentivising the owner to do it, that 155 becomes miniscule.

It is interesting that we are sitting here talking about this policy, which was one of the flagships of all of this, and we are almost conceding here that it will not work, and talking about how, at some stage down the track—

MS ORR: I would not put myself in that bucket.

MR PARTON: Okay.

Mr Nash: I think it is a good start. We are talking about it, but I think there will inevitably need to be some changes to the policy.

MS ORR: We have had a bit of a discussion today about rules, wanting rules, having a rules-based system and the certainty that comes with that. There has been a bit of a discussion about performance and how it does not quite give you clarity but it gives you a bit more to move with. We have these rules, but they are not giving us the scope to actually get the outcome. I am interested to know, from your perspective—as planners, you have to work with this every single day and apply this new code—do you lean towards one or the other—the rules or the performance? Where do you see it going?

The other question, following on from that, is that we have heard a few people say, “The rules have come out of this.” I am a planner; I talk to planners, and they have said, “There are too many rules left in.” I would be interested to hear your thoughts on whether the balance is right and how that will work in terms of getting the outcomes that we are after.

Mr Nash: It is probably too early, and we are probably having this discussion too early, to fully understand it. If we have a discussion in six to 12 months, it may have been a total success or we may need to shift things around.

MS ORR: Yes, we have to wait for the evidence.

Mr Nash: I will say that I am fully supportive of assessment outcomes and an outcomes-based system. I think it has a lot of potential. I hold the assessment teams within the territory in very high regard. I think they have the skills to bring that through. What will be important is implementation and resourcing. That is probably the biggest piece to this. It is not known yet—it is too early to tell—but my feeling is that it will be more involved for both proponents and assessors. That is not a bad thing, but it will need resourcing to ensure that the implementation is successful.

Mr Tanner: I agree 100 per cent with Richard on the timing of the review of this. We have not yet put in a DA under the new system. We are working on a couple. It is teasing out a few questions; we are unsure about how to deal with them. There are things that we are only going to learn as we take DAs through the system. It will take six months or whatever before any substantive building gets approved under the new system, and it will take another 18 months before that building is built. The community will not actually see a completed development under this new system for a few years. There is a massive lag between these sorts of planning changes and what happens on the ground.

MS ORR: Do you think the new plan defines the goals of where we are trying to go clearly enough?

Mr Tanner: No. One of my bugbears in the new system relates to local and group centres. We are saying that we are going to rely on our local group and town centres to deliver an awful lot of dwellings over the next 10 or 15 years. I do not think there is a really clear understanding of what our aspiration is for all of our local centres, or our aspiration for our group centres in this scenario, where they are going to deliver a lot of housing for us into the future. If we are going to choose to keep our RZ1 areas as very suburban areas—and a lot of people want the green, leafy suburbs—and if we also need 100,000 houses over the next 20 years, we need to put them somewhere. We need to strike that balance between putting them in the commercial centres and doing more infill in the residential areas.

Mr Nash: It is a case of nominating what we want where we want it, and pulling the strategy levers to actually achieve that.

Mr Tanner: I do not think there are clear enough aspiration statements for those different areas.

THE CHAIR: If you were doing a review to see how the system was working, would you do that in one year, two years or three years? What is the right time frame?

Mr Nash: It would be—

MR PARTON: All of the above?

Mr Tanner: I would be saying one year for administration, systems and processes, to see whether DAs are getting through the system properly, but it would have to be in

three years to assess the outcomes—whether the buildings that are being built are actually—

Mr Nash: You are not going to have too many outcomes at that point, but you will at least have a baseline.

THE CHAIR: It may be a continual process.

Mr Tanner: Yes.

Mr Nash: Yes.

MR PARTON: That is a really good question, though. Gentlemen, can I say that, despite the fact that you have highlighted some concerns that you have with the new system that you have before you, you seem quite relaxed about it. You are going to have to suck it and see; you are preparing DAs now and you still really do not know about it. Are you relaxed about it or is it giving you grief?

Mr Tanner: Have you ever seen a planning system that is universally loved by everybody?

THE CHAIR: No, it does not exist.

Mr Tanner: Our job is to work with what we have, in the interests of the people we are working for. Under the old system we had some wins and losses. We got some fairly imaginative things approved that other people might not have thought were possible. Under the new system we will be exploring what the real opportunities are as we start working with proponents.

With respect to the question about rules versus not rules, from project to project it is quite different. If you are working with somebody who is trying to deliver an affordable housing outcome, often they will be happier with a rules-based system because they can put a DA in, get it through in minimal time, with a whole lot of confidence that it is going to be approved, and deliver. If you are working with somebody who is building their personal legacy project and wants to do something amazing, they love having the flexibility to introduce innovation and those sorts of things. Any good planning system involves a balance between the two.

THE CHAIR: We have high-quality planners who constantly want more of an outcomes focus and less rules, and we have more routine developers where the community is worried about not having rules. That is quite a good insight.

I have a lot of questions on my list, but we have covered quite a lot of them. I will throw it over to you. We could have a chat about how we make sure we do not knock down good houses that we should not be knocking down, in terms of climate. That is a topic that we have not covered yet, but if there is something you would rather talk about, please do that.

Mr Nash: You are talking about adaptive re-use and those sorts of things?

THE CHAIR: Yes. I am particularly concerned that, with the dual occupancy policy, we might accidentally incentivise the wrong things.

Mr Nash: Yes, that is a fair call. Once again, it is about striking the balance. There would be numerous examples in the 1970s and 1980s suburbs, where they have a relatively small house in comparison to what you see today, on a gigantic block, and they are probably more appropriate for the duplex idea. Maybe there is a further policy lever to enable duplexes on RZ1, but to a limit. That is a good question that you have raised.

THE CHAIR: Is there anything that we need to be thinking about? We had a good conversation this morning about block consolidation and good quality design. I do not know whether you have anything to add there. We have not had any good conversations about embedded emissions and how we incorporate that as we go.

Mr Nash: Once again, there are possibly some policy levers that could look at adaptive re-use—in particular, older office buildings that may or may not be appropriate for some other form of residential or aged-care development. There are quite a few that have larger footprints; therefore they do not get the solar penetration and those sorts of things, but they have a lot of embodied carbon. Is there a balance there, by having a dollar rate that is associated with each embodied tonne of carbon, as an example—basically promoting keeping the building there and making it work versus knocking it down?

MS ORR: When we talk about adaptive re-use, what sort of buildings do lend themselves to this? Is every building good, or is it that some buildings just are not?

Mr Nash: Some buildings just do not work. It has to have reasonable bones.

Mr Tanner: It is really highly—

Mr Nash: Subjective, too.

Mr Tanner: It is a very building-by-building thing. In a lot of the town centres or major centres where there are old office buildings, with turning them into residential, car parking is the barrier, or the lack of car parking. It is really building by building.

Mr Nash: There are some things that you would think logically are conjoined, but sometimes are apropos each other, which is conversion to electrical and having an older building that you are trying to adapt. Actually getting that properly powered and those sorts of things, away from gas, can stop it happening.

MS ORR: Is it even something as simple as the legal structure of the building meaning it cannot easily be subdivided? It is complicated.

Mr Tanner: Yes.

Mr Nash: Yes, and it is a building-to-building item.

MR PARTON: Post this change, because everything in the planning space has

changed, do you think you will spend more or less time at ACAT?

Mr Tanner: With all of our DAs, it is a matter of what they are going to be assessed against. There is a series of assessment outcomes that sit in the relevant policies, and those assessment outcomes are subjective.

Assessment outcome No 1 in a lot of the policies says something along the lines of “biodiversity is maintained across the landscape”. Every DA needs to provide a response to that outcome. The thought that I have is that, if I am doing a DA for a new shopfront in a local centre on a little townhouse block that is built side-to-side, front-to-back, with a laneway at the back, how am I going to respond to an outcome of maintaining biodiversity across the landscape? In that example, I would probably say, “This is just not relevant. It’s not a relevant consideration to a row of local centre blocks that are all built front to back.” But somebody from the community might take a different view and take my DA to ACAT on the basis of that.

There are a lot of outcomes that clearly have good intentions, and I pretty much agree with all of the outcomes that are written down; but, in some cases, when you are thinking about a particular DA, they may or may not be applicable. With the way that you can use them for that DA, we will end up needing to test them or understand how it is really going to work.

MR PARTON: Sometimes the answer is not relevant to the question, pretty much.

Mr Tanner: Yes. That is an example of something that we are going to have to work with over the next few months, to understand exactly how the new system will work.

Mr Nash: It is about establishing what those triggers might be. I agree with Kip. Another element to it is the subjectivity. Two weeks ago, we had a system that was largely rule and criteria-based. With a third-party appeal, sometimes you would get a decision by the tribunal that you did not expect. With the added level of subjectivity, it goes from being a trained professional planner who is assessing and deciding a decision. It then goes to the tribunal, and it is decided by a senior member. With the subjectivity—once again, it is too early to decide—it is something that has occurred to me that could be a problem.

THE CHAIR: Would that be relieved at all if we had more members in ACAT who had planning expertise?

Mr Nash: Yes; arguably, it would assist.

MS ORR: We heard from AILA a little while ago, and there was a pretty convincing argument put forward that landscape architecture should play more of a role in these assessments. Mr Tanner, picking up on what you were saying about assessing biodiversity, is a planner best placed to assess that, or is a landscape architect best placed? I am just asking you the hard questions to wind up!

Mr Nash: We listened, and we chatted about this.

Mr Tanner: We were sitting in the entry room and listening, yes. The project teams

that we probably both work on tend to be made up of a landscape architect, an engineer, an architect and an urban designer—a whole raft of people who have the necessary expertise to come together and create a project. Somebody sits over the top of all of it and pulls all of that expertise together. It might be the project manager. It might be us as the planner, because we tend to be the ones that have to consolidate all of the documentation and put it in to the planning authority. I would not pin that responsibility on any one expert.

MS ORR: Is it probably fair to say that there is a role for it, but not necessarily limited to it?

Mr Tanner: Yes.

Mr Nash: Yes. If the focus is on design, and thinking of that from an urban designer landscape perspective, we are sitting in the landscape, so it does make sense to have that kind of expertise, informing.

MS ORR: I also put this to Ms Flannery: do you think there needs to be a little bit of a refocus of what a city and a landscape look like as we go into our next phase of development?

Mr Nash: Yes, absolutely.

Mr Tanner: I have run into issues where we are trying to achieve 30 per cent canopy cover across all of Canberra, but that keeps getting applied on a block-by-block basis as opposed to a city-wide basis. We need to be able to have an overview. We want to achieve 30 per cent across the city, and in our parks, on our road verges and things like that we can achieve more than 30 per cent. In our shopping precincts or in Fyshwick we probably cannot, because there are lots of big buildings that are taking up too much space, so it will not be 30 per cent on every single block; it will be across the city. Somebody with an overarching view like that would be useful.

THE CHAIR: Thank you, Kip and Richard, for coming in. If you think of anything else, please put it in writing and let us know. We very much appreciate your time and your expertise today.

Short suspension.

McGRATH WEBER, MR FREDERICK, President, ACT Rural Landholders Association of Farmers

THE CHAIR: We now welcome Frederick McGrath Weber, from the ACT Rural Landholders Association of Farmers. We very much enjoyed your evidence last time. Thank you for coming back to speak to us.

Mr McGrath Weber: No worries. Thank you.

THE CHAIR: Can you please confirm that you have received the privilege statement and you understand the rights and obligations in that statement?

Mr McGrath Weber: Yes; I received all those documents and did the signing and sent them back. My name is Frederick McGrath Weber. You can call me Fred. I am from the ACT Rural Landholders Association of Farmers, or ACT Farmers for short.

THE CHAIR: Thank you, Fred. We are not doing opening statements but, if there is anything we do not get to, you are welcome to put it in writing and submit it afterwards. Mr Parton will start with questions.

MR PARTON: Fred, you have suggested that farmers manage around 15 per cent of the territory's land and that, as a critical stakeholder, you are looking for equitable representation. What does that look like? What is it that you are actually seeking?

Mr McGrath Weber: In the ACT, the majority of our endangered ecosystems—like the box gum woodlands, a lot of endangered species and native grassland—are on rural land. We see ourselves as stewards for the land and see that as an opportunity to be paid stewardship payments and really to be moving away from the current system of offsets and development. For rural landholders in the ACT it is not just a case of non-urban and future development; it is twofold, because those properties that might not be deemed suitable for industrial development or residential land might be flagged for offsets, and that is not a good outcome for anyone. There are mounting costs for the government, which they have to pay.

The results show that offsets and reserves actually move backwards in a lot of cases with the assets that they are trying to protect, and there is a better way to do it. We think it is crucial that the 15 per cent of the ACT that is currently rural land remains rural land and provides important outcomes for our city, not just for wellbeing and the different frameworks but also for food and fibre production and protecting our natural resources within our city.

MR PARTON: So there is a sense from you and your group that you are being undervalued?

Mr McGrath Weber: 100 per cent. The Territory Plan in many ways is quite insulting to the values that rural landholders provide the territory. If you look at the district strategies, it is described as “urban and non-urban”. So that has moved away completely from rural land as a zone. That is hugely problematic, because the framing within itself is basically saying, “This is future urban or future offsets,” by saying it is

non-urban. It does not actually present the actual value that rural land plays for our city. That moves away from the Territory Plan and the National Capital Plan, where there are inconsistencies with the language used.

Also, I think the rural land use zones and how they are described is something that really needs to be addressed within the Territory Plan—not just the district strategies, because they only encompass the areas around the city. Anything outside of those district strategy areas is excluded, which is anything beyond the Murrumbidgee River or Tharwa and south. That within itself is problematic because it basically says, “We do not really have a plan for those areas”—well, not yet.

THE CHAIR: I think we have heard this before: why don’t we have district strategies for rural land? The answer we got in chambers from the planning minister was that they are district strategies and they are not for anything outside the footprint, which was a fairly circular answer, frankly—but that is an interesting point.

I am really interested in preserving our agricultural land and our new Food and Fibre Strategy and this new Territory Plan and planning system. Putting aside the district strategies, which clearly do not recognise rural land, do we have the settings right in our Territory Plan and in our planning system to preserve our food growing land at the moment, or is that—

Mr McGrath Weber: No. If anything, it has moved further in the other direction. Unfortunately, with the food strategy, with the draft that was released for comment, there was no mention of planning whatsoever, which is actually the key element and the key thing. If you want there to be food production in the ACT, you want that agritourism, you want that wealth of getting people to connect with Canberra and all our producers and what we do then it needs clear links to planning. That is protecting the prime agricultural areas in the ACT, looking at where our best soils are and where the best opportunities are to grow the land but also looking at the zoning and things like that and what is allowed in the different zoning areas. Broadacre zoning, for example, enables you to do the most creative things with your farm; however, you can also have a petrol station or a transport depot and different things like that. So there is competing land use. Also, most broadacre areas are short-term leases, which gives you next to no security, both from the bank and the government.

The planning is absolutely critical. Long-term leases need to be across the board. Currently, there are only 23 short-term leases in the ACT, all of which are in broadacre areas. I think that is quite unequitable. I think everything should just be brought in line. Why can’t those people just have the same rights as the rest of the ACT? If you own a residential house in the ACT or if you have a commercial block in the ACT, you have a 99-year lease. But many farmers in the ACT have a short-term lease, which does not even give you the luxury of a 30-year mortgage.

THE CHAIR: What are the terms of those short-term leases?

Mr McGrath Weber: Usually there is a non-withdrawal clause or a withdrawal clause, which basically means you have got three months to vacate the land.

THE CHAIR: How long do they go for, usually, if they are not 99 years?

Mr McGrath Weber: They are 20 or 25 years. Speaking from personal experience, with our property, Majura House—which is the oldest inhabited house in the ACT, dating back to the 1840s, and the oldest continually working farm in the ACT, with the relationship we with Duntroon Homestead—we had a 50-year lease prior to it expiring in 2005. There are complexities around the split block and commonwealth and ACT land, which I do not have enough time to get into. With blocks in our areas, because of that broadacre zoning and that Eastern Broadacre Strategic Assessment and everything going on, we are now only offered a short-term lease or 20 or 25 years, which isn't even the same as the lease we had previously, let alone equitable to the rest of ACT residences. That is just one example of the inbuilt inequitable system that the zoning and the Territory Plan really need to address in order to really get the best outcomes for everyone.

THE CHAIR: It is certainly very residency and commercial focused. I definitely see the point. I will finish with one more. You mentioned you are in Majura Valley. Do most of our landholders who are in Majura Valley want to stay there and keep farming sustainably there, do you think?

Mr McGrath Weber: Yes; definitely. There is a case study. You have got the winery and you have got the truffle farm at the top of the valley. They were granted long-term leasehold at the start of the 2000s and you can see what they have been able to achieve not just for the reputation for the ACT in terms of our production in truffles and wine but also with agritourism. That is all really on the back of that security that they have been offered and being able to invest with help from a bank.

Further down the valley, everyone else is on short-term leases. We are unable to go to a bank and get a loan. You are unable to invest in your future and, if you do, you are kind of just doing it on the back of your own hope and goodwill. With many landholders who perhaps are not demonstrating the best in terms of what they could be doing on their farm and maybe breaking the terms of what looks like an agricultural lease and doing other activities it is usually because they do not know when their last days might be.

MR PARTON: So you feel like tenants, almost.

Mr McGrath Weber: Exactly right; so why would you feel like you would invest in the land and things? That is why I think security is really crucial to get the best outcomes.

MR PARTON: I guess it does not really line up with the things that were stated in that food strategy, does it? If you are renting a place, you are not going to create the infrastructure that is required to do something that is long-term, are you?

Mr McGrath Weber: Definitely. I think that is a key thing. I also think it is really important in that area with the Majura Valley to have a look at some of the other areas which are already owned by the government. If we look at the Eastern Broadacre Strategic Assessment we see that it just identifies all the land along the parkway and Majura Road as well as in the Jerrabomberra area. That is all the farmland owned by the farmers. But there is forestry land adjacent to the airport—blocks 728, 729 and 601; the Fairbairn Pine Plantation—which collectively makes up a larger area than the area that they are identifying along the Majura parkway and everything. That is

already owned by the government. Forestry—particularly those pine plantations—does not necessarily play too much of a role in the ACT. So I think there is opportunity there, as well as—

THE CHAIR: Is that the Corin Forest?

Mr McGrath Weber: Not Corin; the paintball shooting and other things are happening in that area. There is also the contaminated land south of the airport, which is currently owned by the commonwealth government. Neither government doesn't want to really take for that land—

THE CHAIR: Might be a little bit too contaminated.

Mr McGrath Weber:—because it used to be the tip and things. But that is also a significant block—with 244 hectares there. For me, when you look at the Eastern Broadacre Strategic Assessment, it is looking at the easy options; whereas, I think if you just tried a little bit harder and went for the harder options, the outcomes would be better for everyone.

MS ORR: You have spoken a lot about leases and you have spoken a lot about other things. How would you like to see rural land represented in the Territory Plan in a way that gives you the recognition you are saying it deserves—because the lease is not a Territory Plan function. The lease is separate. Is it down to the broadacre zoning, or?

Mr McGrath Weber: Zoning is one element, because you are kind of at risk with that zoning. There are also different land uses that are not necessarily in leasing with the land management agreement that happened as a result. It is just around protecting and identifying that high-value agricultural land, ensuring that the findings from the food strategy, the local food strategy, are actually incorporated and making sure that those peri-urban areas around our city are actually protected and do not become an offset or something like that.

It is also about making sure that there is a bit more sympathy around when there is a lease variation and things like that. The Territory Plan actually creates a lot less room for innovation on farms because the new ways to apply for a lease variation for a rural landholder are significant. It is basically putting you on par with a commercial leaseholder, and that creates a lot of barriers to be able to do farm diversification and innovation. Finally, it is about looking at the natural resources and what that role plays on rural lands in the ACT and how farmers can be supported to keep doing that rather than looking at those as possible change areas.

MS ORR: Thank you, Fred. I am so sorry that we are at the end of our time. Thank you for coming in. I am sure you have got a lot of other important things to do. We very much appreciate you coming in, particularly given how many people and how much area you are representing. It has been very valuable. If there is anything that you wanted to tell us that you did not get to, James will tell you how you can do that. But you do not have to take homework away with you. It is not compulsory.

Short suspension.

FEATHERSTONE, MS IMOGEN, Development Manager (Planning), Riverview Projects ACT

THE CHAIR: Welcome Imogen Featherstone, from Riverview Projects. Can you confirm you have received, understand and agree to the privilege statement and the rights and responsibilities contained in that?

Ms Featherstone: Thank you. I have read the rights and responsibilities and privilege statement.

THE CHAIR: We are not having an opening statement because we do not have much time. You are welcome to lodge anything afterwards that we do not get to.

MR PARTON: My question is going to be so broad that it will lead you to give whatever opening statement you would have given, if you were given one. Before I start, I just want to make note for the members of the committee that our colleague Mr Cain, has just indicated to me that he is watching the proceedings live. I know that will give you great joy.

Ms Featherstone, how would you, on behalf obviously of Ginninderry—the submission that I am looking at looks quite positive in terms of the way that Ginninderry Riverview is assessing the changes to planning in the ACT. Why are you so positive about the changes?

Ms Featherstone: I think we are supportive, but we also provided a lot of matters where we might have concerns or further quick queries.

MR PARTON: Yes. I do not know if you want to get to those matters because that is probably the crux of what we are looking at, is it not? You have indicated broad support, but you have said, “Well we have some problems with this, that and that needs more work”. What are those things?

Ms Featherstone: Sure. Firstly it is the transitional arrangements, which I think is super important for any planning system. There has been six months given, however, planning systems can take years. Developments, as we heard from Kip and Richard, are slow. So, as an example, with Draft Variation 369, we already had our estate development plan for Macnamara EDP1 and we had designed that under the current Territory Plan, but we cannot design to something we do not know about in the future.

So what has happened is that we have had purchasers who have already bought these blocks of land. Our concerns are for people with accessibility needs or cost concerns, because obviously on-block DV369 forces the price of buildings to go up. So it is an affordability issue.

As well, people bought under the current rules of the day. People have already designed their houses. Now the moratorium that Mr Gentleman provided was until the new Territory Plan took effect. But unfortunately, for DV369, that moratorium did not take effect on any one block in Macnamara EDP1 because we are not settling one block until January 2024. So development is slow, and it takes time to actually make

those changes. We have already done say, two years of work.

We have just submitted the development application for Macnamara EDP2. That is through planning assessment, the initial technical check. So it is not actually lodged. It was done on the old Territory Plan, and you think, “Well developers just turn around and redevelop it”. There is a huge amount of cost and delay in doing that. As well, we also have to meet the government’s requirement to deliver its land release program. So we will be behind again, which obviously delays and affects affordability. We really had hoped there was going to be transitional arrangements for things that have already been designed in the Territory Plan.

The other big thing that we were advocating for is for Ginninderry to be recognised in the Territory Plan, for the master plan to be recognised in the Territory Plan. It is the first cross-border project in Australia. So we were hoping to have ACT-New South Wales recognition that you have the different planning systems meeting together.

We were also hoping to have Ginninderry’s vision enshrined in the Territory Plan. I think we can all agree that Ginninderry, and what we are doing, is quite innovative, and sometimes we struggle to get through the Territory Plan. We were advocating specifically for a policy to sit in the Territory Plan, so that it could help us deliver affordable compact products. At the moment, the old Territory Plan and the current Territory Plan do not support compact single residential terrace housing and they do not support interlocking type different developments. So we were hoping to be able to create our own precincts to create housing choices and housing diversity.

MR PARTON: Can I circle back to, you mentioned—I think it was blocks in Macnamara, that will now fall outside of the guideline. What do you do with those? In terms of if people have already signed on the dotted line, how do you deal with that?

Ms Featherstone: Well, when people call us, we have to tell them that there is a new Territory Plan; they need to pay for a redesign of their blocks; and that while they bought a parcel of land, their dwelling will no longer be fit for the purpose they have proposed because it does not meet the current controls. Up until recently we did not know what those controls actually were. We did not know when and how it was going to take place because we were not sure of the date, and the date can change, subject to government approval. Our concern is that there might be some people who are caught out by that. We do not yet have the calls coming through, but we suspect that people are taking some time.

Absolutely, we did get designs under the old Territory Plan. We have to approve them on the controls of the day. We have additional design requirements that we sign off on. So the Planning Authority should not be approving any applications until they see our designs and our stamp on it because we require more controls than the Territory Plan in relation to larger water tanks, solar requirements, does the built form fit within our design, those types of things.

MS ORR: Sorry, just to get it right. Purchasers have come up with a design, they submit it to you for review to make sure it meets your requirements. You are saying there might be an issue there because the design they have done will not be compliant. It could also still be compliant; it is just an unknown and depends on the—

Ms Featherstone: Potentially, however, we have all done the analysis: DV369 is pretty well designing a built form outcome on block—

MS ORR: Yes.

Ms Featherstone: Yes.

MS ORR: Yes, if the footpath is not right or something?

Ms Featherstone: Yes. Our biggest concern probably is around delivering that affordable compact product. The only turnkey product we deliver at Ginninderry is our affordable flexi-living series, which are stand-alone terrace housing. It is like any other house, there is no strata title.

So for our Alto 2 design, we did analysis in 2019 and we applied DV369 to that terrace product. The block area was originally 114 square metres. We increased it to 151 square metres to accommodate DV369. The Alto 2 house and land package to turnkey-ready was sold in 2019 for \$447,340. Applying the additional required 37 square metres to that block, at \$950 per square metre, increased the house and land to \$482,490, which is an additional \$35,150 for that flexi-living package. In applying 2023 escalation in construction costs and land costs for that same turnkey product, the cost is projected at \$680,000.

MR PARTON: No, really?

Ms Featherstone: We cannot meet the government's affordability threshold and we have been striving not to deliver a one-bedroom apartment to meet that government threshold. I am not saying that living infrastructure is not what we should be thinking about—

MR PARTON: That it is disastrous in this particular scenario—

Ms Featherstone: But if you were trying to get your first dwelling as a townhouse, not a house, a townhouse—sorry, it is a single residential house that is not a house and land package. That model cannot be replicated across the industry because we make that as a marginal—a sustainable business model because we make a relatively modest development return. We are taking on a lot of risk and we are not taking the normal margins that developers would do, in order to do that.

MS ORR: Ms Featherstone, is that all outlined in your tabled statement? Can you table your opening statement, so we have all that information?

Ms Featherstone: Give this information to you?

MS ORR: Yes, just table it—

THE CHAIR: Yes. Thank you.

Ms Featherstone: Yes, sure.

THE CHAIR: Yes, that would be great, afterwards. I might just confirm because you ran through those numbers really fast.

Ms Featherstone: Sorry.

THE CHAIR: No. You are doing a great job—

MS ORR: That is why I asked for it to be tabled, yes.

THE CHAIR: Jump in when I get it wrong! So before our living infrastructure, we had blocks—compact blocks of 114 square metres—

Ms Featherstone: Yes.

THE CHAIR: Then those compact blocks had to go up to 150 square metres to make sure that we had enough space for trees and greenspaces—

Ms Featherstone: Correct.

THE CHAIR: —to offset the heat island. You had some price differentials. There was the actual cost of the land that changed was \$950 per square metre—

Ms Featherstone: Yes.

THE CHAIR: Yes. Did that lead to a \$35,000 increase? Then you stated a much bigger increase. I am trying to work out—

Ms Featherstone: Yes.

THE CHAIR: —was the increase from the living infrastructure? Was it \$35,000? Or was it that much higher number?

Ms Featherstone: Sorry, just living infrastructure. I was just giving you the square metre rate was \$950 in 2019. The comparison is that the land price has increased drastically since then. Now we have that compound with the living infrastructure cost in 2023.

THE CHAIR: Yes. So in 2019, it would have led to a \$35,000 price increase?

Ms Featherstone: Yes.

THE CHAIR: When you say the land price has increased, it is just the market rate has gone up?

Ms Featherstone: Correct.

THE CHAIR: Yes.

Ms Featherstone: The cost of land. As we are part of a joint venture with government,

we cannot discount land. So we are locked into market rate. Also too, you do not want to be discounting land for affordable housing because the purchaser at the time, that might be their first dwelling, but then they are going to get that equity and they will not always be a first home buyer. So it is a balance for government, right. This is a discussion, obviously through the lens of DV369.

I think our concerns have been around on-block provision of DV369. We control the front landscaping at Ginninderry. However, we see people using artificial turf, rocks, cementing their whole backgrounds. As soon as you get your certifier on, then what happens? As we have seen, exactly as Kip and Richard were saying, you do not actually see the ramifications for another two to three years. We still have not seen it actually come through the wash. So why not control the things that you can control in the urban open spaces?

I think our biggest difference from old Canberra, and those suburbs, is that you have to consider the environment in every single development and greenfield development that you do. So in our instance, one third of that area is locked away in perpetuity for conservation outcomes. One third! Plus all the other additional urban areas that you have to do as well. So you are getting your cake and eating it too. Then you are getting people who are going to rip out the trees and the like because people do not want trees. We have to try and educate people on a daily basis about why they cannot have artificial turf, why they cannot have rocks in the front of their verge. You will see that big difference between other parts of new Canberra compared to Ginninderry.

THE CHAIR: I might just continue on this because part of what this inquiry was meant to look at was 369, and how it carried across. So the \$35,000 increase on land value was a lot smaller. You have quoted a higher price, but that is really just because land has gone up. So from 2019 to 2024, land was going to go up anyway so there was going to be a big step up—

Ms Featherstone: That is it. Yes.

THE CHAIR: I think, and it was interesting, we did hear from the planners about whether trees in green spaces should be applied on a block level or a city-wide level. We actually have done another inquiry that covered similar issues previously. Is there a risk if there are no controls on a block-by-block level that you might accidentally get lots of trees and greenspaces over here and then people living in affordable housing, living in heat islands in a changing climate without any shade around them? Do you see the risk with that? That we might end up with affordable housing that is actually not liveable and is not affordable given the energy bills you would need to put into them?

Ms Featherstone: I think that is a really good question. If you look at the Ginninderry design, anywhere we put affordable housing you will see it is adjoining pocket parks or open spaces; that is within a 400-metre radius if not 50 metres. Then you have those planting and greenspaces. The affordable houses we have delivered have solar panels on them as well, so their energy bills are marginal. We have actually mitigated that, and also with our open space water sensitive open design. Yes, the water we have in its entirety will have 40 water networks, but it also cools the environment. We have strategically identified and co-located the affordable housing with open spaces.

So an estate development plan could easily mimic that thought process to address that issue, to make sure that we are not making heat islands.

THE CHAIR: How big would an estate development plan be? What size area would it cover?

Ms Featherstone: An estate development plan? It varies. Every EDP is completely different depending on our constraints. Ours are designed around our electricity wires. It depends how land has been carved up. It just depends on what the area is.

THE CHAIR: Yes, okay. So there would be no guarantee if you did it on an estate development plan scale of where the trees and greenspaces would be in relation to the houses?

Ms Featherstone: Sorry, no. You could absolutely put a control in to say it has to be within 400 metres. Then you would just design in terms of either space or trees or whatever you thought was appropriate. You could absolutely write that into an EDP—into the suburban policy, absolutely.

MS ORR: I wanted to clarify the price increase you had on those blocks. How much of that was a price increase in land over that period of time, and how of that was a result of the draft variation or the variation?

Ms Featherstone: Sure. I mean, obviously that was 2019 and you can see by 2023 there is a lot of escalation. We would have to go back and have a look—

MS ORR: Yes, okay. So that figure is not solely down to the draft variation, there will be other factors?

Ms Featherstone: And that is exactly—

MS ORR: Yes.

Ms Featherstone: So I am not saying that—the point is, that any time you are going to put DV369 on any block, you have increased it plus all the other pressures that we have. That was the point that I was trying to make.

THE CHAIR: We have actually covered a lot of things I wanted to ask. I am interested in talking a bit more about social and affordable housing. It has gone down well. Part of it, I think, and you mentioned this, is the problem if we make our provisions for social and affordable housing, for affordable housing then the first homeowner gets the benefit and might sell it. What is the model we are using out at Ginninderry at the moment? Can you run me through how we are doing social and affordable housing?

Ms Featherstone: Yes. What we have done for affordable housing is we got a bit of an amendment to what the government threshold was, because we were doing those sustainability initiatives, which over the life of the building mean it is going to be cheaper for those reasons we just mentioned.

But it is now so out of step because the construction costs that government has—no one could possibly—I do not think you could build half a bedroom for an apartment. Like honestly, it does not meet those thresholds. So that is what we have been doing. I am sure there is work going on in the background because we obviously are struggling with that.

In terms of social housing, we have it zoned, like every other parcel of land and then we have a sub-division. We say to Housing ACT, “What blocks would you like?” I do not think that is the best system. But I do have a suggestion, because in your question you asked how we could maybe fix it.

In terms of social housing, the ACT government can absolutely effect this change. So the joint venture sells land to Housing ACT at market rate, but there is no zoning mechanism available for social housing. However, there is a pathway forward to restrict the use in a crown lease for social housing. This mechanism would mean that members of the public are not aware of specific blocks that are earmarked within the suburb and it would not be publicly notified because it is not within the DA.

So, in discussing it with the government and industry, there is no definition for social housing in the Territory Plan and valuers do not know how to recognise and value that parcel of land. If we were to create a definition of social housing in the new Territory Plan, it would allow a mechanism for valuers to look at the land differently. Acknowledging that there is a definition of supportive housing, but it is encumbered and the definition requires services onsite management, so then you are putting on additional costs.

As a government joint venture, land cannot be discounted. However, if we had the definition of social housing it is not discounting land, it is its own use. So then the land should be sold at less or a nominal value to government so that you are actually rationalising the land value for social housing. That would mean that ACT Housing should be able to deliver a greater volume of social housing. You could even put that in the EDP and make the rule “x amount needs to be for social housing”. Then you just need to check with Housing ACT if they have the capacity across all greenfield estates and have the funds to take that on. They should have more money in their piggy bank because they are not having to pay for the land costs. Obviously this information is provided disregarding current tax levies and the federal taxation system, quite clearly.

THE CHAIR: Thank you, that was excellent. Imogen, thank you so much for coming in. We very much look forward to seeing your tabled statement, if that is okay?

Ms Featherstone: Absolutely.

MS ORR: Do you just want to say, “I table this”, and wave it in the air, and then the secretary will come and get it.

Ms Featherstone: I table this.

THE CHAIR: Thank you for your time and your attendance today, that was really great.

MR PARTON: Yes, appreciate it.

Ms Featherstone: Thank you very much.

Short suspension.

MACLEAN, MR HOWARD, Convenor, Greater Canberra

HAAS, MR DAMIEN, Deputy Chair, Public Transport Association of Canberra

THE CHAIR: We now welcome representatives of Greater Canberra and the Public Transport Association of Canberra. Can you each confirm that you have read and agree with the privilege statement, which sets out your rights and obligations in this hearing?

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

Mr Haas: I have read the privilege statement and agree with it.

THE CHAIR: Thank you. Ms Orr will start questions.

MS ORR: Mr Maclean, Greater Canberra says there is a missed opportunity in this reform. What is it?

Mr Maclean: I have been listening to some of the other evidence given today. I will not rehash what various other technical stakeholders have said about the unviability of the current RZ1 reforms and all the technical challenges to that. A lot of people have alluded to problems with LVC, and I will briefly articulate what we think the problem with that is. It is that we have codified LVC amounts when you add additional dwellings to an existing lease. There are a few notable things about this system. It is meant to mirror 75 per cent of the windfall uplift; it assumes that the amount of additional value that you are getting from dividing a lease into two dwellings rather than dividing it into six dwellings per additional dwelling is much higher; and, given the fact that the RZ1 policy limits to 120 square metres, you run the risk of overcooking the LVC and pushing it above a 100 per cent windfall tax break.

That is in addition to everything that we have already heard from various architectural stakeholders. I know that the Institute of Architects study in this, which you referred to earlier, Mark, also talked about that. We share those technical concerns but defer to the expertise of architects and other professional planners in that respect.

We also note that there has been a conversation about block consolidation. We think that one of the biggest problems with the RZ1 policy is that it does not allow for block consolidation because it maintains the existing settings where RZ1 blocks cannot be consolidated or subdivided. Our model, of course, is the missing middle Canberra platform of moving from RZ1 to RZ2, which would allow for block consolidation in a way that would get better developments. We note that RZ2 has incentives for this kind of block consolidation, because if you have two 900 square metre blocks you can build a duplex, effectively, on both. But, if they are next to each other and you consolidate them into one 1,800 square metre block then you can actually get six dwellings. We think that, with many of the conversations about how we encourage block consolidation for larger scale developments in a suburban setting, it solves the problem. We have it within the existing RZ2 zone, because that is what it was designed to do. We think it has been relatively successful at that.

There are some problems with RZ2 that we need to fix, but we think there is a major missed opportunity. We did all of this in the past. RZ2 was the outcome of the last

time that we had an internal conversation where we said, “Okay, how do we get more infill in existing suburban areas in existing suburbs within Canberra?” RZ2 was the outcome. We had a real opportunity in this Territory Plan to go straight from RZ1 to RZ2 and not reinvent the wheel. Instead, we have ended up with a system that is going to need a lot of patching to make it viable.

MR PARTON: Do you think, Mr Maclean, that the people in the suburbs are keen for a lot of block consolidation—that they are keen for a lot of townhouse developments on consolidated blocks?

Mr Maclean: One of the most striking things about listening to the other witnesses here today was that a lot of witnesses, including from organisations which are, let’s say, sceptical of development, had no objection to there being more townhouses, provided the green space and other planting restrictions were complied with. Today, for instance, I am unaware of anyone coming out of the gate and saying, “We have a philosophical objection or an objection to any increase in density in our suburbs.” People just want it to be handled correctly. I do think that we are in the position with the Urban Forest Act, DV369 and any increase of enforcement to ensure that we can deliver increased housing within our existing suburbs in a way that most people are comfortable with.

MR PARTON: Howard, you have been to those meetings. You have picked fights at those meetings. You know, as well as anyone else, that, if you moved in the direction of encouraging many more block consolidations in, say, the inner south, or anywhere else, it would not be received well by a lot of Canberrans.

Mr Maclean: It would not be received well by some Canberrans, most of whom have the fortune of already owning a house in a very centrally located area and who have the time, the resources and the inclination to campaign, effectively, against a set of townhouses down the street. I want to put to the committee that that is a very small percentage of the overall population.

I was at a meeting of the Inner South Community Council, and representatives from the Yarralumla Residents Association got up and said how they wanted more townhouses because they were age appropriate and close to shops. So I do think that, while we are always going to get a pushback if there is increased medium density, there is a real broad base community support for this kind of upzoning and this kind of typology within inner Canberra—and also within all of Canberra, because we think it is an opportunity that should be extended right across the city.

THE CHAIR: You talked about successful examples of good block consolidation development in RZ2. Can you name some of those, or submit it later?

Mr Maclean: I might take that on notice in terms of just providing some examples. The team has been going around and taking photographs of their favourite RZ2 blocks. I am partial to some near the Griffith shops. But we will provide a list of the ones we think do exemplify—

THE CHAIR: We would love a list of your best examples in RZ1 and RZ2. That would be excellent.

Mr Maclean: I do note that most currently existing RZ2 blocks were designed before DV369, which is a perennial problem in having this debate, because there are very few examples—because of how recent DV369 is—of what RZ2 would look like going forward with DV369 in place, compared to what existed from what was built five years or 10 years ago.

MR PARTON: Mr Haas, I have been going through the PTCBR submission, and I just want to note that you have said:

Under no circumstances—

which is underlined and in very bold print—

should the preservation of urban character be accepted as a valid reason to block the delivery of public transport infrastructure or new housing adjacent to high-quality public transport.

Is that genuinely your position?

Mr Haas: Yes. It is why it is in the submission, Mark.

MR PARTON: So, for you and your group, if Deakin turns into Moscow, it does not matter as long as there is public transport—that is the only thing that matters?

Mr Haas: Instead of fictional scenarios, real scenarios in the ACT prove that the delivery of light rail along the Northbourne corridor under the city to gateway zoning has proved to be incredibly successful. If you look at that map of the territory zoning in the Territory Plan that is colour coded, there is this thin line of red right along the city to gateway corridor, and the rest of the territory has just got little dots of red where RZ3 and greater exist. We think that, if you want to resolve urban sprawl and increase urban density in a sympathetic and gentle way, you need to do it along the transit corridors. I think people are very willing to have multiunit, multistorey, medium-density and medium-rise housing along transit corridors. They would much rather prefer to have those sorts of medium rise towers along the corridors than in their backyard in Banks, for example. So, yes, it is a genuine position.

MR PARTON: If anyone else wants to explore that further they can, but I am just happy with that opening question on it.

MS ORR: It sounds like Howard does.

Mr Maclean: I am just going to quickly jump in. Over the past 12 months and the last financial year, the ACT's dwelling completion rate neared 12 per 1,000 residents, which is twice that of New South Wales. In Greater Canberra we have felt that. That means that we have one of the highest vacancy rates in the country in terms of rentals, and that means that our housing prices and housing costs relative to our income are in a much better position than Brisbane, Sydney and Melbourne, which have seen real escalations in rents that have not happened here to the same extent. What has been adding all of that housing and what has been doing the heavy lifting over the past few

years is the city and gateway variation. It is all those new apartment blocks going up in Dickson and along that Northbourne corridor.

Part of the reason that we and the Public Transport Association have such common views and shared ground is the light rail is housing infrastructure and, while we do support missing middle, this kind of transit-oriented development is another crucial ingredient in meeting the housing needs of our city. We look to what New South Wales has just announced that they are doing with rezoning around a much greater footprint than we ended up getting with the city and gateway variation. We do note that EPSDD had a more ambitious zoning proposal for that back in 2018. One of the things we want the ACT government to look at is revisiting the original rezoning around light rail stage 1 and seeing if they can restore that to effectively allow for more medium density slightly further out from the light rail corridor.

Mr Haas: I should also add that, if you look at the current Territory Plan, for some reason the intertown transport routes have been removed that have existed there since self-government. We do not know why they have been removed from the Territory Plan, but they should go back in. It provides certainty for people who are doing future planning and future project development, and it should go back in.

THE CHAIR: Is that the bus routes?

Mr Haas: No; it is the intertown transport routes that have been there since the NCDC days, and they have a statutory sort of status.

MR PARTON: Did you seek advice as to why they were removed?

Mr Haas: I would have to defer to Ryan Hemsley on that.

THE CHAIR: We might defer to Ryan Hemsley shortly and then defer again to Mick Gentleman. We have talked about zoning and density, which is something I wanted to get to anyway. We talk a lot about this general urbanism and how you do density well. Mostly what we are hearing from these two witnesses is greater density along the corridors, but not necessarily mass RZ1 uplift. Is it group centres, city centres and corridors, or is it the whole thing? What is it?

Mr Maclean: Greater Canberra's position in missing middle Canberra is upzoning all of RZ1 to RZ2 and all of RZ2 to RZ3. That is, in our view, a necessary but not sufficient step. We are one of the fastest-growing cities in the world, at 2.4 per cent per year. On current EPSDD projections and the district strategies, they need to come up with an additional 50,000 through to 60,000 homes in order to meet population growth by 2050. This is in addition to the existing change areas and plans. So the answer is that we need both general upzoning everywhere and we also need more high-density, targeted, transit-oriented development along the corridors.

THE CHAIR: I was going to say RZ1 to RZ2 would not get you the kind of density that you are talking about at all, really.

Mr Haas: No. I do not think we have an official position on doing away with RZ1 and RZ2. If you got away from RZ1 and just changed it to RZ2, I think the territory

would benefit greatly. For example, DV369 has percentages of trees and green space on plot ratios already. So, if you got rid of RZ1 and still applied DV369, I think you would still have the green, leafy suburbs that people want. It certainly would not stop you using the same plot ratio of built space on a block for, say, a two-storey development where four families could live instead of one. So I think that there are significant benefits in that.

MR PARTON: Given your very clear stated position—and I know I am asking you something you have already stated publicly anyway—on the transformation of RZ1 into RZ2, when you saw the flagship announcement regarding the dual occupancy policy for RZ1, you must have thought it was a bad joke. You must have laughed originally.

Mr Maclean: Well, we went into it optimistic and then, within two hours of looking at it, we just realised all these technical problems that we thought would be a major barrier to implementation—because, if it were an RZ1 dual occupancy policy which was effective, it would still be better than nothing. I do think that moving from RZ1 to RZ2 is better for reasons that Ms Clay has talked about around consolidation and allowing for rows of townhouses and terraces in larger developments that have better outcomes on the whole. But it could have been a positive step. The main reason why we are disappointed is not just that it was an insufficient step, but rather because there were all these problems in the design of this policy that made it unviable. That means that we end up with this position where in five years time my real fear is that if this policy goes ahead and we are having a conversation about zoning reform and housing in this territory, and someone says, “Well, we did that RZ1 dual occupancy thing, and in the time since, only about 312 of those have been built.”

MR PARTON: That is an estimation there. I was going to ask you to pluck a number out of the sky in terms of how many extra dwellings you think it is going to deliver. You are going with 312?

Mr Maclean: We really do not know. There has been a lot of discussion about what the planning system is going to do in the future and how the entire outcomes verse rules-based system is going to work. The fundamental uncertainty is we do not know what is going to happen—and I do not think the directorate knows as well—because we have this new planning system; then things are going to go to ACAT. ACAT may have a completely different view than the EPSDD on how all those rules and provisions actually work, or how the outcomes should be interpreted. In fact, one of the standing problems that has been explored is that ACAT and EPSDD often do not see eye to eye, because one takes a very legalistic approach and another takes a planner approach.

So I do not know the anticipated number. But, based on the advice that we have received from the architects institute and from other stakeholders, they anticipate take-up to be very low. My analysis of LVC indicates that it may be very low. We know the government have already attempted to address that with their stamp duty changes and by saying that LVC can now be assessed, rather than using the codified rates for these dual occupancy developments. It also depends on how much the government works to fix it within the next six months to a year.

THE CHAIR: Damien, I think this question is for you. We heard this morning some concern about where we are going to put all of these new homes that we will need and whether lots of them should be in the inner south or inner north, and we heard some evidence that there were already quite a lot of apartments and townhouses in particular in those areas. I am always interested in transport emissions and where people live and where they work. It probably comes back to zoning and group centres. Did you listen to that evidence? Do you have a view about where we need—

Mr Haas: I did not listen to that specific evidence, but I understand what you are saying, if I understand your question correctly. I think the view of the PTCBR is that you want to take advantage of transit-orient development. You have proven benefits with light rail stage 1, where you have got this massive uplift in residential density along the corridor—mainly developer-driven units. We think that it is a tremendous opportunity to apply that same zoning along all light rail corridors that are planned and maybe some of the rapid bus ones where it looks like there may not be the demand for light rail at some point in the future.

I think that if you applied that, you could do a whole lot of medium density, medium rise, along these light rail routes, especially around proposed stations. That way you would reduce urban sprawl. Every tower that you build in a town centre is a suburb you do not need to have a bulldozer carve out of the bush. The Public Transport Association would much prefer to see medium density along transit corridors than extra suburbs carved out of the bush.

THE CHAIR: That is great. What happens if we do not get our settings right to do that? I am guessing our options are sprawl or not enough housing.

Mr Haas: If you want to reduce transport emissions, you need to provide high-quality public transport as an alternative to private cars. Even with the move to electric vehicles, you will not get the savings that you are seeking. Certainly, if you look at the number of people who travel one or two stops on light rail stage 1, I think you could expect to see that on the entire network once it is built. That is the experience of people who live in Melbourne who use the tram network there and it is the experience of people who live in Sydney and the Gold Coast and use their light rail.

THE CHAIR: I am not sure if you managed to see that last week the latest carbon inventory for the ACT was released. With transport emissions, there was a dip during COVID, they bounced back to COVID and now they have started going up again. It is one of the areas of our inventory. Do you think density planning and really good public transport is part of that story?

Mr Haas: Yes. I also think you want to look at parking minimums. For example, if you build residential housing right next to a light rail line, within 100 metres of a light rail station, and then mandate 1.5 car spaces per unit, then it is like, “Why are you doing this?” I think two in five households in the ACT have one or zero cars. Why should I, if I choose not to have a car, pay for a parking space in an apartment? I think it should be the choice of the purchaser and the developer offering whether you want to buy a car space or not adjacent to public transport corridors.

MS ORR: You said a high-quality public transport system. What do you mean by

that?

Mr Haas: The ACT has the beginnings of high-quality public transport in the light rail stage 1, and we need to continue with that. It has proven to attract people to public transport. Thirty per cent of people who use light rail stage 1 never used public transport before. We can expect to see a similar result when we extend it to Woden and out to Tuggeranong, when Mr Parton can ride it to the Assembly building when it gets there. So I think that, if we put in high-quality public transport people, will use it. That is demonstrated by light rail stage 1.

MS ORR: Is it just light rail that you see as high quality?

Mr Haas: No; we need to improve the frequency of the local bus network. Certainly something that has been disappointing in the last couple of years is the inability of Transport Canberra to deliver half-hour services on local bus routes, to the point where you have got two-hour frequency on the weekends. It is incredibly disappointing. So if we can improve that and get half-hour local bus services taking people to high-quality light rail, I think that public transport becomes the viable option in the ACT of the future.

MS ORR: Based on the new Territory Plan and the district strategies, how do you see the forward planning for future-proofing a high-quality public transport system in Australia?

Mr Haas: I would like to see the inner-town transport routes go back on the Territory Plan. I think some of the Territory Plan public transport planning is not optimal. You have overlaying strategy plans in the ACT government. You have got infrastructure plans, transport plans, territory plans and urban forestry plans, and I think that, when it actually comes to deciding what public transport will go where, the right decisions can be made by drawing on the different strengths in those various plan. Certainly the infrastructure plan is quite positive about having continuous rollout of light rail stages into the future. That provides certainty to industry and to people who want to use public transport or people who want to find a place to live in the ACT where they do not have to own a private car.

MS ORR: Thank you.

MR PARTON: I love the Greater Canberra submissions. I love them. I really enjoy reading them.

Mr Maclean: My team works very hard.

MR PARTON: I love your optimism about how many terms I am going to serve here in terms of I will be catching the tram from Tuggeranong. I loved the Fyshwick chapter. I just loved it.

Mr Maclean: Is this a district strategy?

MR PARTON: Yes.

Mr Maclean: I wrote that one; so I can speak to it.

MR PARTON: Yes; and the fact that you are calling for us as a city to actually be honest about what Fyshwick is and what it could be.

Mr Maclean: Yes. Fyshwick has always had this problem—well, in the modern history, from about the 60s or 70s onwards, to elaborate for people who have not read my wonderful work.

MR PARTON: And they should, yes.

Mr Maclean: It has a problem when it is zoned for industrial but in practice it is a retail centre in terms of the vast majority of employment and users and why people visit it. That is really disappointing, because we do not provide the pedestrian, public transport or other kind of infrastructure which you would expect for a place where people go to shop.

MR PARTON: Yes. I thought with regard to the submissions that you made on district strategies that there was a lot of common sense in that Fyshwick scenario and that it probably is about time that we reconsidered what we are doing there—because you are right: it is not what it is supposed to be.

Mr Maclean: And there is a real opportunity with future stages of the light rail. I am not saying that we necessarily support it, but I do note the Fyshwick Business Association notion of the Fyshwick green line, I think they call it, of transforming that corridor into a light rail corridor and realising the potential of the place as a mixed-use and commercial retail centre rather than industrial zoning. I am sure all the members here know the problems that can come up when hypothetically allowed use within that industrial zoning is proposed and it falls foul of the community expectations, because people do expect Fyshwick to have land uses which are compatible with it being a retail centre.

MR PARTON: I think I would say on behalf of the committee—not that I am the chair—that we really value the submissions that come from both groups that are represented in this mini-panel here today. I do not always agree with them, but we really value how much work and how much data collection is often involved in putting it together. It is extremely helpful to sessions like these. That is all from me, Chair.

THE CHAIR: Thank you very much for your time today. That has been really, really valuable—and what Mark said. If you think of anything else or if you see things that come up in the next couple of days that you want to tell us, please feel free to put it in writing. James will tell you when you need to do that by. Do you have something that you want to say?

Mr Maclean: Yes. One thing that I did not get to—which I will follow up on—is that we do have major concerns with the inclusion of basements within the site coverage ratios for the purposes of DV369 sites, as it means that you cannot do the kinds of apartments which I live in, for instance—which are perimeter blocks which have full-plate underground car parking with courtyards with greenspace above that

underground carpark—because it counts towards the site coverage ratio for the purposes of greenspace.

THE CHAIR: I am so sorry we did not get to it. Please put it in and we would love to see examples, like your apartment, when that comes through.

Mr MacLean: Yes. The Kingston Foreshore has a bunch of them as well.

THE CHAIR: Thank you both very much for your time.

Short suspension.

HEMSLEY, MR RYAN, Convenor, Molonglo Valley Community Forum
BUTLER, MR LACHLAN, Chair, Belconnen Community Council

THE CHAIR: Ryan and Lachlan, thank you so much for coming in. First of all, welcome to our hearing. Could you confirm that you have received the privilege statement and that you are happy to comply with the rights and obligations in that statement?

Mr Hemsley: I have read and agree with the privilege statement.

Mr Butler: I have also received and read the statement.

THE CHAIR: Thank you. I have some prepared questions based on the things you raised, but I might start by asking about some evidence that just came up about the removal of the intertown routes in the Territory Plan. Have you had an explanation? Have you said anything about that so far?

Mr Hemsley: No and no. This is very important, not just to the other hat that I wear as chair of the Public Transport Association but also very much in my capacity as convenor of the Molonglo Valley Community Forum. As was alluded to earlier, these routes provide certainty. They provide confidence for people who are moving into new areas, such as the Molonglo Valley, that there will be high-quality public transport planned and provided for in the long term. We did not realise that they had been removed in the new Territory Plan until the interim Territory Plan was released, and not until it came into effect in November.

The reason is that it existed as an overlay in the previous Territory Plan. It would show up when you had a large full-scale map of the territory. You could see the little dotted lines from Gungahlin, through the city and down to Woden, and from Belconnen, along Constitution Avenue to Russell and the airport, and also out to Molonglo, with two separate routes—one proposed from Molonglo to Belconnen and a separate one planned from Molonglo to the city, then south via Weston Creek to Woden.

It was not until we saw the new maps. They were not shown to us until, essentially, the revised interim Territory Plan was released: “Here it is. It is going to come into effect on 27 November.” We did not realise it had been removed, because it was an overlay and we did not have the maps. We never, at any point during the consultation period earlier this year, had a full territory map which showed us everything: all the zones, all the overlays et cetera. There was reference to the removal of most overlays, bar a couple, in the consultation report and the explanations about what the new Territory Plan would look like, but it was not until you took a step back and looked at it all that you realised that a really critical part of our integrated transport plan had been removed. We never thought to ask whether it had been removed, because why would you remove it? What possible benefit comes from removing the certainty that Canberrans have been provided since the 1970s?

MR PARTON: It sounds like the sort of thing the Liberals would do, doesn't it?

Mr Hemsley: I could not possibly comment, Mark.

THE CHAIR: Was anything else removed in those overlays that you have noticed so far?

Mr Hemsley: I know that other organisations have concerns around separate overlays. They are not really of interest to Molonglo. Certainly our focus, in the context of Molonglo, in terms of the intertown public transport route, is just about keeping those routes on the map. For years, I had to fight tooth and nail behind the scenes to keep the ACT government focused on delivering a form of high-capacity intertown public transport from Molonglo to the city via Parkes Way. This has been a plan that was hooked up in the late 2000s and the early 2010s as part of the strategic public transport network plan. It was always intended to run along Parkes Way and through the northern suburbs of the yet unbuilt Molonglo, because that was the route that was seen to provide the most direct connection between Molonglo and the city that caught the most people along the way. Being along the way is hugely important when it comes to maintaining the frequency of a public transport service. I do not know why it was removed. We have not followed up because we discovered it only quite recently. But it is a significant change and we would like to see it reinstated into the Territory Plan.

THE CHAIR: Thank you. I believe we will be following up. Lachlan, did you want to add to that or should we move to another question?

Mr Butler: I am happy to move on to another question.

THE CHAIR: Suzanne, do you have a question?

MS ORR: I do. We were having a bit of a discussion this morning about sense of place and how that is important in determining the aspirations and goals of an area and how that is reflected, particularly in the district strategies and their objectives, and how important that is within an outcomes based planning system. I would be interested to hear from both of you, given that you represent very different regions at very different points in their development, how well you feel a sense of place has been encapsulated in the planning strategies and documents that we are inquiring into and whether there is perhaps a little bit more room for improvement.

Mr Butler: Do you want to answer, Ryan?

Mr Hemsley: I will let you go first because I need to check. There is a whole range of issues that I have with the district strategy and place, and I want to make sure I capture as many of them as possible.

Mr Butler: No worries. The Belconnen district is very vast. There are houses and suburbs that have been around for 50 years and some that are just being built as we speak, in Ginninderry, in West Belconnen and in Lawson. Wherever you go, there is a bit of a different perspective. In general, regarding maintaining the place of a suburb or a region, most people that I speak to will point to specific aspects, whether it is green space or the ease of being able to get in and out of a place or the services and amenities. Broadly, that has not been captured, because the documents do not really

have too much to offer, to be completely frank.

I guess the answer to your question would be no, but I think the important thing is to not focus on maintaining how one person views a place to be but make sure that we balance that with all sorts of other priorities, whether it is how liveable our areas are, how easy it is to access transport or that people can actually find a home. We have generational change. We see older suburbs with freestanding houses. We are not going to see many new ones, I imagine. I spoke to someone at the Evatt shops when I was doing ABC Radio and she said, "I love Evatt. I wish I could stay in Evatt, but I need to downsize to something a bit more manageable. I want to stay in my community. I love how it is, but that is just not on offer."

MS ORR: Mr Hemsley?

Mr Hemsley: The district strategy for Molonglo is interesting. It is as much about capturing the views of the comparatively small number of residents, in terms of the overall final intended population of our district, as it is about painting a picture of what the district will look like. It does a reasonable job of capturing essentially negative space around the district. What do people like around Molonglo? They like the river corridor, they like the proximity to the Arboretum and they like Stromlo Forest Park. As to where the gaps need to be filled: what about what is inside Molonglo? What about the places where people meet, where people have those incidental run-ins over coffee? What about the places where people shop and spend time in their community? It paints a very rosy picture of what the future Molonglo group centre will look like, but, as our submission to the ACT Planning System Review and Reform Project and our expression of interest to this inquiry makes clear, none of us in the Molonglo Valley Community Forum are convinced that these things will actually be delivered.

We have seen it with the failure of the Coombs shops for many years. It is still ongoing to an extent. It still does not have a supermarket. The ability to develop viable retail precincts in our district has had very mixed results, and that is identified in the district strategy, but what is not clearly identified is how it is going to be resolved. There is all the talk about planning and design frameworks. I was part of the planning and design framework drafting process the Suburban Land Agency ran as part of the remaining commercial zone blocks around the Coombs shops. Nothing has happened there yet. It is likewise with the Whitlam centre. There have been some fantastic designs put up, but the Suburban Land Agency has had to work very hard to get those plans close to being approved. The residents of Whitlam will be sans a local shopping centre for many years to come.

What we would argue is the biggest problem of all is the fact that the population forecast for our district has been increased by tens of thousands of people over multiple years. It was 44,000 people in 2006; it was 55,000 people in 2008. Now the final figure has been removed from the final district strategy, but we know it is somewhere around 86,000 people, as articulated by the ACT Treasury in their population projections, at least last year, and we have separately heard 70,000 from other parts of the EPSDD.

Unfortunately, the provision or the planned provision of commercial, community,

retail and entertainment facilities has not increased to match that increase in population. Our efforts to resolve that issue by upgrading the future Molonglo group centre to town centre status within the ACT retail hierarchy has been met with a stone wall. We are getting absolutely nowhere, and it is a very easy process to undertake.

We have met with the National Capital Authority. In the National Capital Plan—in, I think, figure 2 or figure 10—they identify where the town centres are across the ACT. Those are the primary commercial hubs for those districts. Molonglo is now rapidly approaching, in the long term, parity with Canberra’s other districts that have town centres, whether that is Woden, Gungahlin, Tuggeranong or what have you. So we met with the NCA to say, “Is this something that you would consider? Are you the barrier to any change which would see Molonglo given its own town centre?” and they said, “No. We would happily consider a draft amendment to the National Capital Plan to give effect to this change.”

We do not know why we are meeting such resistance from the ACT government and why we cannot get a town centre in the Molonglo Valley and make sure that our future residents do not have to rely on the neighbouring Belconnen and Woden town centres. They have their own genuine community hubs—the kind that is articulated in the district strategy—but, based on previous experience, we are not confident they will actually be delivered.

THE CHAIR: Mr Hemsley, should I take from that that you are broadly comfortable with some of the strategies set out and some of the directions and goals set out, but you are just questioning how that is going to be realised?

Mr Hemsley: Yes. The town centre is identified as a long-term ambition, which is bananas to us. We do not quite understand how they intend to retroactively unscramble the egg if it is built as a group centre over 20 years, and then they might decide to put an extra 25,000 people on the western edge or what have you. How are you then going to retrofit those facilities in an already established area? It is difficult. Unlike a lot of Canberra’s legacy town centres, there are not going to be a huge number of large open-air car parks that you could turn into those facilities. We are in a constrained environment abutting areas of national environmental significance.

If we are going to have a Molonglo with between 70,000 and 86,000 people, we need to do the planning for those facilities now rather than retrospectively after the rules have been set, the buildings have been built and there is no more space to put anything without demolishing huge sections of what has been built.

THE CHAIR: Lachlan, we talk a lot about the growing population of Belconnen, which is at over 100,000 and is rapidly growing. Were you surprised that the district strategy for Belconnen does not have a school in the CBD? We have schools in other places like Strathnairn, but there are none in the Belconnen town centre.

Mr Butler: We were quite shocked by a few of the things that were lacking. We have been calling for a Belconnen town centre primary school. It was in the infrastructure plan for 2019, so we called for it and thought, “The government said they will do it. We will just push them along.” We recently found out, with the new infrastructure plan for education, that it is not there. There are a lot of things lacking.

One of the few changes that we got in the district strategy was extending the light rail from the Belconnen town centre to Kippax. A lot of the other suggestions that we made were disregarded to a few small comments in the consultation feedback report that they did at the end of it. The Belconnen District Strategy has a lot of the same issues that the one for Molonglo Valley has, in that I read it and I saw a lot of “to consider”, “to investigate”, “to look into” and “to review”. Sixty to seventy thousand people are moving into the district and, to increase the necessary infrastructure, services and amenities, we just have “to consider”, “to investigate”, “to look into” and “to review”.

THE CHAIR: Thank you. I hear the concerns. That is well put. Mark, do you have a question?

MR PARTON: Yes. We heard from some representatives of other community councils this morning. They indicated to us that they have some concerns about the fact that the new planning system, with the technical specifications, is not going to be enforced as rigidly as rules have been in the past. Their belief was that, even if it were not the intention of the government to further exacerbate the David and Goliath thing that happens with developers and residents, it would be much more difficult for residents to intervene, either privately or through community councils, and that it gave developers even more of an upper hand in just ramming things through and getting them done. What are your views on that, gentlemen?

Mr Butler: I think from our perspective the new system, the outcomes-based system, has the potential to have good outcomes, but it is quite reflective of the way the reform has come about, that there are a lot of uncertainty and unknowns. I think that is really a key part of some of the angst that is in the community—if you do not know how a system works, if you do not know what your options are, what things will actually come out to be throughout the process. If you live somewhere, you want it to be better and you are going to be very concerned. I think it is quite reflective of how the planning reform was gone about.

I think that a lot more work has to be done in communicating with the community. Make it a two-way street so that what is actually being said gets implemented. That is why I think this inquiry is quite crucial as one of the final things occurring with the planning reform because cities evolve. We cannot go to the Molonglo Group, say, in 20 years’ time and knock it all down and rebuild it. We really need to have the EPSDD know how the system actually works and make sure they inform the community on how it works, so we can all work together and try and keep Canberra a great place.

MR PARTON: What do you think, Lachlan?

Mr Hemsley: We are just going to have to wait and see are we not?

MR PARTON: Yes, to some extent.

Mr Hemsley: I mean, genuinely. I consider myself to be an above average informed person as far as these new territory plan rules, criteria, assessment outcomes, technical

specifications, zoning policies, et cetera are concerned. I have been involved in this planning review and reform project since it started circa 2019 I believe. And I must admit, I am still not entirely sure how a new DA is put together. I am actually regularly on the DA page waiting for that first new DA under the new system to come in to see what it looks like.

If you want a copy of the template you have to reach out to someone at EPSDD. It is not readily available. There are barriers in place for people who want to learn more about the system. Not everyone is going to want to rock up to a virtual online training session to learn about how the system works. There needs to be easy to understand stuff, which is easily accessible, that outlines how the new system will work. There is a lot of information out there; I am just not sure how much of it is particularly useful. Certainly, from my perspective as the convenor of a community group, I will just be waiting to see what first DA looks like: how it is processed, what decision making goes into the various discretionary new elements of the system.

There are a lot of unknowns. We do not really know how it operates; whether it is going to have all those terrible things that the previous groups might have referred to earlier, but we will not know until we actually see some stuff go through the system. So that is the thing here in Molonglo that we will be waiting for because we are ground zero as far as new development is concerned. Every new house is a new house and the time is ticking down until we start to see the outcomes out of that new system built on the ground. So rest assured, if we see there are problems emerging in the system we will be first to talk about it because it will be very, very obvious to us very, very quickly.

MR PARTON: A lot of people think of you just as a transport nerd but you are a planning nerd as well are you not? I say that respectfully.

Mr Hemsley: Look, this is all terribly interesting. I love this stuff to bits. It is nice when you get a win. I am really hoping we can get a win on the town centre but nevertheless I just love knowing stuff and this is one particular project where knowing stuff has been much harder than I would have expected.

THE CHAIR: We heard some suggestions earlier in the day from some of our planners and developers that if you were going to review the system to see if it was working you would maybe review the system in a year. You could not really review the outcomes for three years or so, which sounded sensible, because you have to wait until things get built. We have also heard quite a few suggestions for what metrics we should be putting on to see if this new system is delivering what it is meant to. So some reporting obligations we could put on government and what they should report against. Have you had any thoughts about what measures we could put in place to see what success looks like? Is it working? Have you had any—

Mr Hemsley: I think that ultimately rests with EPSDD. Fundamentally they are the ones who designed the system. They are the ones who set the assessment outcomes. They are the ones who claim to be carrying this new project forward with the best of intentions. As community organisations we will bring our own views and prejudices to the table as far as what we would like to see built, but ultimately we are not the ones setting the assessment outcomes. We cannot evaluate what actually gets built

against those outcomes. So it has to rest with the directorate that is actually driving this reform.

Mr Butler: I completely agree. It has been four years of reform. They kind of knew from the start it was going to be an outcomes-based system. Transparency and governance are things we have been raising since the beginning, and governance only kind of got a mention last minute when the Planning Act was being passed. When it comes to evaluating whether or not this is a good job, what should have been done, probably years ago, and as part of the consultation, was to ask: is the community happy with how we are going to measure these outcomes? But, again, I agree with Ryan, eventually it is an EPSDD issue.

Mr Hemsley: So to give an example, living infrastructure is one of the terms of reference of this committee. It is obviously hugely important for what we have achieved as far as substantial planning changes are concerned as part of this review and reform project. I guess what would be interesting to see is how much living infrastructure actually gets built. Looking through the new Territory Plan, the new botanical specifications and new policies, “planting area” is vague enough that it says that “It is an area of land within a block that is available for landscape planting” not “It is landscape planting.”

So if I was to use an example, out at Molonglo is a great case in point, like Lachlan has with Ginninderry as a similar greenfield expansion area but with far stricter rules about what you can put on your front lawn or not. Certainly we are seeing out in Molonglo a lot of artificial grass, gravel, and rocks. It is permeable. It is not hardscape area, probably not living. So is that living infrastructure? Is that meeting the intent of living infrastructure variation?

MS ORR: Yes, it is a great question. We have looked at how they measure trees and greenspace in Canberra before. I will check the details and correct the record if I get this wrong, but I think they are using LiDAR data and doing it five yearly, which worried me a little bit because there is not a good baseline before you start something like 369, and then five yearly is quite a big interval. So I had always thought maybe there would be a better way of measuring actual living infrastructure with satellite imagery, or sample audits with satellite imagery, or something like that. Have you thought about that? Like, actually measuring green stuff?

Mr Hemsley: Satellite imagery can be difficult, right. What is green? Is that artificial grass? Is it real grass? Is it very well maintained real grass? These are questions which you will only know by actually going down onto the site and checking. We have received all sorts of assurances from EPSDD that they will be going and doing audits of new developments to see how the new system is operating. Certainly those are comforting words, but unless there is some sort of measurable framework within which they can be evaluated in this system, we are not necessarily confident that it will yield the results that they claim it will.

MS ORR: I think that is great. I think that has got me where I need to go. We have also heard from EPSDD that they will be doing sample audits and they have some new FTE staff, which they have not previously had. I think perhaps we need to ask them to tell us more of what they will be doing and to report publicly—that might be

where we need to get to.

MR PARTON: Can I tell you, your answers are so full of information, you have covered off all the things I was going to bring to this session, so I do not have anything more.

THE CHAIR: We have had a lot of conversation about density and I think we have covered it with this session, but density and whether we should still be doing greenfield or whether we should be doing density?

Mr Hemsley: What I can add to this is that I think that the current 70/30 split is producing some pretty perverse outcomes. I mean that in the sense that in the Molonglo Valley we have very limited land available for basically anything. There are huge, big offsets. We have things like Bluett's Block, for example. People have raised the alarm about developing near it or on it, so we have pulled back and so we have lost a lot of housing. We have very little land to build things. So what that means is that we do not get to build large flat expanses of commercial area for shops. So what that means is that every shop has to have housing and that housing counts towards the greenfield split in the 70/30 split. Our concern, and certainly something we are trying to watch as the indicative land releases get rolled out, our concern is that we are actually getting critical facilities in Molonglo delayed in order to meet the 70/30 target because you are not just releasing a set of shops; you are also releasing however many dwellings. I do not think it is reasonable, when you have people living out in Molonglo who need shops, that they are just putting a hand brake on their facilities because there are some very sensible, very modern, very ambitious mixed-use development that is attached to it. It is starting to get very strange as well because when you actually look at the breakdown on the 70/30 split you see that North Wright and north Coombs are infill. How? Why is that infill?

THE CHAIR: The definitions are unusual, yes.

Mr Hemsley: There are a lot of questions we have about how that target is designed and operationalised. What we do not want to do is be putting a hand brake on critical community facilities, critical retail, critical education infrastructure, in a growing regional area, just to meet the targets. We need something that is a little bit more nuanced and a little bit cleverer to make sure we are providing facilities and infrastructure where they need to be, based on need, not just meeting a target.

Mr Butler: Yes, similar comments from us as well. With our conversations with people, densification tends to be associated with bad outcomes, which is more reflective of a planning system than it is of densification itself. Examples I always go to are that I have seen some pretty hideous McMansions out there but I have also seen some very nice duplexes, high density dwellings. When I show two examples of it, most people tend to pick the nice duplex or the nice row of townhouses over the big concrete cubic mansion that maximises everything.

Following on from that, greenfield development tends to be put forward as a silver bullet for housing. I think that is quite inaccurate and kind of gets away from some of the things that we really need to be focusing on. Is greenfield development appropriate? Well, if the goal is for more housing, we have seen with the CSIRO field

station site that there has been no progress there for many years. From my understanding, the number of land releases Ginninderry have been doing is behind schedule, so it is also not getting land out there quicker.

Do we want good quality housing? Well, again, if you look at the district strategy it says that West Belconnen has some of the worst social economic outcomes in Canberra; whether it comes to access to jobs, health care, income, all sorts of things. If we are going to just continue expanding, there are a lot of issues that we do have to actually address before urban sprawl forever. Even Lawson is considered infill not greenfield development. We have seen how long it takes just to get ACT government services out there, let alone shops, let alone all the sorts of supporting infrastructure that people need. Even today Lawson still has some pretty horrendous public transport. Ginninderry does have the small electric bus, which is a good start, but it still takes an hour to get into the city and that is if you do not have to change buses. So I think we really do need to be focusing on how we actually make a good liveable city, rather than this very simplistic conversation about densification that has been happening.

THE CHAIR: Lachlan, thank you so much. Ryan, thank you so much. That brings us to the end of the session. We have had some great evidence today and fantastic evidence in this panel. Thank you very much. If you think of anything that you think we need to know you can put it in writing and submit it. James will tell you when our timelines are for that. We very much enjoyed the submissions you have already put in and you do not need to do further homework if you do not need to. Thank you.

Mr Hemsley: Thank you.

Mr Butler: Thank you.

The committee adjourned at 4.43 pm.