LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT AND PLANNING

(Reference: Inquiry into the use of controlled activity orders)

Members:

MS J CLAY (Chair)
MS F CARRICK (Deputy Chair)
MS Y BERRY
MR P CAIN

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 15 OCTOBER 2026

This is a **PROOF TRANSCRIPT** that is subject to suggested corrections by members and witnesses. The **FINAL TRANSCRIPT** will replace this transcript within 20 working days from the hearing date, subject to the receipt of corrections from members and witnesses.

Acting secretary to the committee:
Mr A Walker (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.

WITNESSES

BENNETT, MR JAMES, Executive Group Manager, Building, Design and Development, City and Environment Directorate **57**

BERRY, MS ASHLEE, Executive Director, Property Council of Australia **40**

CILLIERS, MR GEORGE, Executive Group Manager, Statutory Planning, City and Environment Directorate **57**

DAVIS, MR JAMES RICHARD, Deputy Chair, Forrest Residents Group **17**

ENGELE, MR SAM, Deputy Director-General, Environment, Planning and Policy, City and Environment Directorate **57**

FERGUSON, DR SHIRLEY, Private citizen **31**

GINGELL, MS CHRISTINE, Friends of Hawker Village **1**

GOODBODY, MRS MARY ELIZABETH, Chair, Forrest Residents Group **17**

GREEN, MR BEN, Executive Group Manager, Policy, Planning and Built Environment, City and Environment Directorate **57**

LOVELL, MR TODD, Private capacity **17**

McALLISTER, MR GORDON, Lyneham Community Association **31**

MILLER, MR MARTIN, Private capacity **49**

PICKERING, MR MARK, Committee Member, Save Big Splash Inc. **1**

RICKETTS, MS MELISSA, Coordinator, Neighbourhood Watch Hawker and Weetangera **1**

RYNEHART, MR JOSH, Head of Access Canberra **57**

STEEL, MR CHRIS, Treasurer, Minister for Planning and Sustainable Development, Minister for Heritage, and Minister for Sport and Recreation **57**

STROH, MR KEIRAN, Secretary, Belconnen Community Council **1**

VAILE, DR JODIE, Executive Branch Manager, Building, Planning and Land Use Regulation, City and Environment Directorate **57**

VICKERS, MR TREVOR, Lyneham Community Association **31**

Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

"Parliamentary privilege" means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

The committee met at 10.16 am.

GINGELL, MS CHRISTINE, Friends of Hawker Village
PICKERING, MR MARK, Committee Member, Save Big Splash Inc.
RICKETTS, MS MELISSA, Coordinator, Neighbourhood Watch Hawker and Weetangera
STROH, MR KEIRAN, Secretary, Belconnen Community Council

THE CHAIR: Good morning and welcome to the public hearings of the Standing Committee on Environment and Planning for our inquiry into the use of controlled activity orders. Today we will be hearing from community and residence groups, individual submitters, the Property Council of Australia and the ACT government.

The committee wishes to acknowledge the traditional custodians of the lands we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of this 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 streaming from elsewhere.

We are recording and transcribing with Hansard, and we will publish. We are also broadcasting and webstreaming live. We do not often ask our community submitters to take questions on notice, but if you take a question on notice, if you can say, "I will take that question on notice," that helps our secretariat track down those answers.

We will start. Welcome witnesses from Neighbourhood Watch Hawker and Weetangera, Belconnen Community Council, Save Big Splash and Friends of Hawker Village. Do you have any comment to make on the capacity in which you appear?

Ms Gingell: I am appearing as a representative of Friends of Hawker Village Incorporated, which is a residence group which takes a broad interest particularly in the Hawker-Weetangera area.

Mr Pickering: I represent Save Big Splash, an incorporated association of community members advocating for the preservation of Big Splash.

Ms Ricketts: I am a resident and local coordinator of Hawker Weetangera Neighbourhood Watch, and I am appearing from a security perspective for our community.

Mr Stroh: I am appearing as Secretary of the Belconnen Community Council.

THE CHAIR: As witnesses you are protected by parliamentary privilege and you are bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. By all means, stop and ask for guidance at any point if you need to.

We are not inviting opening statements. We have got your submissions, and, Melissa, we received some extra material from you quite close to the submission hearing, so members have done their best to read that, but we may or may not have absorbed all

the details of that.

We might jump straight into questions, and I will begin with the first one. This one is probably mostly for Mark and Melissa. We have had a lot of commentary from many submitters, including you two, about a lack of confidence in action being taken at Hawker Tennis Centre and at Big Splash, and you have spoken about the need for a really clear enforcement framework and really clear rules and guidelines and transparency about how Access Canberra or the government will enforce noncompliance. Tell me what you think you need to see. Also I am interested in if you think it is a gap of regulation or if it is a lack of the actual enforcement action being taken by the decision-makers, as in we already have what we need but those decision-makers are not being open and transparent or are not taking the action they need.

Ms Ricketts: One of the things that I was hoping that the committee would be able to do is assist us to understand whether the show cause notice has actually progressed to a controlled activity order. We have no evidence of that. There was obviously a freedom of information. We cannot find anything. We wanted to understand, if it has not been provided, what the reasons are for that and whether they can actually look at the enforcement action under section 29 and consideration of the lease termination powers, if it is now warranted, given this has been a very protracted aspect of getting this through—also looking at whether reliance on voluntary assurances and extensions has undermined the deterrent effect of the statutory scheme.

The evidence that we have got demonstrates a longstanding failure to achieve compliance within the Crown lease purpose, and we believe that there is a continuing risk to community safety. We are looking for a clear and decisive regulatory response being required. We do not believe that the activities that have been taken to date actually have been enforced as well as they could have been. The evidence that we have provided—we have taken photos, we have gone down there, we have walked around the perimeter, taken photos from outside. There is so much rubbish. There is so much dead fuel. We have already had fires there, and we want to be able to make sure that we are not going to have another horrendous summer where we are constantly waiting for something else to happen.

THE CHAIR: Melissa and Mark, I might give you some extra information that you may or may not have. What we are doing is gathering information in this inquiry. We have got some information from government on lots of different sites. The information I have got from government is that for Hawker no controlled activity order was ever issued. For Big Splash, I think, as you know, a controlled activity order was issued. We have documents out under FOI. It was not followed through with, and I believe there is no regulatory action on foot at this point in time. We are seeing the minister later today.

Ms Gingell: Can I just clarify—no order. There was a clean-up order, but no order regarding use of the site. Is that what you are saying?

THE CHAIR: Sorry, what I have at the moment is there is not a controlled activity order in place at the moment.

Ms Gingell: At all?

THE CHAIR: Currently. As of right now, I do not believe there is a CAO in place. This is partly why we talk to our ministers at the end of the day, so we can put questions to them. Part of what we are doing in this inquiry is we are getting lots of information like this, and we will pull it together in a report so that everybody will be able to see the state of play.

Mr Pickering: You asked whether we perceive any gap in the regulations, and we certainly do. It is clear that the regulator has authority but in the case of Big Splash has chosen not to exercise it. We believe that the regulatory gap really is about providing some clearer guidelines to the regulator on how to exercise its powers, and we have made some specific suggestions in that regard, which you have, but I am happy to expand on.

THE CHAIR: You certainly have. I was interested because the regulator issued a notice of intention to terminate the lease in January and in April changed their mind. That is a story I am intending to get teased out in this afternoon session to find out what happened there.

Mr Pickering: That completely mystified us because nothing had been done by the leaseholder, so we approached Access Canberra and asked them for their reasons for the decision. It seemed an unusual request, but they agreed to release their reasons. Their reasons essentially came down to, "The leaseholder promised us something." In fact they broke that promise, and they have not done anything to reopen by the 1 November. One of the key recommendations that we are making is that the regulator should not just go on promises, because it is very easy for leaseholders to make promises.

THE CHAIR: They should demonstrate.

Mr Pickering: It needs to be against clear plans, time-bound plans, finance to execute those plans—and clear consequences if they do not execute those plans. All of this should be done in the sunshine, not in a dark room where people cannot see what is going on.

THE CHAIR: Certainly, a lot of information has had to be obtained under FOI and private discussions, which is tricky. Mark, do you want to hit the high notes of what you think would be the key features of an enforcement system that actually worked?

Mr Pickering: Obviously it needs to be an escalating process, with an ultimate threat of termination—a credible threat. At the moment the powers exist but are not being used. We would like to see a presumption of termination if a lease is not used for its purpose for two years. It can be a rebuttable presumption, because there will always be a case where there are extenuating circumstances, but leaseholders should not be able to simply squat on land and not perform the function that that land is meant to serve. They should believe that the lease will be terminated if they continue to not perform the purpose of the lease.

MS CARRICK: I just wanted to ask about how you were saying it was all in the dark and it should be in the sunshine. Can you just tell me about that consultation from the

owner or the government? Did they ever consult with you and let the community know where things were at, where things were up to, what was happening?

Mr Pickering: Save Big Splash was formed in January, so we cannot really speak for the period prior to that, but that was after almost two years of the facility not functioning. We have had extensive engagement with ministers—Yvette was the minister at the time—and with the MLAs, but not with government officials. We were not approached by government officials. We certainly did approach government officials, and we have had hearings with government officials as things have progressed, including Access Canberra, but more from our initiative than theirs. The owner is notoriously inaccessible, and I am sure Yvette could confirm that. The mortgagees stepped in at a point. We made contact with them, and they have been willing to engage. We can say that there has been a fair amount of engagement but in general initiated by the community to raise our concerns rather than stemming from the regulatory process itself, which was very untransparent.

MS CARRICK: It is interesting that when a private sector owns a public asset that they are not accessible to explain. It is the same at Phillip pool; you cannot get near the owner of that either. When things happen and the community wants to know what is going on, there is nobody that will get on the radio and talk to the community and say, "This is what's happening. This is why this happened. This is where we're up to." You cannot get access to the spokesperson for these facilities, for public facilities.

Mr Pickering: I guess in the Big Splash case what happened was the owner appointed a planning consultant, Purdon, who did act as the public face and who was publishing plans to completely transform to, in our view, a totally different purpose the site. That was probably the extent of public communication, and I guess that is why the owner did not want to be accessible, because they have had a completely different purpose in mind.

THE CHAIR: I might just note that I was the sponsor of the Big Splash petition, and it was a delight to work with the community, and the community did a very good job of bringing that issue to our attention.

MR CAIN: Similarly, I would disclose that I was the sponsor of the Hawker Tennis Centre petition, which is all, as Jo has touched on, public information anyway. For transparency I say that. I actually want to thank all of you for your community advocacy, particularly for Belconnen. Shall I disclose I am also a member for that area? Because I am.

I will just touch on something that the Belconnen Community Council has mentioned. I will say I am inclined to agree with the submission from VCC that there are sufficient powers now for, in a way, necessary enforcement of controlled activities orders and enforcement of lease conditions. Particularly Minister Steel has been talking about, "We need to look at our laws," but I know when these laws were first presented it was presented as if, "Now we have a legal framework to do something about leases," and now there is a reluctance to actually use the powers that actually sit there. I am just interested in particularly the community group, but, Kieran, first of all, just maybe explain the situation that I am at the moment inclined to agree with.

Mr Stroh: The community engagement that we had, including some petitions, was quite vocal, and there was public support of termination of the lease. That is a drastic measure and we believe comes with risks. When you pare back what the CAO framework looks like, we generally think there is sufficient scope with a drastic measure right at the end of the pathway all the way through to the initial notice to a leaseholder's supply information. The opportunity I think that we see is for greater and more consistent use of the powers that have already been enabled or enacted. As you would have seen in our submission, we looked at some ways that might bring accountability around that. It could be a publicly disclosed framework for how Access Canberra would act as regulator. Of course there are always challenges with that, where you are either prescribing or you are setting a principles-based arrangement where, in effect, you cannot say exactly what will happen at what stage and when. There is always flexibility required. Alongside that the next step would be a disclosure register of activities.

The community had faith that there were actions being taken by Access Canberra in its capacity as regulator here or its enforcement capability. We I think have a view that there is good work that is being done in some of this activity, which has been brought to the attention of government. It is starting to show that these things can work, and with persistence, with consistency it should bring leaseholders into compliance, and for others, they will be brought into compliance. It seems like a low-cost, effective tool to nudge people in the right direction, particularly in the early stages.

I guess, just finally, we agree with Minister Steel, who I believe said that maximum penalties possibly were not high enough, and that was a position that BCC supported, that penalties could be increased. But of course that is something you probably ramp. You do not go to a maximum penalty; you start smaller, and it is context dependent. I hope that answers your question, Peter.

MR CAIN: Yes. Noting that no penalties have been issued at all. I note, Mark, that for Save Big Splash there is the view that there needs to be law reform, but I am just interested in Hawker/Weetangera Neighbourhood Watch and also Friends of Hawker Village. Do you think the laws need reforming? Or do you think it is a lack of enforcement of what the current tools actually are? Or both?

Ms Ricketts: My understanding—I have gone through all of the freedom of information information—is that the section 429 does allow for the controlled activity order. It allows the ACT government and gives that statutory framework to give the planning authority the broad remedial powers under that section 429, including directing restoration, requiring clean-up et cetera and being able to also apply a penalty. None of that has been done for Hawker at all for the tennis centre. We have struggled to get a lot of information. We have only had one access point in and out of ACT government. I have offered to meet people there, to have conversations, to try and do something, but we feel that we have not been given that opportunity. It is just this one-way street of, "Well, yes, we've taken your request for a show cause." We are just not getting anywhere. I feel that there are better ways of being able to manage this from ACT government's perspective. Having those enforcements, having the penalties that are applied—there is no stick. There needs to be a big stick for these people and these organisations who are not doing something with the land that they

purchased and what their intent was.

MR CAIN: What is your big stick then?

Ms Ricketts: I think financial penalties is one of the things. I think—

MR CAIN: Which are in the scheme now.

Ms Ricketts: Yes, but from what I can tell they have not been applied for Hawker. They also need to be able to be held to that compliance. If there are reports of noncompliance within that show cause notice to be able to—if you are not doing it, however many times, three strikes you are out. Whatever it happens to be, something has that big stick if you still do not do this. This has been going on for probably 12 years for Hawker Tennis Centre. It is to the point of ridiculousness now. I noticed in the freedom of information information that we were able to access that the landowner or lessee suggested that they would look at selling the land back in November of 2025. That seems to have all changed now. Another development application they have also requested. I think, from what I read, they were wanting to have another development application extension until some time in 2027. It is to the point of ridiculousness. If they are going to buy land, they need to do something with it. It just seems like a constant excuse.

Ms Gingell: What I would like to see is a public register of controlled activity orders, because I was somewhat confused. I thought controlled activity orders had been issued, but—we are googling—it is intent to issue, and I think we need a register that tracks what is happening and contacts officers who can provide information if you want to find things out, because I am always asking people for information and I get nothing back. Very bland responses from everybody, particularly the regulatory authority. It is quite difficult to speak to anybody there. I think they have secret phone numbers. You can email them though. Actually talking to somebody is very difficult. Obviously the financial measures should be used, but they are very weak and small. I guess it depends on what the operation is because for Big Splash and tennis centres they do not have a lot of funds, so I do not know how you balance the impact of a fine for the type of organisation that it is. The current owners of Hawker Tennis Centre have just been land banking.

MR CAIN: I will just make a comment and then am happy to pass on. Obviously a fine could be issued, and then if it is unpaid, it is a charge on the land, so if sold, the fine would eventually be paid, you would think. Anyway, that is just my comment.

Ms Gingell: The other thing is I would like to see consistency of registration of controlled activity orders on title deeds. I am spending a fortune on behalf of organisations trying to access information, and I saw one controlled activity order registered and then when I said, "Well, why wasn't the second one registered on the title?" they said, "We don't have to. We're not required to." There needs to be some clarity about when a controlled activity order has to be on a title deed so it is something someone in the public can find out, which would be good.

THE CHAIR: Yvette, do you have a question?

Ms Gingell: Can I just finish the other thing about deficient legislation? I have asked a question. People have said that the legislation is deficient. That is why those fines and things do not occur. But no-one answered the question, "Who's actually looking into that and fixing it?" If the legislation is deficient, it needs to be fixed.

The other thing is the vibe I have got is it is around compensation. The government is very concerned about compensation issues that could arise if they do actually go to terminate a lease, and the people just do not give up the lease.

MR CAIN: Just for the record, I note that Save Big Splash has effectively answered the question I posed, but, anyway, thank you.

MS BERRY: With the conversation around the things that need to change, I think we all agree on that, and we will talk with the minister this afternoon about what that might entail. But this is not the first time this has happened, where we have had unscrupulous developer-owner leaseholders. Giralang shops was a big one. There is the Campbell petrol station, and various other petrol stations where there has been land banking, and even on residential land.

Clearly, there are some things in the legislation that need to change. There is the idea of having a bit more of a stick. I liked the idea of having a clear plan, and that being made public as well, in the order—that there is a plan for the leaseholder to comply with the order. I think that is missing as well.

There will always be groups of individuals who will be unscrupulous and who will find ways to get around legislation. It will constantly need to move and change, which it did, but it has been found to be lacking again. I am interested in the consistency around that question of the enforcement of the order, as well as making sure that there is a clear plan shown by the leaseholder, and that they are complying with the order. I think that is the role of the regulator, isn't it? They are supposed to provide some kind of support for the leaseholder to do the right thing.

That is my question. It is not just about having a blunt stick; it is about saying, "What's the plan that you're going to comply with?"

Mr Pickering: We absolutely agree.

Mr Stroh: I think we are comfortable with that, and we would agree. It is one of the risks, we think, with this notion of termination. It does not provide a community outcome. If an intractable party goes through years of formal dispute resolution, it does not provide community amenity, if it is a community zone site, any sooner. The role of a modern regulator would help people to get into compliance, and nudge way sooner, when it comes to getting that use back to the community or to be used by the territory. Yes, we would agree.

Mr Pickering: One of the consequences of these processes being drawn out is degradation of infrastructure, which becomes a self-fulfilling prophecy of, "It can never work because it's broken." We feel that the regulator needs to act quicker and have a clear plan—"You will fix it or you will lose it"—rather than just letting things roll on and for vandalism to take its course, as it will.

We have a question to which we have really struggled to get an answer. If you could pose it to the minister or the regulator and get an answer, that would be great. The question is: under the lease, there are very clear provisions for breach and termination and, in the case of Big Splash, there is no compensation for termination, as with any commercial agreement. If you breach, you lose it. But the regulator does not seem to want to use the provisions of the lease. It defaults to the Planning Act and the processes under that, and it defaults to the "just terms" commonwealth framework. We do not understand why. If you have in the lease a clear legal path to an outcome, and it is justified, why not follow it? That is a mystery to us.

THE CHAIR: That is a great question.

MR CAIN: Has anyone asked the minister, with respect to that particular lease?

Mr Pickering: We have sat in front of the minister and asked exactly that question.

MR CAIN: And?

Mr Pickering: We have not received an answer.

THE CHAIR: I have asked in parliament and not received an answer.

Mr Pickering: And we have asked the regulator, and we have asked the planning—CED—people. We have asked in writing, and we have asked in meetings, and we never get an answer to that question.

MS CARRICK: If there is a hierarchy of legislation, what trumps what?

Mr Pickering: Exactly.

MR CAIN: Live in hope for this afternoon's hearings, perhaps.

Mr Pickering: Generally, contracts trump legislation.

THE CHAIR: We might move on. I am personally very convinced about making these regulatory changes that have been suggested. I think they are excellent. I am still puzzled as to why we seem to be where we are now, given what we have. The government submission was quite helpful. This committee told the government the information that we wanted to see in that submission, and that information is there. Go and read it. It is quite short. It is quite useful.

In the last year, there were over a thousand planning complaints about lease-squatting and things being built outside their DA approvals. There were 25 matters that were taken on for enforcement action—25 out of 1,046. We have further information about the status of those particular ones now. Government have told us that they are now—right now—tasking Access Canberra to start working through the 25, to work out where they are up to. And there have been fines issued—$3.5 million. None for Big Splash; none for Hawker. No controlled activity order was ever issued for Hawker at all; various things were issued for Big Splash. I have seen in the records lots of

enforcement activity. I have not seen any effective enforcement, and I am still struggling.

It really comes back to the original questions. One of these sites has been here for 14 years, vacant and unoccupied, and we have had a lot of community members following up for a long time on these issues. Do you think that the government have done a good job in the last 14 years with the powers that they have had, and since 2023? What has been the hold-up?

MR CAIN: I think we know the answer to that.

THE CHAIR: Yes, it is a bit of a Dixer. I will move on to a different topic. With Hawker Tennis Centre—this issue has not come up with Big Splash; we are not quite so far down the track—our submissions speak very strongly about retaining it for sports and recreational use. I think the community is pretty clear that, with Big Splash, they want a water park and a pool. Do you think those uses are viable? What do you think is the role of Access Canberra to enforce those uses? If those uses are not happening under the current arrangements, what do you think is the role of government in deciding, "Do we repurpose this land? Do we keep this land for sport and rec?" How do we get stuff on this land that the community wants?

MS CARRICK: It is a policy question about the government's role.

THE CHAIR: Yes. I think everyone will have a comment to make on that. Chris, let's start with you.

Ms Gingell: I put sport and recreation in the same kind of bucket as education and health: it does not have to be something that makes money. I think it is something that is very important for the community. The government currently owns pools and has them managed. I think we need to find a way for this to become government-sponsored, in some way; otherwise we are just going to lose everything.

THE CHAIR: Mark?

Mr Pickering: On aquatic facilities, the government is running a process to develop an aquatic strategy for the ACT. We can see in the existing budget that government values those. There are, I think, seven ACT pools that receive public funding to operate, in addition to all the private ones that, in some cases, have had public support in the past. Interestingly, there are no public pools in the Belconnen region, which is the largest and one of the fastest-growing regions.

We definitely see a need, but your question was about viability. We have done a survey across New South Wales of aquatic facilities. They are generally built with public support—not exclusively. There are plenty of commercial investments. It is a growing sector. There is plenty of private and public investment in that sector. We certainly think that commercial viability is possible. There is a growing population. Summers are getting hotter.

Whether it is sensible to operate it in the way that it has been operated in the past is an open question. Hopefully, the minister's inquiry will shed some light on this. Our

petition has suggested that complementary uses of the land should be considered. We hope that that outcome is possible. But we do need to protect the original intent as to why this land was assigned that purpose and has operated for decades in that way.

THE CHAIR: Thank you. Melissa?

Ms Ricketts: I agree that we need to look at how it is being used. I would love to see the facility at Hawker open up for sport and recreation, but something that is all-purpose, all-year-round. There are a lot of places that have been closed, either private or ACT government. I think the community is screaming out for somewhere they can go to.

From a Neighbourhood Watch component and putting that hat on, just slightly, even with what we are seeing with our crime rates, the security people, and what they are saying to us in the local neighbourhood, if the land had been bulldozed and it was just an empty, vacant lot, it may not cause the amount of graffiti, the fires, the drug and alcohol type of things—all the things that are happening down there. There is the rubbish. If it was cleared, it probably would not have attracted the unruly behaviour that has been happening around there. By giving our community somewhere that the elderly, young and youth can go and use, I believe that there will be a snowball effect.

If we can provide the community with somewhere to go and something to do, it will allow us to fix not only this issue but probably other issues. It is like we have seen with Big Splash as well, with all the graffiti. When things are left empty and vacant, it just encourages that type of behaviour. If it is a clean block of land, there is nothing for them to paint on et cetera. It is about being able to do something, whether it is ACT government or a private lessee, as long as there is enforcement that they have to follow.

THE CHAIR: Thank you. Keiran?

Mr Stroh: Belconnen Community Council is sensitive at the moment to community-zoned spaces and recreational spaces being lost in Belconnen. We are moving towards missing middle. There is greater density coming. Some of these leases or operations were operating when Belconnen's population was at 60,000. We are approaching double that.

Viability is an interesting issue that is tossed up by leaseholders or potential commercial operators. In one of the submissions to this inquiry, there is the suggestion that non-delivery of use of a lease could be linked to a pathway for easier rezoning. That almost encourages land banking. Even in that context, if there were guardrails so that a community might lose a pool but gain an indoor sports facility, or something like that, to keep it within the same sphere of use, it could perhaps encourage giving leaseholders options to deliver to the community.

The question of the viability of Hawker Tennis Centre might have looked really different when Next Gen at Lyneham had just opened up, and it was something brand-new and sparkly. Now that that is mid-life and we have a different population blend and whatnot, there might be different opportunities that could arise. We should have a framework and policy that support continued health and recreation use, or community

use, rather than a default position to rezoning towards residential.

THE CHAIR: Yes; towards higher commercial value.

Mr Stroh: Higher commercial value. That is part of the terms of reference, on land banking. Land banking is an interesting problem. While holding costs are low, if you consider a lot as inventory for a corporation, economic benefits may lie down the path. Something which worked really well was when the government said there was no appetite to rezone the Big Splash site. It ended a conversation about whether it could become something else. More of that could be good, if other leaseholders knew that there was not that—

THE CHAIR: Yes. That came about because I put up a motion in parliament to say, "This site will not be rezoned," and parliament backed it; at which point it is impossible for government to rezone it, because rezoning has to go through parliament.

Mr Stroh: Is that practical for every lease in Canberra? Unfortunately, no.

THE CHAIR: You are giving us ideas!

MR CAIN: Just noting the chair's comment, obviously, the numbers in parliament can vary from one point in time to another.

THE CHAIR: It could change in a different term.

MR CAIN: Yes; or it could change within a term, depending on other things.

Mr Stroh: Belconnen has been very fortunate, too. Big Splash is located within Belconnen, but our representatives for the district have been most vocal in the community's interests on this stuff in recent years. We are grateful for that.

MS CARRICK: I have a question that is along the same vein—extenuating circumstances, which Mark mentioned before, and land banking. Land banking for commercial shops is one thing, but when it comes to sports and rec, do the proponents or landowners ever say that it is not financially viable to provide public sports and rec as a private owner? Most of the pools in Canberra are owned by the government. There are a couple of outdoor ones that are owned by the government. But the outdoor ones that were private have both failed. At Phillip, they will say that it was not financially viable—and then they changed the zoning. Now it is going to be towers, so we have lost it. Hopefully not; it has not all gone yet.

My point is: if you have a lease that says, "You will do something," but the private sector says that it is not financially viable to provide something that is not necessarily profit-making, if you have to build the facility or completely renovate it, and you have a big payback period regarding the investment that you have put in—your up-front investment, to bring it back—what is the government's role? Should they be saying, "What is the financial viability of this? Can we help?" If it is a government policy—it is their lease—to have these sports and rec facilities, should they not be somehow working through how to enable it all to happen?

Ms Ricketts: Absolutely.

MS CARRICK: With the private sector—I am not talking about commercial areas, where you can make money; I am talking about sports and rec, where it might be hard for the private sector to make money out of it. If you give them the stick and say, "You shall do it," what is their option to sell the site, if they feel that they are not going to make any money out of it? If they cannot sell the site, that says there is a mismatch here, between the policy, the lease and the reality of the whole situation.

Ms Ricketts: With the Hawker Tennis Centre, they have put in development applications for a childcare centre. Years ago, with childcare centres, there was a genuine need. I do not believe—and this is my personal opinion—that there is a need for that many childcare centres now.

One of the things with sport and recreation is about having it multipurpose, if the lessee was looking to sell, which they indicated in November, but they seem to have retracted that. We became aware of a couple of different areas that were actually very keen. There were private organisations who were looking, if they could purchase it, to actually do something, in community consultation, to be able to provide some type of full-purpose, indoor, all-weather type of multi-sports facility.

There are private companies or lessees—developers—who want to be able to do that stuff. It is just about having the ability for them to be able to do it. If they could do it with something like Hawker, and this current lessee sold their property, obviously, ACT government can work with them and make sure that it comes up with exactly what the community needs and do it in consultation.

MS CARRICK: Does the Hawker lease allow for a DA to do a range of different things?

Ms Ricketts: My understanding is that the zoning is for sports and recreation, but the DA is for child care. If anything, we need something at the opposite end, in Hawker. We have a lot of ageing people. If it had to come down to something like an area for elderly, rather than young, that is probably a better option, if it could not be sports and rec.

MS CARRICK: That is losing the sports and rec, though.

Ms Ricketts: That is our preference, but if it had to come a different way, child care is probably the least of what we actually need there.

Mr Pickering: It is definitely a tricky question. A leaseholder will evaluate their options. "Do I run this waterslides park or do I develop it as a hotel, which is more valuable to me?"

MS CARRICK: Or do I sell?

Mr Pickering: The history of Big Splash suggests that not only the current owner but prior owners have had multiple rounds at redeveloping the thing. We have

documented development applications virtually every year—2004, 2005, 2006, 2007, and two in 2008. That takes your eye off the ball of running a waterpark. There is no investment going on in upgrading, bringing in more turnover and other things.

Successful waterparks elsewhere, in New South Wales, will typically add a new slide every two or three years and continue to bring in more footfall. That has not happened at Big Splash, probably because of its location and the attractiveness of value of redeveloping it for another purpose.

How planning laws should deal with it is up to you to guide. We feel that the permissiveness of the planning regime and the lease for sport and recreation facilities to be redeveloped for other purposes basically encourages that. We need to tighten up on the purpose and make it clear that that is the purpose. If you are going to own and operate this thing, stick to the purpose, invest in that and make it work. That is where sustainability will come from, not from a peak payday from turning it into a hotel.

MS CARRICK: That comes back to compliance with the lease, on the maintenance. If you look at both Phillip and Big Splash, they have both been allowed to deteriorate—the condition of them. With Phillip, you can tick a box and say, "Yes, got a pool there." But everything around it is run down, and patronage declines because it is really run down. That comes back to government. If you want an aquatic centre there, you need to ensure there is a standard. They have not done that along the way. They have not enforced the lease. You can tick a box and say, "Yes, it's maintained, the pool is open," not in the case of Big Splash; Phillip was open, but the whole thing around it had deteriorated.

Mr Pickering: Delivering community services can be by public or private means.

MS CARRICK: Yes.

Mr Pickering: The trouble with handing over the ownership, as well as the operation, is that these kinds of outcomes arise. We think that the public model, when it comes to ownership, and responsibility for maintenance and ongoing improvement with a private operator, seems to deliver better outcomes in Canberra.

MS CARRICK: Agreed.

MR CAIN: As you are probably aware, obviously, the process going forward for us will be to issue a report. We are probably not in a position to say when that will happen. The government will then have an opportunity to respond. We are looking potentially at six months or longer before the government responds to what you are saying now and what we reflect in our report. What else do you think you can do, as community groups, to achieve what you are all seeking?

Mr Stroh: That is a tricky question. This has engaged the community, in many ways. Also, with the event at the Ginninderra Labor Club, and the turnout there, the support is definitely interesting. Something quite negative has crystallised and shown the power of the community. People can make noise and people, hopefully, can effect change. We will see what happens.

There are a wide range of opportunities to create submissions. In our role, at Belconnen Community Council, we are trying to find new ways of getting engagement, whether it is running our own mini petitions to help inform our advocacy in this space. I do not have a good answer for you, Peter, on how we could nudge or help leaseholders with compliance in the interim.

We have made a submission on Arscott House. It could be DPA-14. I cannot remember which DPA it is. It is in a similar kind of vein. It is about community use and community loss. Once we lose community use or amenity, sometimes it is really hard to get it back. This will be a continued pattern, based on what we are hearing from the community, as to how we then advocate. I imagine our advocacy will continue along this vein when it comes to the regulatory approach. It is no good having a hunting dog that will not leave the porch. We have to get out there and do stuff. We have faith that the settings are broadly right. This has been a teething thing, and sophistication and maturity will follow. We will follow that, and we will see how it goes.

Ms Ricketts: From our perspective, until that land is bulldozed and flat, we will continue to have safety, security issues, fires and dumped rubbish. Literally, every week we are going down there. I do not know whether we just start bombarding ACT government—putting in the notices to say this on their website. That is what we have been doing to date. Other than just keep complaining, we really do not have a way forward for us at this point in time.

Obviously, we do not want to go onto the land. It is privately owned. But there has been commentary, even on Facebook sites, about, "Let's all clean it up." That is what the lessee should be doing. I would love to see enforcement with the lessee, even just to the point of getting that land bulldozed and cleared.

MR CAIN: On the two subject sites, I note that Big Splash has had controlled activity orders. At least there is an appearance of very secure fencing, both around the building now—we think we know why—and around the perimeter. With Hawker, without a controlled activity order—as I have seen as well, of course—it just has second-hand fencing with—as you have highlighted; thank you for your extra pictures—a massive gap. Maybe a controlled activity order will produce some positive outcome, because there is a difference in the way that the sites have responded.

Ms Ricketts: Yes.

MR CAIN: At least with security of the site.

Mr Pickering: If one believes the long-range weather forecasts, we are heading for a super El Nino and an extremely hot summer. Our intention is to just keep turning up the temperature on the pressure—

MR CAIN: You will go El Nino on them!

Mr Pickering: I do not expect the issue to go away. There is really deep community feeling about this. Canvassing on this issue is very easy. People really identify with it,

because a lot of Canberrans have happy memories, and would like their children to have happy memories.

MS BERRY: Big Splash is a little bit unique as well. It is a bit of a challenge, more than the tennis centre. They are both shit; right? Let us be fair. One of the other issues with the swimming pool, with the government purchasing and operating the pool, is the agreement that they currently have with CISAC not to operate a pool within five kilometres. I do not think that can ever end.

THE CHAIR: I believe there is an agreement not to operate a new pool within five kilometres, not a pool—

MS BERRY: Those semantics can be argued by lawyers in a room somewhere, I am sure.

Ms Gingell: Well, they are a bit different.

MS BERRY: That is one of the challenges, I think, going forward. Of course, if it is not for sale, and you cannot buy it, how do you operate it?

Mr Pickering: It is for sale.

THE CHAIR: It was for sale.

Mr Pickering: There is a big sign up.

MS BERRY: Yes, it was for sale, I know.

MR CAIN: There is a sign up.

MS BERRY: But it is a bit different to Hawker. With Hawker, you can put whatever there, besides an early childhood centre—some kind of sports facility. With Belconnen, the pool is a bit constrained. The government said that there needs to be a pool in west Belconnen. We lost the Kippax pool, back in the day, to apartments. Obviously, none of us want to see the same thing happen at Big Splash.

MR CAIN: Chair, we are moving into commentary here.

THE CHAIR: We are moving into commentary.

MS BERRY: Do you think that the community understands that complexity?

Mr Pickering: It is really regrettable that government took so long to even table the commitment it had made around CISAC. Despite our requests, it has refused to reveal the exact nature of that commitment, other than in a press release. The other day, the minister made reference to some potential ground contamination at the site, which was the first we had heard about that. There is just an endless string of excuses that seem effectively to protect the owner's opportunity to continue redeveloping the site for some other purpose. It does not play well. Whose side are you on?

THE CHAIR: We might move on to Chris.

Ms Gingell: Can I get back to anticompetitive clauses in contracts?

THE CHAIR: Yes, please. You can use the final three minutes in whichever way you think is useful.

MR CAIN: And my question was: what more do you feel that you, as a community group, can do?

THE CHAIR: Chris, also feel free—

Ms Gingell: We spend hours and hours at home, writing emails and not getting answers to things; writing submissions and not getting the responses that we are hoping for.

Can I say something briefly about anticompetitive clauses in contracts? We have now had to put in an FOI to try and find out how long that anticompetitive clause between CISAC and Jammo is for. Why is that so hard? Why does the community have to do all of that just to get this fundamental piece of information? There were ideas about retaining the 50-metre pool as an open-air pool but using some of the land to build things that could be for fitness classes. We had also thought about maybe small pools for year-round swimming classes, and things like that. We need to know what that anticompetitive clause is. Why does it have to be a secret?

MS CARRICK: We need to know how many there are.

Ms Gingell: It was 30 years, wasn't it, for one of the things? But was it the same for the anticompetitive clause? It is a battle, constantly. I feel let down, not by our representatives, because I know you work really hard. What is the end result, with respect to the government people who have to work through these things? Quite frankly, if the government calls a food van an unlicensed restaurant, to comply with the lease, I think you are absolute fools.

THE CHAIR: I might clarify: we are not the government.

Ms Gingell: I know.

THE CHAIR: I think many of us share your feelings.

Ms Gingell: I know.

MR CAIN: Forgive me for being cynical, but sometimes, if the community goes quiet on something that was once very important to them, the change that the community is opposing will happen eventually. Continued noise does play a role.

THE CHAIR: On behalf of the committee, thank you so much for your attendance today. We will take a brief break.

Short suspension

DAVIS, MR JAMES RICHARD, Deputy Chair, Forrest Residents Group
GOODBODY, MRS MARY ELIZABETH, Chair, Forrest Residents Group
LOVELL, MR TODD, Private capacity

THE CHAIR: We now welcome Todd Lovell and the Forrest Residents Group. As witnesses, you are protected by parliamentary privilege, and you are bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. We are not doing opening statements; so we will go straight to questions.

On the Manuka hotel, the submissions highlight changes that occurred to that design since the DA was first approved and called for much greater transparency on those. There is already a public amendment process for DA approvals, and that includes public notification. Do you think we need a different notification transparency process to that?

Mr Lovell: I do not think it has been clear. With the original approvals, there was public knowledge out there on what was approved, and there were plans and everyone got to consult on that and look at that. But I think changes have been made and we still do not know what those changes are and what is actually going to be delivered. So there is really no transparency. It had quite considerable public support. Personally, the cinemas is something that I am interested in. It was supported on five cinemas but, at the moment, we do not know what will be delivered. I think changes have been made. We have been asking for information, and we have not really received any. Even a freedom of information request was put through. We have not received any transparency or—

THE CHAIR: So, on that original decision, it was meant to be five cinemas and then it was down to one, and now you actually do not know—

Mr Davis: We do not know if there is even one.

THE CHAIR: So there has actually not been any transparency or notification.

Mr Lovell: No.

THE CHAIR: And the only way you are getting that information is through FOIs?

Mr Davis: Well, through a newsletter. In fact, the only information we have on the current status is an interview with the developer in August of last year, where she said that she has reduced the number of cinemas to one and it will be only an 80-seat cinema—so a relatively small room—and its usage will probably be at the discretion of the hotel operator. That is, the hotel operator will put on movies when they feel like it. So it is pretty close to no cinemas.

There has been no public statement about that at all, that I have ever seen. The minister was asked in September last year, in the Assembly, by Fiona Carrick, and he responded that the floorspace had been reduced through a subsequent amendment to the DA that no-one in the public knew about as it had never been mentioned—in fact, two amendments—and that the number of cinemas had not been reduced, even though

a month earlier, in the newspaper, the developer had said there would only be one cinema now. So it is all extremely hazy as to what the government has approved and what is really in the building at the moment.

THE CHAIR: What do you reckon the community expects from DA amendments like this that have a significant impact on what might get delivered?

Mr Davis: I think the community needs to know. If it is a major change, like a hotel plus five cinemas suddenly becomes a hotel and no cinemas, I think the community, particularly those members who were involved in the DA who made submissions and got actively involved in the DA process itself, should surely be notified that a very significant change occurred. Yet nothing happened.

THE CHAIR: What do you think the regulatory bodies should have done in this case? We have heard from a lot of submitters on many sites that what they are concerned about is no enforcement action gets taken and the only action that ever gets taken is retrospective approval of whatever has been non-compliantly done. What action do you think the regulatory bodies should have taken in this case?

Mrs Goodbody: I must admit, I am always surprised that there is very little information when they are in the middle of something. I appreciate that, if you are in the middle of an investigation, as we have been told by the minister, but basically there must be something going on. In other words, do we think this is an investigation that is going to take a long period, because there is so much to be dealt with, or is this something which we should be able to report on within x period of time? We have no sense of any of that. We have no idea of how complex it is or whether, in fact, there will be a controlled activity order—as in, will there? We really would like to know all that. If this is not in full compliance with what was originally approved, then surely there is some provision that could be applied in order to determine: well, what do you do now? Does it mean that you get penalised? Does it mean that you have to go back to some earlier version of your plan? None of that information is available. So we are sitting here in this limbo.

MS CARRICK: It is controlled activity number 3—undertaking a development for which development approval is required, other than in accordance with the development rules.

Mrs Goodbody: Correct.

MS CARRICK: There could be a controlled activity on it under section 3 of schedule 4.

Mrs Goodbody: Correct.

MS CARRICK: So the question is why is there not, when it came to light that there were no cinemas being built?

Mrs Goodbody: Yes; correct.

THE CHAIR: We have some information from the government, in the government submission to this inquiry. If you have not looked at that, go and have a look at it. It is

quite useful.

Mrs Goodbody: Okay.

THE CHAIR: It is quite specific. For Manuka Hotel, it says it is an active regulatory matter. It says that the notice of decision on the DA did not explicitly state the number of cinemas that had to be built. It says that no binding requirement exists in that DA to construct a specific number of cinemas, and then it has a bit more information on that. It basically says, "At this stage there has been no breach of the legislation, but the matter remains under investigation." That probably does not tell you an awful lot more.

Mrs Goodbody: That is the problem. It is sort of still under investigation.

THE CHAIR: Yes.

Mrs Goodbody: But do we know if it is going to be six years? Do we know if it is going to be six months? It is that sort of thing about—

THE CHAIR: Maybe just a timeframe for how long this investigation—

Mrs Goodbody: Very much so. In 2021, it got approval the first time. So it has moved on from various stages thereafter. We are now heading into 2027.

MS CARRICK: It has been under investigation for 12 months. I do not know if it is the same investigation or a different investigation.

Mrs Goodbody: Correct.

THE CHAIR: A number of our submitters have raised that a lot of people are worried about the lack of enforcement action. They are also worried about the lack of transparency over what enforcement action is taken. A lot of the submitters who were worried about transparency have also raised integrity concerns, because they do not know why decisions are being made. That is an environment in which people are concerned about trust and integrity. Do you have any concerns about that?

Mr Lovell: Yes. To me, it is not clear—the accountability and the checking is opaque. There is no real transparency. Decisions are made behind the scenes. Originally, the public was consulted on it. Now we do not know what is happening. Is it that decisions can be made on a development and then the government can say, "We don't have to let the public know; we can make these changes with inside the building." To me, as a resident, that does not seem to be something that the community would support. There is no transparency. It seems to be very opaque. There are approvals. There are decisions going on. There is no ongoing communication. At the end of the day, we are not sure what we are going to get.

Mrs Goodbody: There was a lot of consultation beforehand—before the DA was approved.

Mr Lovell: Yes.

Ms Goodbody: So it is a real gap now compared to the kind of communication process that was taking place early on in the development application and approval process. Suddenly something has changed dramatically in terms of what is being built compared to what was approved, and yet there is deafening silence.

THE CHAIR: We have had calls from various submitters that there should be a public register of regulatory action and a public register of enforcement action. That strikes me as quite a sensible call. We would have to work through the detail but that looks sensible. We have been obtaining information in this inquiry, and I have learnt things that I did not know. For instance, the government tells us that in the last year there have been over 1,046 complaints about lease squatting and noncompliance with DAs; there have been 25 enforcement actions; and a lot of the key sites that the community is interested in currently do not have any regulatory action on foot at the moment. Do you think a public register might help people to actually see what the working is, when there are 1,000 complaints, only 25 pieces of enforcement and none of them leading to termination or next steps?

Mr Davis: I think it would help. I do not think it is all that is needed. That would certainly be one step beyond what we have at the moment where it is completely opaque as to what is happening after a DA is approved and all sorts of secret business happens behind closed doors between developers and the government and the public is unaware of it. So I think a register would help. But, if it is a major change, like we are seeing at Manuka, from the DA to what is there now, I think there should be direct notification to those people who got involved in the DA process at the beginning, because they showed their interest at that point and their expectation is to let them that in this particular instance there will be no cinemas or whatever else it might be.

Earlier on you asked about a conflict of interest. This is not to do with the Manuka cinema per se now; this is more generally. I think the current system we have where certifiers are selected and paid for by the developer—and this is a boring old one; I am sure you have heard it many times—and then have responsibility for ticking of the stages of development against the DA, is bound to cause conflicts of interest at some stage and at some level, minor or major. Whether that is the case here, I have no way of telling, because—as Fiona Carrick found—none of the building approval stages of information are actually available to be released and the public have absolutely no idea as to what the conveyancer's reports were on the building approval stages.

So there are two points I am making there. One is about the lack of transparency during the building approval process and the conflict of interest.

THE CHAIR: Thank you.

MS CARRICK: I did an FOI on this one. It has been 12 months since I did it, and we do not have the response yet and they keep extending, extending and extending. So where is the transparency? This is with the Ombudsman. To your point about the building certifiers, how did the building approval not align with the DA? Maybe that is what is under investigation.

Mr Davis: I presume it is, but we do not know.

Mrs Goodbody: We do not know.

MS CARRICK: The point that the government makes is that the decision mentions cinemas but not how many. But the plans had five cinemas.

Mr Davis: That is right.

MS CARRICK: So the decision does not reiterate every single element of the plans. The decision approves the plan with some conditions. So the decision approved the plans which had five cinemas. So I am not sure how the government's argument really stacks up there. There are a lot of questions about this one. My understanding is that they will have to do another DA that will represent what they have actually built And they will get retrospective approval for it. I am not sure what your views are about that.

THE CHAIR: I am so sorry, but I am going to interrupt for one second. WIN News was here and filming. Usually they ask us before they come into the room and we check in with everybody. We did not have that opportunity; they just showed up. I hope it is okay. It is a public hearing. I am so sorry, but you might be on the news. Please continue.

Mrs Goodbody: Thank you very much.

Mr Lovell: One of the things is that there should be mandatory notification if there are any material changes released. If an improvement has gone through and it has been approved and then changes are made retrospectively, then there should be notification and there should be a process where the public can see this. We need to improve that transparency and provide greater public access to the approval process and, if there are any material changes, notification should be mandatory and there should be clear compliance. There should be a framework. For us, it is very opaque. We do not know what is really going on and things are changing.

So plans go to the public and we are consulted but, after that point, it cannot just be that they can make changes and we are not notified and, at the end of the day, there are sort of behind-the-scenes things happening, there is no transparency and then they come out and say, "Here is your end result, and we changed everything,"—and the public were never consulted or notified about it.

MS CARRICK: Which goes to the question: what is the point of the planning system if you can just build what you want to get retrospective of approval.

Mr Lovell: Exactly. Can I just say it is a hotel and then end up building something completely different in the middle of it? What is the point of having the public consultation, the approvals and the plans et cetera, if the developer can then go ahead and just do what they want?

MS CARRICK: One of the benefits of the five cinemas and the case that was in the DA was the economic benefit that it would bring to the Manuka shops.

Mr Lovell: Absolutely.

MS CARRICK: By just changing it, that case regarding the benefit to the shops has just been dismantled.

Mr Lovell: Yes.

MS CARRICK: So where was the compliance to say, "No; you were approved because there were going to be economic benefits from bringing people into this area"? There are questions around at what point the government knew. It was at the foundations, that first floor, because the cinemas were to go through to the basement—that slope. So they knew early. So why weren't there controlled activity orders in place very early?

Mr Lovell: Exactly. There were cinemas there before. This is my argument, really. It is more about those local businesses that front on that cinema and the people that come from all over the place. They were something that the community really liked. They were something that a lot of people came to Manuka for. It has been a massive impact. This whole development was a massive impact. It has been closed for years. I am sure it has been delayed and overrun. And there has been no transparency about what is going on. The considerable support from the public to go ahead with this was really based around the cinemas. You can see this anywhere in Gungahlin or anywhere. Cinemas are something that the community likes and wants and it supports the local businesses. So, absolutely.

Mrs Goodbody: I think it is disappointing, because in the early stages there was a lot of public consultation, involvement et cetera. In a sense there is an expectation that, if you are going to make massive changes, you will actually consult and you will actually give some other updates. When you are getting total silence, it is worrying.

MS CARRICK: Yes.

Mr Davis: You asked a minute ago about our reactions to retrospective DA approvals. I have to say that my single word would be "cynicism", because raises the question about why you have a planning system at all if in fact a developer can change it part way through. In some cases, in minor cases—not in this case of the cinemas—I have seen instances over my back fence of buildings been built in backyards with no DA at all. When this was pointed out, they got a retrospective DA. Even though it actually breached some of the setbacks and other conditions, it did not matter; it just got a retrospective DA approved—and so cynicism arises. More generally, I think a widespread mistrust will build up in the community about the planning system if the government does not play fair and use the planning system as it is meant to be used with the community interests in mind.

MS CARRICK: Good point.

MR CAIN: What are your next steps? Obviously, it has moved on to a state where I do not think any of you or your members are particularly happy. I asked a similar question in the first session. Obviously, if the community goes quiet after making

some noise, then the less preferred changes will probably happen eventually. So what are you planning to do further?

Mrs Goodbody: I suppose there are a couple of things. In the context initially of what has been said already, we have tried to find out information but we have not been given any. Perhaps you have advice as to how better we can approach this in terms of getting the information we actually have been seeking over the last year or so.

MR CAIN: We will have the minister before us this afternoon. You are most welcome to attend, of course, in the gallery.

Mrs Goodbody: Okay. I think that is really important. Perhaps there is some process that we are sufficiently unfamiliar with that we have not approached in order to be able to do something. But we feel we have approached all the things we should approach and the relevant people in terms of the minister and the relevant people in terms of the actual process itself. It does not seem to have given us any information.

MR CAIN: What do you put that down to?

Mrs Goodbody: I think there would be a number of different views—as in more consistent but nonetheless slightly different—as to why nobody is telling us anything. What is there to hide? What is going on that we will be given an ultimatum eventually that we can do nothing about? It leaves us with the feeling—to your point earlier and to others—distrust.

Mr Davis: To answer your question, Peter, I would put it the lack of opportunities for us to pursue this down to two things. One is the restrictions that are in the legislation and the regulations. For example, in the Building Act, even an FOI will not be able to wrangle out those conveyancer reports. That is a barrier that we face through the legislation or the regulations. The second barrier is the unwillingness of the minister to release information. He still has not told us what the inquiry that Access Canberra is running at the moment is inquiring into. I think he is capable of telling us that, but there is an unwillingness to actually release information at the ministerial level as well.

MR CAIN: Todd, do you have anything further?

Mr Lovell: I do not think I can add anything extra to that, really.

MR CAIN: I would provide a comment now. Obviously, the committee will produce a report with recommendations. That is all we can do, really . But individual members of the Assembly have questions on notice and orders to produce documents. So there are some tools in the arsenals of individual MLAs. I am sure you have already contemplated that, but they are also tools for drawing out information that is otherwise difficult to find.

Mrs Goodbody: Certainly that is something which you have the opportunity to do. We feel a bit at the point where we have tried what we should do and what we could do and have not had any success in terms of removing the obscurity—to put it that way.

MS CARRICK: Well, the FOI has not worked.

MS BERRY: I am sorry to hear about what has been happening at Manuka. I relate to it because of the Liangis family owning Kippax swimming pool back in the day. So I think cynicism around what their purpose going forward was how I felt when I saw what they were going through the development process in the first instance. I thank you for your advocacy. I am not sure that we will get all the answers through the committee, but we will do our very best. We cannot change the past but will certainly recommend some changes for the future.

Mrs Goodbody: I think there should be more openness about what this process is that is happening. What sorts of things may we expect? Is there going to be something like an approval after the event? Will there be a controlled activity order? If there is not, why is there not? That sort of thing would be really helpful for us to understand. Then perhaps we could communicate further as to what our continuing concerns are. If we do not know what it is that is likely to occur, in any way, shape or form, it is pretty hard to put together any kind of simple and straight forward proposal, submission or whatever.

MS BERRY: Yes.

MR CAIN: Just to close my line, you have some recommendations and suggestions in your submissions—and thank you for your submissions. Some suggestions—for example, in yours, Todd—are sort of generic.

Mr Lovell: Yes.

MR CAIN: So feel free to supplement them in a way to provide the committee with very specific recommendations that you think would prevent this happening again. That is something the committee members could contemplate.

Mr Davis: I actually wrote out this morning some summary points and recommendations—and then of course I could not get my printer to work. I had hoped to bring it along. I have it on a memory stick with me if some of the staff can take a copy.

THE CHAIR: You would be welcome to table that. We would love to see it.

Mr Davis: Thanks. I will pass that on.

THE CHAIR: Thank you. Obtaining information is difficult. We started this inquiry to get information. We directed government to give us certain information about seven sites. This is one of them. We also said, "Can you tell us all the other sites?" We have got some of that. It is probably more statistical information in the government submission now. So that is available. There is some information in there on the Manuka hotel. But, as I said, the nature of the information that the government have published in this submission indicates that they think it is an active regulatory matter but they also think the lease holder developer is in compliance. That is how the government considers this right at this second.

I am really interested in the notion that something that was meant to be a five-screen public cinema might instead become a private single screen open at the discretion of the lease holder. That sounds a lot like what I already have in my lounge, which is a TV, and I can invite people in sometime. Does that sound like a public cinema?

Mr Davis: The only information that I have seen on what we might end up with is in that interview the developer gave in August last year, and nothing else. So I am just going on that. In that she said something a little bit obscure but along the lines of she could not draw up a contract with any of the major cinema chains or any of the independents, and so she has decided to have this 80-seat room, and it will be up to the hotel operator to run movies there. It is a little hard to know quite what that means—whether the hotel operator will form a contract with a distributor or whether they will just suddenly think, "I will put on Titanic tonight." It is clear.

MS CARRICK: Have a screen that pulls down and get the chairs out.

Mr Davis: That is the only information we have to go on at this stage.

THE CHAIR: When the government or Access Canberra gets information like that from a developer or from a lease holder of, "This is just not feasible; we cannot do anything at all," would you expect the government or Access Canberra to verify that information from other sources, or would you expect Access Canberra and the government to simply rely on the person who owns this lease and has a commercial interest saying that it is not possible and therefore agreeing that it is simply not possible? What sort of other information would you inspect government—

Mr Lovell: There should be an evidence trail there and there should be some accountability. It cannot be just their word or whatever; there has to be some evidence-based tracks.

Mrs Goodbody: Given the process to get to the original DAs and the DA approvals, you would expect that, with all this silence and no-action and no responses coming through, that you would need more than just one person in the party saying, "x"; You need evidence about what was done, when it was done, with whom it was done et cetera.

THE CHAIR: I particularly recall an inquiry that this committee ran—I chaired it at the time—last term where we looked at the Giralang shops. The lease holder and developer there told us and the government definitively that it was absolutely impossible to get a supermarket there and that the government had changed the regulations and made it absolutely impossible. They said they had asked every operator in the country, and it was simply not possible. Those individuals ended up surrendering the lease during that inquiry, and, within six months a different lease holder got a supermarket on the site. So I wonder if maybe sometimes feasibility and viability is in the eye of the beholder, and I wonder what information you would expect from Access Canberra. I sort of feel like it might be useful if we tell them exactly what community expectations are. They should probably do some due diligence when they get a claim like that to somehow test whether it is genuinely impossible or somebody else might be able to manage it.

Mr Lovell: Did they put it out for tender? Did they get any responses?

THE CHAIR: Yes; good process questions.

Mr Davis: What sort of financial arrangement was the developer expecting to get from the cinema chain? Was that unrealistic? I am not sure quite how far I think a government agency should investigate financial arrangements. It is not clear to me exactly how far they should go, but certainly they should carry out some due diligence to verify these sorts of claims, particularly when it leads to a major change in the development—five cinemas to half a cinema or less or whatever we are going to end up with.

THE CHAIR: Yes.

Mr Davis: I have not seen the government input to this inquiry, but I could imagine it would be highly bureaucratic in the sense that it will show that this rule and that regulation and this act has all been complied with and everything is hunky dory. But there is a huge gulf between that view of the world and the community expectations over here, where we are led to believe we are getting something and all these little rules and regulation may be adhered to but we end up with something quite different. So I think the government somehow or other need to take more account of where they lead the community to in their original decisions and not just leave them stranded but bring them along with them if there are to be changes. Relying on rules and regulations is simply not going to be sufficient.

THE CHAIR: Perhaps if Access Canberra were genuinely of the opinion that it was not possible to do a five-screen cinema there should have been a public conversation about that and then a public conversation about, "Okay, that is not going to work; so what would be an appropriate community facility that would activate the shops that fits into this development?" Would that have been another possible way forward?

Mr Lovell: It would be more transparent. I feel as though a lot of people do not know what is happening and they will not know until it is completed. It has been kept quiet. It is not in the media. People do not know about it. If they say there are going to be five cinemas and then say, "Oh, we can't get anyone in," that due process should be shown. Couldn't they say, "We called around"? What did they do? We need some evidence of that, absolutely.

Mrs Goodbody: Particularly, as I said earlier, when there was so much consultation, discussion and involvement and then there is a DA approved and then suddenly there is silence and any attempt at questioning is responded to with, "It is under investigation," and then silence. It is not a helpful process.

THE CHAIR: No.

MS CARRICK: I would like to ask about another couple of strange things with this whole thing. There was a DA that did a third of the building and then there was a DA that did the other two-thirds of the building and they joined together.

Mr Lovell: Yes.

MS CARRICK: Have you ever seen that before, where you have two DAs that create one building?

Mr Lovell: No. It was like a tree or something that had to be—

Mrs Goodbody: It was unusual, to put it that way.

MS CARRICK: And then there was the tree as well.

Mr Lovell: That disappeared in the middle of the night or something. I think that was part of it.

Mr Davis: I am not experienced in DAs, so it might be more common. I had not seen it, but I have a very small sample to draw from.

MS CARRICK: Maybe we will ask the minister if there has ever been two DAs that join together to create one building.

MR CAIN: He might take it on notice.

MS CARRICK: Yes. The tree issue was a big issue, too. I think it just disappeared, didn't it?

Mr Lovell: It did.

Mrs Goodbody: It vanished.

Mr Davis: I think it had a few trenches dug around it.

Mrs Goodbody: I think the main thing in terms of your question to us about what we could ask is that one of the problems we have now is: what do we ask? We do not know enough to know what to ask. It may sound silly, but it is a fact. We tried to do all the things at the time of the original DA and all those applications. We put in submissions, we heard back from things, we understood the various changes et cetera, et cetera. But the silence thereafter leaves you wondering where we go to next. What do we ask? What is it that is out there that we should ask about but know nothing about in order to be guided?

MS CARRICK: And then, if one tries to go to ACAT, what is the government decision that we are trying to challenge here? Is it the lack of compliance?

Mrs Goodbody: We would not know what to take to ACAT at this point.

MS BERRY: On the compliance or the activity order and enforcement of compliance, is that a broad brush across everybody, every developer, or is it particularly developers that are doing the wrong thing? If it is a change straight across the board, do the developers that are doing the right thing get impacted by some of the changes that might be suggested through this inquiry? It is a real question. There are some who might not do the right thing—which seems to be the case in this one—but there will

be others that do not want to deceive the community and want to engage with the community on development.

Mr Lovell: It is about transparency. There is a power imbalance. Obviously, the community is involved at the outset. We are consulted and we are able to put in questions and put in why we support it and why we do not support it. That is all quite clear. But, from there on in, it is the developer—who makes changes et cetera. It should be across the board. It is more around the transparency. The developers are all just doing their job. They are all trying to build something. They have got their interest. But the process should be very clear right through that, if there is a change, they need to go through a process. That needs to be clear to the community. It needs to be the same process for everybody. They shouldn't be concerned or worried. There have to be clear processes there and transparency; otherwise, they can just do what they want. There is a massive power imbalance here. We get consulted and, from there on in, we do not know what is happening until the end result.

Mr Davis: My answer to your question would be that I was not personally contemplating any changes to controlled activity orders across the board. The little bit I read in the legislation about when a controlled activity order might be imposed all seemed on the surface to be pretty sensible occurrences. So, if a developer is doing the right thing, they should not really be caught up in such controlled activity orders anyway. What I am more focused on is trying to strengthen and improve the planning process and the public acceptance of the planning process so that controlled activity orders are not needed as much as these in other cases. I think that would be the right approach to take to try and clean up the planning process and reduce the likelihood that CAOs would ever be required.

MS CARRICK: It is interesting that we moved to a outcomes-based framework but then there was a lease done, I assume, like a new Crown lease—that it was varied before building started. It is very definitive—like how many square metres you can have for this, that and the other thing, and it says a maximum of 630 square metres for the cinemas, because there was that amendment. So another question I might ask is: why is it that, when you have got an outcomes-based framework, you get so definitive about the exact square metres in this particular building? You have to wonder what conversations were happening behind the scenes that got that into the lease?

THE CHAIR: Is that a question or a comment?

MS CARRICK: I think it is a comment.

THE CHAIR: I think it is a comment, too. I might have a question. We will see the minister and Access Canberra this afternoon. One of the things I am interested in asking them is: when you make these decisions, are you only engaging with the lease holder/developer? And it is a bit similar for the Planning Authority: when you make these decisions, is it just the Planning Authority engaging with the developer? Are those the only inputs for information? If that is the case, how is the public interest taken into account in those, particularly when you have individuals in those agencies seeing those lease holders and developers over long periods of time and catching up a lot, how is the public interest taken into account in such a closed process? We might hear, "No, no, no; here are all the other sources of information that we use to take the

public interest into account." I do not know if that will be the answer, but would you have concerns about how the public interest is protected if that is the only way the information is obtained?

Mr Lovell: There should be a notice of decisions and it should be made public so that we know who made the decisions and why those decisions were made.

THE CHAIR: Yes; published reasons for decisions. If they are registered, they should have reasons for decisions in those registers.

Mr Lovell: Absolutely.

THE CHAIR: Great.

Mr Davis: I am sure the minister is busy day to day with lots of decisions and he is focused very much on departmental advice, and so he is not really engaging with the public on all those decisions. I am sure he is on some of them but on many, he is not. If you are meeting with the minister, I think it would be good to explain to him what happened where, at the DA time there was a reasonable alignment with what the community thought that they had signed up for and what the developer and the government were doing and then, as time went on, one diverged away from the other but the community had no knowledge of that. If you could paint that picture to him, it might actually be helpful.

MS CARRICK: Do you have any other ideas on questions for the minister?

Mr Davis: What is this inquiry about that Access Canberra is conducting?

THE CHAIR: The review into controlled activity orders and enforcement powers?

Mr Lovell: Yes.

THE CHAIR: We will be asking that question.

MS CARRICK: There is an inquiry into the Manuka hotel.

Mr Davis: The inquiry that Access Canberra is conducting.

THE CHAIR: We might ask for the terms of reference, for instance, and the timeline.

Mr Davis: That would be helpful, yes.

MR CAIN: What do you know about that one?

Mr Davis: We know it exists. That is all we know.

MS CARRICK: That has been going on for around 12 months, and we do not know whether it is the same one, over that period of time.

MR CAIN: Wow.

Mrs Goodbody: When we ask questions, we are told it is ongoing.

MS CARRICK: Yes.

Mr Davis: It allows the minister not to answer questions because this inquiry is being conducted.

MR CAIN: We will do what we can.

THE CHAIR: Yes. Unless you have any last comments or last things that you want us to know, we might wind up with a very rare five-minute early mark.

Mr Davis: Thanks for the opportunity.

THE CHAIR: It is because you presented such excellent evidence in your submissions and you were so concise in your answers. So thank you.

Mrs Goodbody: Thank you for your time.

Mr Lovell: Yes, thank you so much.

THE CHAIR: Thank you for your attendance today.

Hearing suspended from 12.00 pm to 1.05 pm

FERGUSON, DR SHIRLEY, Private citizen
McALLISTER, MR GORDON, Lyneham Community Association
VICKERS, MR TREVOR, Lyneham Community Association

THE CHAIR: We welcome Trevor Vickers, Gordon McAllister and Dr Shirley Ferguson to our hearings today. As witnesses, you are protected by parliamentary privilege and you are bound by its obligations. You must tell the truth. Giving false or misleading evidence is a serious matter and may be considered contempt of the Assembly.

We have got really clear evidence—I have been following this one for a long time now through the Assembly—that Lyneham community are really concerned about the illegal car park next to Brindabella Christian College. Government, through various arms, failed to act on those concerns. Government actually let the statutory timeframe lapse. What that meant was the matter had to be taken to ACAT for enforcement. Government had provisions under the old act to be able to take enforcement action and could have intervened much, much earlier. Do you think we would be in a different situation now if government had either met its minimum statutory obligations or in fact simply jumped in and enforced when the community first raised concerns?

Mr McAllister: As we point out, this issue has been going on for many years. If the government did something, it should have done it a long time ago, not when the LCA finally sought a controlled order. When you look at all the history of it—a lot of this came out during the ACAT hearings and the submissions that came in—people were complaining about the car park 10 years ago, a long time ago. I guess the funny thing was everybody just assumed, "There's a car park there. It's got problems." We were not even aware of the whole illegality thing, but when you look at all the documents that came out in ACAT and one of our members doing all the FOI requests, various people within the government knew that it was illegal. There were emails saying, "No, this is contrary to the Territory Plan." There were just a number of cases where you think, "Somebody in the bureaucracy knew that there was a problem here," and our view is that basically the government was an accomplice in this process.

It was not as if they just ignored it or were turning a blind eye; they seemed to be willingly wanting this car park to be there and prepared to break their own rules to allow it to stay there, or at least not do anything about it. It was only when we finally got to ACAT where you had somebody who was independent of the process who could go through all the evidence and just clearly state, "Yes, this is illegal. It shouldn't be here." There were three grounds on which it was illegal: it breached its sublease, they had not received development approval and it was contrary to the zoning of that land. They had to admit even before we got to the hearings that it was illegal, and so the hearings were more about what to do about it.

THE CHAIR: What next?

Mr McAllister: Yes. But way back, many years ago, they knew that this was illegal, and they did not do anything about it.

Mr Vickers: Actually, prior to us realising that it was illegal, there were concerns

expressed to various government members and so on that the school was in breach of the sublease. It is not the same as illegality in terms of doing development, but those issues were just swept under the table.

THE CHAIR: Fees and contract breach is a type of illegality. Was it useful to be able to have that tool of a controlled activity order?

Mr McAllister: Definitely, I think.

Mr Vickers: Yes. What would be more useful is somebody willing to use it.

THE CHAIR: We are hearing this a lot. We are at a point of "What do we do now?" and I hear how frustrating that world is. It looks like there seems to be a bit of a binary between retrospective approvals, I believe, or decisions and everybody moves on and leaves it alone versus does that car park get torn up and restored to an open area. Getting rid of the car park at this stage, now that the school has expanded and done all the things it probably should not have done, is probably going to cause traffic and parking problems in the area. Keeping the car park is clearly going to cause pedestrian access and a lack of green space problems. What do you think are the best options going forward? And are there other things that government should be doing? Are there other tools in addition to whatever happens that government should be imposing in that area?

Mr Vickers: With respect, I have a problem with that because essentially what you are doing is asking us as a community organisation to solve the problem. We tried to prevent it from happening in the first place, and this is continually what we are asked and expected to do—here is a problem. If we do what you suggest—what we are suggesting is that people follow the law. If we close the car park because it is illegal, how are we going to solve the traffic problem? Really, it is not our problem our solve. We believe there are solutions, and we propose them every time we have been asked, after I had my little spit about it is not our problem. It was not even our problem in the first place to report that there was illegality going on, and yet as a community organisation we feel we are being asked to be the police and come up with the solution, and there is something fundamentally wrong with that approach.

THE CHAIR: Entirely reasonable.

Mr Vickers: In terms of solutions, as we have proposed many times, I believe that people's behaviour will change if the car park is closed. The parents dropping their kids off will not find it comfortable to try and spend half an hour trying to find a park in the local streets. They will choose other options, particularly if they are encouraged to, such as dropping their kids off at the ample car parks at the hockey centre. The school could run a little minibus from there, perhaps with a teacher on board for the little kids. It would cut down the traffic congestion. It might even get the kids walking from there. It is only a five- or 10-minute walk. There is also parking at Southwell Park as well. These, to me, are easy solutions. The government in the ACAT hearings was trying to tell us that what will happen is that people will just park out the local residents. It is like a scare campaign that you do not want to do that because your local residents will be upset. I just do not think that is the way it would happen.

Mr McAllister: Just on that, I am happy to give gratuitous advice on what should be done, but when you are just—

THE CHAIR: You are a witness to a parliamentary committee. It is the best use of your time.

Mr McAllister: You just look at the guidelines for how you manage traffic. The schools—there are basically three types of parking. There are the teachers, who are there all day. There might be parents who want to go and have a chat to the teacher, and so it is short-term parking. Then you have got people dropping their kids off and driving off. When you look at some of the documentation, a teacher parking there all day does not need to be right outside the front door. They can park elsewhere or catch a bus or whatever. As Trevor said, there is ample parking nearby that is hardly used during the day, like at the hockey centre. Short-term parking—there already is a small car park just near the school or on the street.

I guess my view is that they probably do need to fix up where people drop off kids, because, most recently, where all this started was the safety issue of kids trying to navigate crossing over where the car park was. I think some work could be done in that whole frontage to Brigalow Street, but I could work it out. If they had some decent design professionals to come up with a plan—because the other thing is you would know we are trying to encourage people to use public transport and active travel. During the hearings the traffic guy—even talking to ministers and things, they just say, "Well, people will still drive." They are sort of just admitting that all those approaches fail, that people always want to drive. That is why we have to provide this huge car park.

It was interesting when the car park did close for resealing. Then when it was threatened to be closed after the order, the school actually had to put out information to the kids and to their parents saying, "Here are alternatives. These are where the bus routes go. This is where you could park. There are other ways to get to the school." Suddenly, now the car park is open again—"Just everybody drive there." Surely we should be looking at ways of reducing the need for people to drive their kids to school rather than just assuming we have to have a car park for every person who wants to go to the school.

MS CARRICK: You probably mentioned this before, but in the hearings this morning consultation about—being kept informed about what was going on throughout the whole period and having a plan of how this was all going to resolve. What are your views? Presumably, in your case, like other cases, the consultation and the plan of—knowing where things were going. You did not have any clue about all that, I assume.

Mr McAllister: I think the opposite. I think we were fobbed off most of the time. It was not about consultation. People would complain, and we would just be told, "We'll do some assessment," or, "We'll consider this down the track." Everything was just kicked down the road. I do not think you would call that consultation. It was more just, "Go away. Just don't worry about it." We contacted various ministers, bureaucrats, MLAs, and everybody said, "We're trying to look at it. Something is going to happen." Nothing ever did.

Mr Vickers: Worse than that. We wrote in 2018 to a minister to inform them that Brindabella College was in breach of the sublease. It took several years to discover what the purpose clause was on that lease, and that is when we realised that they were only allowed to have a car park ancillary to outdoor sporting facilities. There are no sports facilities on that land that they subleased. I am not a legal person, but it seems to me that they are in breach of the sublease just on that ground. The response we got was effectively, "This is none of your business. It's a matter between the government and the lessee." That is not encouraging.

Mr McAllister: No.

Mr Vickers: We believe they continue to be in breach, so it is curious, when I read the government submission to this inquiry, that they say for the car park that there is no regulatory action currently underway or proposed. Why is the government not taking action now when everybody knows that they are in breach of the sublease?

Mr McAllister: They also say the controlled activity order is resolved. That is still out there. It is still sitting in the Supreme Court. The order has not gone away, so I think you should question what the hell they mean by that statement.

MS CARRICK: I was interested in your views. In the government submission they say:

> Where voluntary compliance is not achieved, Access Canberra can apply enforcement provisions, which may include the issue of a "Controlled Activity Order" which can:
>
> - direct the owner to do something …
> - direct the owner not to do something …
> - direct the owner to obtain development approval for a particular activity.

Basically, they try to get retrospective approval of DAs for a lot of these things. What are your views on the government's use of the retrospective DA?

Mr Vickers: When I read that part of their submission, the thing that occurred to me that is missing is any timeframe. It is like: well, how long do they wait before it is reasonable? In this case Brindabella College has been in breach of their sublease since the sublease started in 2009. I would suggest that, however many years that is, it is more than enough to have time for negotiation, education and so on, and it is about time that regulatory action was taken.

Mr McAllister: The whole retrospective thing—that came up during the ACAT hearing. They used the term "regularise". They said, "All we need to do is just regularise this car park"—that is, just give it the tick and they will move on. As came out there and we have stated here, the car park does not even comply with proper standards. There are issues with children possibly being hit by cars. It is not a well-designed car park, because they just came in, put down the bitumen, marked a few spots for cars to park. They did not really think about all these other issues of

flow and things like that.

My view is that they are in breach of the sublease. Basically, the sublease really should be ripped up, in my view, because it has not been complied with. We have also got the issue—this is another question you could ask government—because the sublease was with the old owners. As Yvette would know, the school had to be sold off to new owners, so what has happened to this sublease? Has the government actually issued a new lease to the new owners? Because the old lease should actually be null and void now. We have tried to ask a few questions, but nobody seems to know what has happened to this lease, because, from my point of view, it is null and void now. There should be a whole new negotiation over that lease and new payments. They have been paying $1000 a year for that rental of the land, but that lease should not just be continuing as it is with the new owners.

MS CARRICK: The sublease—just tell me more—was with the old school.

Mr McAllister: Yes, with the government and the owners of the school, the Brindabella Christian College. They are the legal entity that ran the school, so the lease was with BCEL, Brindabella College Education Limited, and then it was sold to Community Christian Ministries.

MR CAIN: I guess the Supreme Court is testing a lot of this. Where is the need for law reform to stop this sort of scenario from happening again, do you think? Have you turned your mind to that question?

Mr Vickers: My feeling is no reform is necessarily needed. Let us enforce the rules we have already got, see how they work.

MR CAIN: On that, you think the government itself—I think you have said this—is failing to apply its own laws and rules.

Mr Vickers: Absolutely.

MR CAIN: Which is an unusual situation to be in, of course.

Mr Vickers: As Gordon said, there is a conflict of interest there because the government is a party to the lease, and is also supposedly the enforcer.

MR CAIN: Here is a conundrum for me. Obviously this has had a long history of compliance under previous ownership with the ACT government as well as the commonwealth. Why would the government be bending over backwards in this case when they have had some pretty strong messages to the school as part of its ongoing history, particularly with the previous board and ownership? It is hard to imagine why this is happening. Now we are getting into conspiracy theories a little bit, except I know that when this was raised in another forum, I saw a strong interest in the government saying, "Yes, but we don't want all these cars on the streets." I guess I am trying to puzzle out: why did this get so long on a pathway that was clearly, in your view, not supported by any proper process or decision-making?

Mr McAllister: It is a very good question. I wonder about conspiracy theories myself.

MR CAIN: I am sure you have asked that of the government.

Mr McAllister: Do anybody's kids go to that school? I found it really weird. I think it got to a stage where it became too embarrassing for the government, because, as I said, this has been going on for 17 years. Complaints were being made about the car park a long time ago. I think obviously there were stuff-ups at the start, and I think it just got too embarrassing for the government to admit that they stuffed it up. Once the car park was there, they probably went, "Well, the car park is already there. We might as well use it." They were just hoping that people would forget about it and just, as I say, move on and not worry about the fact that it was illegal, because the government really is not taking ownership of this. When you go back and look at that DPA-12, basically their approach was, "The car park is there. It's sort of being used by the school, so we might as well just give it the tick by changing the plan." There was no analysis of whether you actually need a car park, are there alternatives to the car park, how you design the car park. None of that was addressed. It was all about, "There's a car park there. We might as well use it."

MR CAIN: It is not your problem to solve, but what would be the alternatives? Let's say the car park was closed tomorrow. What would be the alternatives?

Mr Vickers: They would do what they did when they did close it themselves for a fortnight—this was before the ACAT closure—and recommend that people drop their kids off a little bit further away and let them walk, or, as I said before, they could have a shuttle bus from local car parks. I do not think it is a hard problem to solve. I think it is just a smokescreen to say, "Your streets will be parked out and no-one will like it." I think that would happen initially, and then people would get so tired of trying to find a park that they would happily go to where they were recommended.

Mr McAllister: Or just put up a few more "no parking" signs. The government does put up "no parking" signs where it does not want people to be parked during the day. It is not a hard thing to do.

MR CAIN: I am not sure this scenario is present in any of our other sites, this particular set of circumstances.

MS BERRY: There are circumstances in private people's homes and fences encroaching on other people's land. That would happen.

MR CAIN: But I guess not in the current inquiry.

THE CHAIR: No, I think not this particular one.

MR CAIN: It has got a uniqueness about it.

MS BERRY: You have obviously been in Lyneham for a long time, and you know what it was like before they put the tarmac down and it was being used as a temporary car park. What was it like then? Was the car park busy then? Was it a case of a "If you build it, they will come" situation?

Mr Vickers: It was much different then. To start with, the biggest difference is that the school only had at that stage an enrolment of about 600. It has doubled that. They were required to keep it at about that level under I think a 2009 development approval, which they did not adhere to, and no-one enforced it. There just were not the traffic issues. The fact that it was a gravel car park as opposed to tarmac did not really change anything besides the traffic flows.

Mr McAllister: The issue is when it was that small they had a car park on their block.

Mr Vickers: They used to, yes.

Mr McAllister: And they got approval to build over the top of their car park, which is a bit dodgy I think anyway. That is really where the problems started. That is when they decided to use that area as just a rough car park, and then over time they put down the gravel. Weren't the parents complaining there were potholes? It was getting muddy. The cars were getting muddy. That was when the school decided, "Let's just put bitumen down without consulting the government or getting approvals or anything."

Mr Vickers: No. But they had cooperation from the government to put the turning lane in the middle of Brigalow Street and so on. I do not know what the arrangement was, but I do not understand why there was cooperation then without somebody saying, "But are you allowed to have a car park here?"

MS BERRY: I know the previous operators were difficult to engage with. Are the new operators engaging at all around this?

Mr Vickers: They are very pleasant to meet with, but they are no more accommodating.

MS BERRY: Do you have any idea when the court hearing—

Mr Vickers: We were told that they expected to deliver an outcome by the end of September, which has passed.

Mr McAllister: They are up to eight months since the hearing.

Mr Vickers: Their website claims the average is three months.

Mr McAllister: I do not know what is happening in the Supreme Court, but that does seem odd to us.

Mr Vickers: It also seems odd to me that the DPA-12 stuff is going ahead now rather than waiting until the Supreme Court has made its judgement.

THE CHAIR: It also seemed odd to this committee.

Mr McAllister: Yes. But, as you said, the Supreme Court action is not about the legality. As I said, they agreed it was illegal. It was more about whether ACAT had the power to actually close the car park and the all the conditions that they imposed. It

was more about the conditions of the order, not about the fact that they could issue an order. One way or other, there will still be action happening, and obviously the school has started that process by applying for a Territory Plan variation. They have started the process, and I guess the ACAT, or whoever, will set various conditions, because originally they wanted a few years to do it and keep the car park open. ACAT said, "No, it's illegal. You shouldn't be using it. Let's close it." They put timelines on when you had to—I think the ACAT talked about 12 months. They had 12 months to do it; otherwise, the car park had to be ripped up. Putting those strict timelines on it I think was really important, because otherwise this could have dragged on for another 10 years.

Mr Vickers: This is just my speculation, I suppose, but I am allowed to say anything here. I think the only purpose for BCC lodging the appeal is I think they knew that they would not succeed or did not believe that they would succeed; what it did buy them was time. They could keep that car park operating, so they did not lose face to their parent body. It made it look like they had a win, sort of thing. The appeal itself they dragged out for as long as they could. In the end those owners failed, but the new owners keep kicking the can down the road.

MR CAIN: If I might ask: have you had engagement with the new ownership to see if there is a different approach or not?

Mr Vickers: Yes.

MR CAIN: No different approach?

Mr Vickers: As I said a moment ago, they are very pleasant to meet with, but they are no more accommodating or trying to shift—

Mr McAllister: We have had a couple of meetings.

Mr Vickers: A couple of meetings, yes.

Dr Ferguson: I suppose I am here because my biggest concern is that if this gets a tick, which it looks like it will, we are just legitimising people breaking the law. If you want more land, just take it and eventually the government will just tick it off. For me, it is the illegality that is really distressing me in this case.

THE CHAIR: Have you got concerns about whether the public interest is being looked after in this process?

Dr Ferguson: No, I do not think the public interest is being looked after. It has felt like the government has supported the school all the way through, and anyone who makes any objection to that is just ignored really.

THE CHAIR: You have raised some concerns about public liability insurance.

Mr Vickers: Yes.

THE CHAIR: Did that get engaged with at all? Is there public liability insurance in

that space at the moment?

Mr Vickers: I cannot see how there could be because I cannot imagine that any insurance organisation covering something that is illegal.

THE CHAIR: It is certainly concerning, given that I have ridden with the bike bus in that area. Given the safety concerns, that is particularly concerning.

Mr McAllister: The sublease says that the lessee has to have public liability insurance.

Mr Vickers: So it is another breach.

Mr McAllister: We could not identify any evidence that they did have the proper insurance. Even if they did, the fact that it is an illegal car park, would an insurer just say, "No, you're not covered because it's illegal."

THE CHAIR: I will ask the government landlord if they have PL in place.

Mr Vickers: We did inform the minister of this view, but they were not particularly interested. I think we informed the new BCC owners, and they were not interested. Their response was, "We'll cover you."

Mr McAllister: They just said, "We'll deal with it if the matter comes up." They certainly did not say, "Yes, we have got insurance."

Dr Ferguson: Can I just add to that. The children in the school have to cross that car park multiple times a day because there are no playgrounds in their school, and they are doing that with cars moving around in there.

Mr Vickers: Oddly, the Active Streets pathway goes across that crossing.

Dr Ferguson: That is right.

Mr Vickers: I took my granddaughter to school that way today. It is a nightmare every day.

THE CHAIR: It is concerning. On behalf of our committee, thank you so much for your attendance today. We did not have any questions on notice for you. We have a lot for our government and minister. Thank you for that. That is great.

Short suspension.

BERRY, MS ASHLEE, Executive Director, Property Council of Australia

THE CHAIR: Welcome, Ashlee Berry from the Property Council of Australia, for our next hearing. As a witness, you are protected by parliamentary privilege, and you are bound by its obligations. You must tell the truth. Giving false or misleading evidence is a serious matter and may be considered contempt of the Assembly.

Feel free to jump in and ask for guidance at any point. Now, we are not doing opening statements. We do not have a long time.

Ms A Berry: That is fine.

THE CHAIR: You have given us a great submission. Thank you very much for that. I will jump right in. You have spoken about two different categories of enforcement. One of those categories that you spoke about was lease squatting—sorry, I should not say lease squatting—where a site is not developed for its purpose within a certain period of time. You talked about when people are facing viability issues, or where the site they originally acquired does not look like it is feasible for them to develop, and you cautioned against enforcement and termination in those circumstances. Tell me why you think that is not a good situation, to enforce it.

Ms A Berry: We are facing some pretty horrendous economic conditions at the moment and investor confidence is down. At the same time, construction costs are up, labour is up, and taxes and charges are increasing because that is the way that state and territory governments are able to actually balance their budget as much as they possibly can.

So, there is increasing pressure on developers, on investment. And the point of our submission is, in some circumstances it may be appropriate to take enforcement action. But the caution is: if there is a situation where a parcel of land has been purchased and there are certain conditions in the Crown lease to provide some sort of—normally it is around providing public amenity; I think that is normally the crux of it. And the concern from government, the concern from public is, "Well, you have paid a purchase price. You have got a deal as the private sector. And we have given you a parcel of land and we have given you rights on that land, and you have not done it, and so we are missing out as a community."

I think that is the general, you know, reason why enforcement would happen. And the purpose of our submission was to caution against just going straight ahead and saying, "Well, you have not done it, so we are taking the land back or we are imposing other conditions on it." It was about trying to understand the situation, because each of them will be different. And that it is not just about land banking. Most people will want to do something if they can. I am not saying it does not happen, but in most circumstances, people actually want to do what they have said they are going to do because that is how they are going to make a profit. That is what their obligations are, probably, to their financiers and to their investors. So, it was about taking into account the circumstances before taking any action.

That also puts the onus on the private sector as well. We cannot sit there and do nothing. We need to be proactive with governments or, if there are challenges, that

certain steps are taken. And I think we too often have one side or the other, and we need to understand that, particularly with development, there can be a lot of grey. And there are a lot of reasons why things perhaps do not happen in the way that the public want them to.

So, that was the reason for that caution; around, before any decisions are made, we need to understand and government needs to understand why certain things are not happening—and keep track of that, because if there is a continued, you know, trend or something from that, we need to be able to take that and government should factor that in when they are selling the land, given that government is often the person selling the land or the entity.

THE CHAIR: We have got a lot of evidence, lots of different sites. In the last year alone, there were 1,046 complaints made, a lot of those about undeveloped land—lease squatting. Most of the evidence we have received is that government does not do any enforcement at all. They do lots of the education, lots of the engagement. There is lots of activity. I got an FOI back on Big Splash; there was lots of activity, but no actual enforcement. Some of these sites have been there for, you know, three years, 14 years, 17 years. If the thing that the developer or leaseholder has is not viable, and they are unable to show government how they are going to prove that they have a viable thing going forward, would it not be better to skip to the next step and let one of your other members jump in and redevelop that site more usefully?

Ms A Berry: Potentially. I mean, I think it is on a case-by-case basis, but you are right about the level of activity. We see it across traditional and social media. People are concerned when they know that a parcel of land has been sold and something is not happening. But it is also a big step for any government to come in and take land back, even if they are providing appropriate compensation to that landowner.

And I know we have a leasehold system. I know that it is actually the territory's right to be able to do that. They have got the power to do that. And the purpose of that was to be able to change the zoning, change the leases as the city grows. It was to give us flexibility which is, in its own, not bad thing. But it does start to impact investor certainty, and that is something that we should be mindful of. If people looking into the territory go, "Hang on a second, at any point in time the government can come in and take back land"—and have to pay compensation, but still, they can take it back—that certainly undermines investor confidence in the territory.

THE CHAIR: Do you imagine we have got the opposite at the moment, though, where investors are certain that they are not going to get penalised when we have 1,046 complaints lodged in a year, and only 25 of those lead to any regulatory action, and most of that regulatory action leads to nothing except the issuing of notices? Does that not lead to the reverse?

Ms A Berry: Where people are complacent.

THE CHAIR: Where you come to Canberra, buy a site, and you will not have to do anything with it.

Ms A Berry: I almost wish that was the case, but investment into the territory at the

moment is fairly non-existent and so I do not think that is the case. I do not think people are looking and saying, "I am being complacent."

But you are right, it could be an issue. The government has the power to do this, and we know that. We are aware of that. Industry is aware, but there have not been any examples. And I suspect it is because the sheer action of resuming a site and taking it back and going through probably what would be Supreme Court action, is not done lightly—and it should not be done lightly.

THE CHAIR: And would you have any objections to public registers of regulatory activity; more transparency over some of these decisions? A lot of the concern we are hearing is actually just that the community has no information and can get no information.

Ms A Berry: I think it can always be improved. There is obviously a balance. If there are confidential financial discussions going on and that sort of information, we would not want to see that published. But I would have thought that there is a way to communicate more information. Ultimately, so many of the disputes that we have, particularly in the property industry, are about communication. And so, you know, an increase in that would not go astray.

MS CARRICK: My questions are about sports and rec, primarily: Manuka cinema, Big Splash, Hawker, Phillip pool. With Manuka and Phillip pools, the lessee said that it was not viable to have cinemas; it was not viable to run a pool. They have been making the case at Phillip for many years that removing the ice rink would lose the financial viability of the pool. So that led to the government changing the zoning. Whose responsibility is it to look after the public good in these situations, and ensure that we have social infrastructure?

Ms A Berry: Well, ultimately, in our view, it sits with government, to start with. But I think you will find really good developers want to create precincts with the social infrastructure there. It is often difficult who funds it, because in some cases that social infrastructure can return a profit or a surplus. In other cases it does not. But it is about probably the bigger picture. And we see a lot of new estates—you know, sometimes over the border, but just generally—looking at, "Well, how can we incorporate social infrastructure?"

Sometimes it works for the developer to fund it. Sometimes it needs to be done in partnership with government. But primarily, infrastructure priorities are that of government but you will find good developers looking to go, "How can we do this?" because they know that if the social infrastructure is around their property and their buildings, that is a good thing for the community and it is a good thing overall. And we see that particularly here in Canberra, with the private sector leading that.

MS CARRICK: You might see it in a big greenfield area like over in Googong and Jerra. There are some big playing fields going in there. But where we have got brownfield and it is developed block-by-block—

Ms A Berry: It is very difficult.

MS CARRICK: So we will get a pool in each tower, but who does the district stuff? Who does it for the region? And so if we lose it—Because what we have found is that a developer might say it is not financially viable, but who actually checks? Should there be some due diligence on whether it is not viable to have a cinema? Do we just, if the developer says "not viable", we go "okay"? Should there be a level of due diligence about whether something is viable or not?

Ms A Berry: I think there should always be due diligence. And on your point around if we are doing it block-by-block, piece-by-piece, I think that is valid. If you have got a situation where one block is being sold and then another, and then another, then you do not want a situation where it is the last developer standing has to provide all of the social infrastructure. You also do not want the first one in.

We will see this really come to play, I think, in the city over the next few years because at the moment we have got one in four office buildings vacant, and we know that that is going to increase. There are not enough tenants to fill all of those buildings; not enough commercial office tenants.

And so there is a real opportunity to start to revitalise the city, around whether that is conversions to residential, student accommodation, a mix, hotels. And so that is the opportunity from a planning perspective. It does require a lot of trust. It requires a lot of collaboration between government and industry. But if we do not do that at the early stage, then we end up with piecemeal planning and we do not get the outcomes we need.

MS CARRICK: But then that requires planning, and we do not have—I mean, we have our district policies, district strategies, but they do not go into that fine-grained thing around a town centre. So, we do not really have town planning anymore. And even if you were to say to all the developers, "Chip in for a facility," who is going to do the land? The government does not give us any land anymore; they just sell it.

Ms A Berry: I mean, it is a way that—I think we have proposed in the past—this is where something like the LVC collected can go back into community facilities and that social infrastructure. But you are right, it needs someone to take the lead on precinct-level planning. So, whether that is, you know, almost cordoning it off and saying this is a special economic zone; this requires certain extra things—or "We have got someone to take over that planning and control." But it is not easily done.

MS CARRICK: Thank you, Ashlee.

MR CAIN: Just looking at your recommendations, Ashlee, and in the light of the way you think the system should work from a governance point of view, what is your opinion of how the government has responded to, I guess, the failures of the leaseholders at Big Splash, Hawker tennis centre, Brindabella Christian school and Manuka cinema, which we have all heard about today in this committee.

Ms A Berry: I think, rather than responding to each of them because I do not know the sort of intricacies of—

MR CAIN: Well, that is what I am interested in.

Ms A Berry: Correct, and I understand that. I would urge the committee to approach that part of it with some caution because my concern is that, if you look at who has given evidence to the committee, made submissions, it is—not surprisingly—I would say, quite one-sided in terms of it is the community expressing their frustration. And that is an appropriate vehicle for the community to do so, and it would be great if we did not even have to have this committee in the first place.

MR CAIN: I guess I am—and other members may be—interested in whether the Property Council feels this is, you know, maybe one of the sites, "well that was a bit rough" or "that was a bit light, a bit lenient" or "no further action needed." I am interested in whether the Property Council has a view on how each of those different sites is being managed from a governance point of view.

Ms A Berry: We would not take a specific position because I do not think it is appropriate that we say, "yes we need to" or "no we do not", because we do not have all of the information. And I am not sure whether the committee does. Obviously the committee will have all of the information from government, and I know government is appearing later.

MR CAIN: You might be surprised.

Ms A Berry: But we do not have the leaseholders here, and so that is—

MS CARRICK: Why did they not put submissions in, do you reckon?

Ms A Berry: Because most of them are normally quite private and do not want this all aired.

MS CARRICK: Yes, but they are running public facilities.

MR CAIN: That is a generous approach. But I understand what you are saying and why. So even at the broader level, we have got some real examples of how these orders have been administered.

Ms A Berry: Correct.

MR CAIN: And depending on your viewpoint, either applied or just not applied, and maybe even illegally processed. Do you have the broadest picture as you are able to give us? Or as narrow, actually, even better.

Ms A Berry: The way I see it is, government has the ability to take back land or to cancel leases and to change zoning. They have ability to do that. I would urge caution always, because I think that is a really significant thing to do. And I know we are leasehold but it is essentially taking someone's land, and you cannot do it in any other state, you know, without going through a much bigger process. I think government—

THE CHAIR: There is a fairly extensive process here too.

Ms A Berry: Correct.

THE CHAIR: And it has never been followed through to the end, so this is not a quick decision.

Ms A Berry: No, but it theoretically could be a much quicker decision than what it is.

MR CAIN: Although we have seen the Calvary take over.

Ms A Berry: Correct, so it could happen.

THE CHAIR: But that was owned by the government. That was a different situation.

MR CAIN: It was a compulsory acquisition. Not a controlled activity, I get that.

THE CHAIR: That is a completely different situation.

MR CAIN: Yes, but it is still an acquisition.

Ms A Berry: But that was not so much the land, no.

MS CARRICK: But that is what they do in the states, they do compulsory acquisitions.

Ms A Berry: I think that, yes, it can happen in other jurisdictions, with a convoluted process. I think it is probably too convoluted here, given that we have got a leasehold system. But I would hate to see a situation where a complaint is made and government goes, "They have not done that. Okay, here is a letter to say that—" and I do not think anyone is proposing that—"Here is a letter to say, right, your lease is cancelled."

MS CARRICK: We do not want to normalise it.

Ms A Berry: We do not want to normalise it, but we need to get the balance right. And so if someone has said they are doing something and they have not done it, like a community facility—or even if it is not a community facility—if they have committed to doing something and they have not done it then there should be some form of consequence, or at least an ability for the government to say, "Can you please explain to us, in a timely manner, why you have not done this?"

That should be the first step, and I am not sure that the process is being followed as quickly as what it could.

MS CARRICK: Could they ramp up the fines so they just got bigger and bigger and bigger and just forced—I mean, some people have got deep pockets but if you just ramp up the fines, sooner or later, it is going to reach the deeper pockets.

Ms A Berry: Potentially. I mean, the thing is, does the government want to—I mean, it is a convoluted process. It could also be a very expensive process. Do they want to start taking back every single piece of land where someone is not complying? That would be difficult.

MS Y BERRY: And expensive.

Ms A Berry: Correct.

MS Y BERRY: On one of your recommendations, you talk about differentiating between genuine land banking behaviour and projects that have become un-economically viable. You have touched a little bit on that. I just wonder what that would look like? And what would that mean, though, if somebody's project is not viable, then they should not go ahead anyway, should they?

Ms A Berry: Absolutely. We would not want them to go ahead because if projects are unviable and someone tries to push through, that is when we are much more likely to see not just defects—I mean normally, when financial pressures are there, that is when you do see an increase in defects—but also you are putting that business and all of the subcontractors and, if it is residential, putting the homeowners at a serious risk. So, we absolutely would not want that.

That is where it is really difficult to say, this should just be the—you can put a framework together, but it is difficult to say this should be the approach for every single one. Because it, ultimately, is going to need someone to weigh up: is the developer doing all of the things that they ought to? It is almost an equity type argument. You know, you are looking at have they done what they should be doing? Have they done what a model developer would do in terms of, can we mitigate some of these expenses? Can we can we look at changing the design? Can we incorporate other things?

So, for example, at the moment—and this is anecdotal—anything that has got an approval but has not yet commenced construction, I cannot see it commencing construction anytime soon because of just the significant increases in construction costs, in labour, materials. That is all going up at the same time as house prices. And what you can sell something to the market for is stabilising or even declining. And so there will be, I suspect, parcels of land that have been sold for which it no longer stacks up for people to develop on. And they could not start without potentially putting themselves in financial difficulty for that project.

MS Y BERRY: I was just going to ask on that differentiation then, on good developers, they must be concerned when they hear about situations that we have described here—which are unacceptable in anyone's mind, right?—and trying to get the balance right.

Ms A Berry: Absolutely.

MS Y BERRY: Would your members accept, with a balanced approach, more transparency around the orders that are put in place and the process? Because that is what we have been hearing from witnesses, that if there was more transparency around the order being applied, that would help as well.

Ms A Berry: I think that would absolutely be appropriate. I mean, as you said, it is a process. So, if there is an order put in place and that order is not complied with, but we know about the order, then I think that warrants further action. And I am not sure

anyone would quarrel with that, because we need a fair market. People are buying these, either recently or historically. We want competition. And we do not want people to say that they are going to do something, pay a certain price and then not do it.

But we do need to weigh up. And I think that, as part of that, you would get transparency around, "Well, I have not been able to do these things". And I am probably talking more from a development perspective rather than the examples that Mr Cain gave earlier, but it could apply to both. “We have not done these things” or “We cannot do these things, because of these barriers.” But you have to be able to demonstrate that, and if you cannot, even confidentially, then that is a problem.

THE CHAIR: I am interested in this situation where something is not viable. It is not viable; it is not going to magically become viable. In that situation, the only way to move to a new world in which that land is usefully used is for it to be transferred to somebody else and have a different project there, or have the person who is there at the moment have a different project there. There is no point. Like, if something is not viable, it is not viable. Why wait for 17 years just in case something comes up? Do you think supply costs will drop? We have got to get it going.

Ms A Berry: Correct. It could be a range of things. So, sometimes people do buy things for the future; they are planning ahead, absolutely. But 17 years is very long foresight.

THE CHAIR: But can they not sell it?

Ms A Berry: Well, if there is someone willing to buy it, yes absolutely. But there is not always a long list of people ready, willing and able to purchase, whether it is social infrastructure sites or just standard sites. If you look at what is on the market at the moment in Canberra—either advertised for sale or on the market but perhaps not, you know, not flashing that it is on the market—there is a lot. And there is a lot that has not yet sold, because the price that people need to get, either to clear debt or to satisfy investors, is not there.

THE CHAIR: Sometimes if you speculate, you lose. And if you are putting something to the market and expecting a price that people will not pay, you have probably got the wrong price.

I am just trying to work out how we get to a world where a site that is not feasible with what that person wants to have, we do something other than just leave it there forever. They need to sell it, they need to move on, they need to get somebody else in to do that or something else that is viable.

Ms A Berry: In a perfect world, perhaps, but if you have got banks there with covenants and you are expected to sell it for a certain amount, then you cannot sell it for less than that.

THE CHAIR: Maybe it goes to the bank.

Ms A Berry: If they would like to take it, but not many people want to do that.

MR CAIN: I only actually wanted to comment, in the flow of the questions from Yvette and Jo. Do you imagine a scenario where the acquisition of the lease by government would really be appropriate?

Ms A Berry: Absolutely.

MS CARRICK: Particularly for social infrastructure.

Ms A Berry: Particularly. But it depends on what government wants to do with it. It could take a lot of vacant land, or land that has, you know, either dilapidated buildings or buildings that perhaps are not at the capacity that we want them to be. You know, it could go and buy all of the vacant office buildings in the city and take them back, as part of this; acquire them and then repurpose them and sell them to the open market with residential and hotel on the lease purpose clause. So they could do that. But that is a big task. It is also a very expensive task. And I just do not see the appetite for that.

But if someone has bought something and paid money and is not complying with their lease, is not being transparent, is not being open, and the community is suffering, then let's go through the process, let's be transparent, and let's do something with it. That is my two cents on that part.

MR CAIN: Sure, thank you.

THE CHAIR: Thank you. On behalf of the committee, thank you so much for coming in today. There were no questions on notice, so we will then call a very short break.

Short suspension

MILLER, MR MARTIN, Private capacity

THE CHAIR: Peter Cain sends his apologies. He very much wanted to be here, but he cannot be. We welcome Martin Miller.

Mr Miller: I am appearing as a private individual. I am a member of the Save Phillip Pool group. This part of the hearing goes to my private letters and emails that were sent to various people, one of whom is the former minister for sport. I would rather be over there and have her sitting here at the moment!

THE CHAIR: There may be an opportunity. Thank you, Martin. Note that, as a witness, you are protected by parliamentary privilege and you are bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Feel free to jump in at any point and ask us for guidance on that. We are not taking opening statements. We have your submission and all of the documents that you sent through. Thank you very much for all of that extremely useful material. Martin, do you reckon the Phillip pool will open on 24 October?

Mr Miller: Yes, it will be but at a reduced capacity. The lessee has disconnected two of the smaller pools. They erected a fence and put in fixtures and fittings, and that goes against their Crown lease. I made a complaint to Access Canberra and they said they have inspected. I wrote back to them about specific parts of the Crown lease and the Building Code, and also electrical safety measures, regarding power that cannot be installed within a pool zone. As a former electrician, I can say there are two major zones around a pool. They have installed a shipping container which seems to have power to it. I do not think it has been properly inspected.

THE CHAIR: Interesting.

Mr Miller: They had a DA approved last year. They put in an amendment, but they need to have a DA that varies the lease and they have not done a variation to the lease, so that means they cannot start work, but they have started work.

THE CHAIR: Nine days out from opening day and they do not yet have a compliant DA for what they are doing?

Mr Miller: No. They are planning to only open the 50-metre pool. There is some conjecture in the current Crown lease. It says "heated swimming pools", but there is a line about words meaning plural and singular and vice-versa—

THE CHAIR: Yes. I saw that.

Mr Miller: which is in any different lease. I had someone look at that and they said that it means "pools". They should be opening more than three pools on that site until they get a DA to vary the Crown lease—and, if they are ready to start work, that is it.

THE CHAIR: You have been pretty deeply engaged in this for a long time.

Mr Miller: Yes—for a long time. I have written several letters to the former minister

for sport, over several years. It was a public pool. There is no doubt that, over the history of the site, it was an ACT public pool. The Auditor-General made a statement saying that the Phillip pool was managed under a series of 10-year leases from 1979, and said:

> Following the granting of the original lease the pool was identified as a 'Commonwealth improvement' and in subsequent leases as a 'Territory improvement', meaning the Territory retained control of the asset. Short term leases allowed the government to review the operator's performance and ensure the facility continued to meet public needs.

When you look at the lease insurance, it says that the lessee shall insure the site under the names of the current lessee and the territory. In the variation in 2002, it states that the pool is a government-owned asset. I think the government are now trying to say that these leases were backdated from 2008, when it was granted a 99-year lease, but they never owned the pool or were never responsible for the pool. That is incorrect.

A statement that Dr Wayne Houghton, the former lessee, made to variation 259 stated that the government is responsible for maintenance works and "there is a major crack down the spine, leaking water into the groundwater. There are other mechanical problems." He said, "We've only been able to keep the pool open because the ice rink subsidises the pool." This is the kicker: "The pool is a loser. It loses all the time, but the revenue from the ice rink has been able to keep the pool open." Subsequent to that, within 12 months the ACT former Minister for Planning, Andrew Barr, agreed to a 99-year lease. It was signed on 12 May 2008 and was backdated to July 1999. That structural crack is still there. That has never been repaired. You could argue that, under the Crown lease, there has been a failure to repair.

THE CHAIR: We have an Auditor-General report into the issue. There was a rezoning decision with the new Territory Plan. The Integrity Commissioner has announced that he is looking at this. No-one knows what the Integrity Commissioner is looking at or what they will find until they have finished their investigation. You have engaged a lot with Access Canberra. I am interested in how you have found Access Canberra and government responses to the reasonable questions you have asked. Did you find them responsive? And do you think the public interest has been looked after at all with those points?

Mr Miller: I do not think so. The turnaround for some of the emails was almost as long as for an FOI. It took months. In my submission I put a timeline. During that timeline, I spoke to someone in EPSDD about compliance with the lease, and they told me that Access Canberra are now responsible for those lease conditions. So I had to make another complaint. This was after Geocon had bought the site. My issue is that no inspections were done during the whole period when the pool was closed. The reason they closed down the pool was not just because of COVID. You will see in those FOI documents that the government was actively discussing reducing the size of the pool. The lessee made a complaint through a legal team about the new ice rink in Tuggeranong, saying that it would not make their business viable. So it was not just about COVID and not getting maintenance done, because, as I said, I wrote to some of the private operators and they said they had no trouble getting maintenance done. I would argue that, in that period, after the second closure between 2021 and 2022, the government did not do enough.

THE CHAIR: Between 2021 and 2023, the government did not do inspections or enforcement.

Mr Miller: They did not do enough to get the pool open by November 2022. And, as we found out, the pool was sold to Geocon, but the thing is that the manager was still employed at that time. I think he was employed for that season before he was let go. You will find that letters from the leasing area to Geocon were sent about getting the pool open by 2023. They were released under FOI as well. The three little sentences in the ACT government submission are entirely not correct.

THE CHAIR: Tell me about the three sentences you mean.

Mr Miller: They say:

- No regulatory action currently underway or proposed.
- Access Canberra engaged extensively with owners in 2022 to ensure opening of pool …

I would argue that they did not, because the pool did not open by November 2022 and it did not open at all that season.

THE CHAIR: I will hand over to Fiona.

MS CARRICK: Thank you. I declare that I have sponsored petitions for Phillip pool. The government sold the pool in 2008. That is clear because we have a brief that says that.

Mr Miller: Granted in 1999—a new lease. Sold, you could argue.

MS CARRICK: The owner, Dr Houghton, talked about the pool being "a loser" all those years ago. The lease required maintenance of the site. What sort of maintenance and investment happened over all those years, going way back for decades, really? Did he comply with the lease well enough to actually maintain the site, and did the government do enough to ensure that the maintenance standards were kept up?

Mr Miller: As a user of that pool, I would say that the pool was kept in fairly reasonable condition. I found only one document that said that any water testing was done. I would say that, particularly for public health and safety, you would require some of the public pools to have proper inspections done, or that, at least, the inspections that they do themselves are sent away—pool testing and stuff like that. But, in terms of maintenance—

MS CARRICK: The surrounding amenity of it all too. That is part of it.

Mr Miller: It is hard to say because I do not think any inspections were done.

MS CARRICK: Yes, but, when one goes into the toilets and into the—

Mr Miller: That is right. There was the state that some of those toilets were in—

unworkable conditions and stuff like that. They were terrible. Even the former manager talks about some of the health and safety issues with that site over the years. He said he could write a book. There is the Public Pools Act. Does anyone know about that? But the thing is that it only pertains to ACT-owned public pools. I would argue that this needs to include all pools open to the public. Regarding the meaning, it says:

> (a) means a pool facility that is—
> (i) owned by the Territory; and
> (ii) open to or used by the public (whether or not on payment of money); and
> (b) includes a pool facility managed under a facility management agreement.

It does not say "private operators" at all. I did not put any recommendations in my submission, but I think that this needs to be updated to include all pools that are open to the public.

MS CARRICK: Martin, when the government committed to the ice rink—you mentioned this before—what impact did that have on investment in the pool? It created a lot of uncertainty about the future of that site, and, according to those FOI documents, it is something that the owner, Dr Houghton, went to the government about—future financial viability without the ice rink—in seeking to have the zoning changed.

Mr Miller: That is correct. Firstly, the government announced that the new facility would be in the south, not necessarily Tuggeranong, and the site was later announced—I think in 2019. Straight away, as the only other ice rink operator, they thought that their site was unviable.

MS CARRICK: And therefore did not invest in it again.

Mr Miller: They did not invest in the pool. All they did was the minimum amount of maintenance to keep that pool open under the requirements of the Crown lease. I saw a document where the lessee of the pool had an option to tender for a new ice rink facility. Following my emails to John Raut, the manager at the time, he said: "As for partnering with the government to build a new facility on the current facility site, it would not be possible for a number of reasons. The owner, Dr Houghton, is retired. I would like to retire. We are both in our 70s. A new venture is not an option. The reason for this site being the wrong option for any facility is that the current facility would have to shut down and there would be no ice facility for at least two years. This would kill off the ice sports and it would take many years to rebuild at the current levels of participation. There are many reasons why this centre is not viable. The age of the facility and what is above for an acceptable 40 years is no longer appropriate."

He then goes on to say, "If the government would like to buy the site," but they cannot see that, and says, "The pool is also dependent on the condenser for the ice rink to heat the pool and water. With the new ice rink planned for a different location, there is no future for the pool liners. The government wanted to purchase it back from the owner. I cannot see this happening." I wrote to Minister Berry not long after that.

MS CARRICK: You have to wonder about the government's—

MS BERRY: Sorry—before you go on—is that paper that you have just read from part of your submission?

Mr Miller: No; it is not.

MS BERRY: Are you able to provide that for the committee?

Mr Miller: Sure. I might have to provide a redacted version of it.

MS BERRY: Sure.

THE CHAIR: That would be great. Have a chat to the secretariat after the hearing and we will work out how we can do that.

MS CARRICK: If the government commits to a new ice rink, which seriously undermines the financial viability of the Phillip pool site, there would be a question about the government's competition policy, because they have completely undermined the financial viability of the site.

Mr Miller: That is right. They did that. I was listening this morning. It was not under the Labor government; it was under the Carnell government, about providing the new CISAC facility. The owner of the Kippax pool and the owner of Big Splash both—

THE CHAIR: Raised concerns at the time. They certainly did.

Mr Miller: raised concerns at the time about a new pool going in. It was not long after that that the Kippax pool closed. They were the only other indoor pool at that time, plus they were providing swimming lessons. We had the same situation with Deakin pool. We had another 50-metre pool in our location.

MS CARRICK: We lost two, and now we have zero.

Mr Miller: That is right. There was a 50-metre pool and a 25-metre pool, and it was reduced to only a learn-to-swim facility which is not open to the public.

MS CARRICK: And it has four lanes. Regarding the FOI that recently came out, you can see over years—from the commitment for the ice rink—the toing and froing about what to do with this site. In 2020, there was a document that looked at the needs. It did not really get into the pool, but it got into other indoor sports and needs for the community, but then it seemed to shift the focus.

Mr Miller: That was the SGS—

MS CARRICK: The one in 2021.

Mr Miller: Yes—which I have tried to FOI several times.

MS CARRICK: That does not deal with the pool, but it does talk about—

Mr Miller: It mentions aquatic facilities.

MS CARRICK: It talks about community infrastructure, anyway. Throughout that whole FOI process and all the emails back and forth, you can see the whole shift: looking towards what the developers need and that the developers want to develop the site. It shifts to that, and there is a change to the zoning. Do you think that the ACT government has been an accomplice in the whole demise of this site?

Mr Miller: Yes. It is very disappointing. With you as the community council chair, we both attended district planning studies. That was not mentioned at all. There was no mention about reducing the size of the pool, even though that was happening at a ministerial level over a number of years, right until the site was sold, which happened within a week of the new draft Territory Plan coming out.

MS CARRICK: And there was no discussion about the issues with the community in the whole lead-up to that sale.

Mr Miller: No. And, if you read the Woden district policy, it just says one sentence about the pool. You have to go to the supporting documents to find exactly where the reduced pool size and other things are. The suggestion that no-one was building any 50-metre pools or indoor 50 metre pools was blatantly wrong. I cited two sites. They used the ANU. It says that one was built by the ANU itself. It is managed by Leisure. There is also one at Batemans Bay, but I have a list of 20 to 25 sites across the country that are actually upgrading their 50-metre pools and adding 25-metre pools as well. Hardly any of them are reducing the size or removing 50-metre pools in those developments.

MS CARRICK: With respect to the population forecast, the response to the motion I moved talks about 70,000 people for a 50-metre pool. The town centre—and it is Weston Creek's town centre as well—services a big region. The town centre has a five-kilometre catchment. Why do you think they do not look at the catchment when they look at the pool? The population forecast comes down to old Woden forecasts.

Mr Miller: Yes. I have taken issue with some of those forecasts. What is needed has only come in over the last few years. Many smaller regions around Australia have 50-metre pools. Goulburn has the same population as Woden and they have upgraded their facility and kept their 50-metre pool, and they have installed a 25-metre pool as well. There is no history behind those population forecasts. It is now with the Royal Life Saving Society. They have come out with a table. Woden still fits with that area for a public pool. Plus, regarding the way the ACT was designed, with five separate town centres, they would have equal facilities. You cannot say that you put one eight kilometres away, halfway up a hill, and say that it is a pool for Woden. It is ridiculous, and it takes an hour to get there by bus.

MS CARRICK: The current population forecast in fact says that, in a five-kilometre radius around the Woden town centre, there will be over 150,000 people by 2065, so I am not sure why we are not planning for the future.

Mr Miller: That is correct. You cannot remove facilities, and that is what has been happening, even though some of them have been privately owned. The government

rezoned that whole area from accommodation and leisure to commercial.

MS CARRICK: And they knew what would happen.

Mr Miller: The idea that the private industry is going to provide all these facilities for us has not happened.

MS BERRY: Mr Miller, you and Ms Carrick have worked very closely together over a number of years across a range of areas in the Woden precinct, particularly around the pool. That is correct, isn't it?

Mr Miller: I was part of the Woden Valley Community Council from 2006. I got involved when school closures happened. I was a community member and then took over as chair from 2014 to 2015 or 2016. I actually encouraged Fiona to go on the Woden Valley Community Council, and she took over as president. I was dealing with my parents' health issues with at the time.

MS CARRICK: I joined the committee and then I took over as president.

MS BERRY: So you are pretty close.

Mr Miller: We certainly have conversations and that sort of thing.

MS BERRY: Pretty close friends. Did you discuss coming to the committee today or your witness statement with Ms Carrick before coming to the committee?

Mr Miller: As in—

MS BERRY: The witness statement that you have provided—

Mr Miller: Today?

MS BERRY: Your submission and/or coming today?

Mr Miller: No. That was all provided through the committee.

MS CARRICK: We have not discussed this.

MS BERRY: I was curious. We were not talking about controlled activity orders, so I was curious.

MS CARRICK: It was on the lease. It is about what has happened to the lease over the time.

Mr Miller: You will find that the last letter that was sent by Nick Lhuede talks about a controlled activity order and Geocon.

MS BERRY: For a moment—yes.

THE CHAIR: Martin, is there is anything else that you wish to say to members of

this committee? You could probably take another couple of minutes if there is anything that you want to say.

Mr Miller: I am just concerned about people who have sat in this spot, regarding the privilege statement and telling the truth. I would say that, over time, during some of the committee hearings, people have not been telling the whole truth. They are certainly leaving things out. There is the statement that I read—that questions were asked of the former minister for sport about Phillip pool and that she said it is a privately owned facility and it is a matter for them. As we know from those FOI documents, it has not been a matter for them. The commercial operation has been an issue for this government since May 2021, when they decided that they were going to reduce the size of the pool and they were going to build the ice rink facility somewhere else. The commercial operation has not been just a matter for the private operator; it has also been a matter for this government.

THE CHAIR: Martin, thank you for coming in today and for your evidence. I think you are already aware, but I would remind you that we have an Integrity Commission. If you have any concerns, you are welcome to report any matters to them. We thank you very much for your time today.

Hearing suspended from 2.36 pm to 2.49 pm.

STEEL, MR CHRIS, Treasurer, Minister for Planning and Sustainable Development, Minister for Heritage, and Minister for Sport and Recreation
BENNETT, MR JAMES, Executive Group Manager, Building, Design and Development, City and Environment Directorate
CILLIERS, MR GEORGE, Executive Group Manager, Statutory Planning, City and Environment Directorate
ENGELE, MR SAM, Deputy Director-General, Environment, Planning and Policy, City and Environment Directorate
GREEN, MR BEN, , City and Environment Directorate Executive Group Manager, Policy, Planning and Built Environment
RYNEHART, MR JOSH, Head of Access Canberra
VAILE, DR JODIE, Executive Branch Manager, Building, Planning and Land Use Regulation, City and Environment Directorate

THE CHAIR: We welcome Mr Chris Steel MLA, Minister for Planning and Sustainable Development, and officials from the City and Environment Directorate. As witnesses you are protected by parliamentary privilege and you are bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. We will proceed directly to questions. I will just note the apologies of our colleague, Mr Cain, who very much wished to be here but cannot for personal reasons.

I actually just wanted to start with a bit of a case study of Big Splash as a bit of an example of how these controlled activity orders and enforcement powers have been used. I got some additional information out under FOI. I am really interested—in December 2025 Access Canberra formed a view that they could terminate the lease. In January 2026 Access Canberra issued a notice of intention to terminate the lease under a controlled activity order. Then in April 2026 Access Canberra changed its mind. Can you tell me what happened between January this year and April this year that led to that change?

Mr Rynehart: I will start, and I will hand to Dr Vaile to talk about the detail. The use of powers under the new Planning Act—in any new piece of legislation and in any new process as we work through a process, in this case an enforcement process, at each step of the process we assess information that we have available to us and we check the most appropriate steps forward. As a general statement, that is true for enforcement. In the case of the scenario you are talking about, the process that is worked through is effectively that a show cause notice is issued, information is provided and considered and a decision is made. At the point of making the decision the delegate—

THE CHAIR: Which decision? At the point of making which decision?

Mr Rynehart: Sorry—the decision in April. The decision not to proceed with termination. The delegate at the time formed a view that the termination of the Crown lease by the Territory Planning Authority is properly characterised as an acquisitional property and that under the section 23(1)(a) of the Australian Capital Territory (Self-Government) Act it only permits the Assembly to make laws which provide for acquisitional property on just terms, which means that the act itself must include provisions which provide an entitlement for the lessee to be paid just terms and that,

while the act provided some compensation, under sections 360 and 364 of the act it would be unlikely that the compensation payable would equate to just terms. That effectively meant that termination was not a viable pathway forward for the decision-maker.

THE CHAIR: Why did the delegate only turn their mind to that issue in April? Why did they not turn their mind to that issue in December before issuing the notice of intention?

Mr Rynehart: I think, as I said at the beginning, as we work through processes, as each step is taken we assess where our position is at and the information available to us at the time to make decisions.

THE CHAIR: Did the delegate make any assessment in December or January about whether it was legal and valid to issue the notice? Or was there no assessment made?

Mr Rynehart: Going back to the 2025 show cause notice and then the January notices?

THE CHAIR: Yes. In December we have records that the delegate was considering this issue. In January the delegate issued a notice. Did the delegate consider whether they could issue that notice in December and January? Or did they not consider that until they got to April?

Mr Rynehart: There are various sections that are utilised at each of those steps along the way. The consideration relating to sections 360 and 364 did formally occur as in April—the different sections that are applied for each step of the way. As the delegate made a decision to progress through the process, certainly they satisfied themselves that they were comfortable to move forward on each of the steps.

THE CHAIR: Did the delegate or Access Canberra obtain legal advice?

Mr Rynehart: Yes, they did.

THE CHAIR: Did they obtain legal advice in April or in December or in some other time?

Dr Vaile: I believe both.

THE CHAIR: I am interested if the delegate obtained legal advice in December and then issued a notice of intention. In April had the advice changed?

Dr Vaile: I believe that it took some time to prepare the advice because it is quite a complex matter.

Mr Rynehart: If I could just say, in relation to legal advice, it is difficult for us to provide much information obviously because of legal professional privilege, which we are unable to break.

THE CHAIR: I am a lawyer by training. I do understand legal professional privilege,

which is why I phrased the question as I did—"Did you obtain legal advice?"—and I did not ask you what was in that legal advice. We have got on record that there was some legal advice in December. We have got on record that there was some legal advice in April. Please feel free to come back and correct the record if that is not the case.

I am interested in knowing what information sources the delegate used between January and April to change the decision. Did they talk to the leaseholders? Did they talk to other individuals? Was there community consultation? If there was some legal advice, I will not ask you what was in that legal advice, but what were the sources of information that they used that led to them in April deciding not to terminate the lease? There were two decisions in there: "I am not going to terminate the lease" and also "I no longer think we can terminate the lease"—two things.

Mr Rynehart: I might hand to Dr Vaile for the detail on that.

Dr Vaile: I can just correct the record there. The formal request for legal advice went through in January.

THE CHAIR: Can you, either now or later on notice, tell me what month there was legal advice on this matter and then tell me in whatever terms you can, so as not to waive your legal professional privilege, what the advice was? If it was about lease termination, if you can tell me that, tell me that.

Mr Rynehart: We will provide whatever we can, absolutely.

Dr Vaile: I think that probably one of the easiest ways of describing this is to go to the former construction occupations registrar's notice of decision. He talks about a number of steps and the steps that he took in considering the interpretation of the requirement, particularly of the requirement for what the premises was to be used for in the provisions set out in the Crown lease. He also discusses the engagements that he had with the lessee across the period, the steps and, in earlier times, the lack of steps that had been taken to come into compliance when he was making those decisions.

THE CHAIR: There was quite a lot of engagement with the lessee. When does the information about the public interest come in? There were other stakeholders here. The community had a pretty big interest, and Big Splash had a pretty big interest, but Access Canberra is only engaging with the leaseholder, who has a significant commercial stake in the game. Where does the public interest come in?

Dr Vaile: I think that in this situation Access Canberra has to apply the law, and the law talks very much about natural justice in terms of the engagement with the lessee. That is the path that has been followed by Access Canberra throughout this in terms of that particular part of engaging, because in a matter of the compliance with the Planning Act it is those actions that we are assessing the lessee's actions against.

THE CHAIR: We do have decision-making guidelines for Access Canberra and guidelines for how you make these regulatory decisions. Do those require Access Canberra to consider the public interest? Or do these only require procedural fairness

for a commercially invested leaseholder?

Mr Rynehart: The decision-making guidelines apply to all decisions made in Access Canberra. At the end of the day the decisions need to be made in accordance with the relevant legislation and the sections that apply, so it is probably true to say both in certain circumstances, so in some legislation there is community consultation and decision-making and in others there is not. Decisions made would apply directly to what the legislative provisions are.

THE CHAIR: Is it Access Canberra's view that if Access Canberra were to terminate a lease in these circumstances that government would need to pay compensation?

Mr Rynehart: I think it is Access Canberra's view that it is not open to us to terminate this lease in these circumstances.

THE CHAIR: At all, even with compensation paid? It is not open to the government to terminate the lease at all, even with compensation?

Mr Rynehart: In this circumstance we are of the view that we do not have a viable pathway forward for a termination of the lease.

THE CHAIR: When you say viable, that means not even with payment of compensation?

Mr Rynehart: We have to consider prospects and proportionality et cetera in the decision-making. I think that if you are talking about determination under that specific section, we do not see a pathway forward relating to whether the compensation—

THE CHAIR: So there is no ability for government to terminate a lease where there is repeated noncompliance?

Mr Rynehart: I think it will come down to the individual lease is the answer. I cannot provide a generalised answer for all cases, but certainly it comes down to the specific conditions of the lease itself.

THE CHAIR: There is a section in the act that talks about lease termination though. I am really confused.

Mr Rynehart: I think I will refer back to the original comment I made about the consideration relating to just terms and compensation under the act and that section itself and having the just terms element within it. We at this stage do not see a way for us to apply that section in the circumstances where we have got to that point in the process.

THE CHAIR: I am not trying to be silly here. I actually do not understand. The information I am after is: can government terminate a lease only if they pay compensation? In which case I am going to say: did you tell cabinet, did you tell the minister and did you tell your executives what that compensation might be in this case? Or are you saying there is absolutely no ability to terminate a lease and that lease termination provision on just terms is actually not even—you cannot even do

that? I actually do not know because I feel like I have heard two different things.

Mr Rynehart: I think this process has identified to us that it would be very difficult to apply that section as it currently stands. The challenge is speaking about in all cases as opposed to a specific—

THE CHAIR: We can speak about this specific case. The information is out in the public.

Mr Rynehart: In this specific case in the delegate's mind the decision was that termination was not open to them under this section.

THE CHAIR: Including on compensation?

Mr Rynehart: The use of that section was not open to them.

THE CHAIR: That was clear. The lease—

Mr Bennett: Ms Clay, I might just jump in there to add to that question. Through the work that our regulatory colleagues have been doing our policy area is also undertaking a review of the legislation and looking at the lease compliance powers, so this is one of the issues that we are actively looking at under our review: learning from some of these case studies and looking at the legislation and what that means.

The characterisation of termination—when the territory terminates a lease, if that is characterised as an acquisition of property by the territory, then that can only happen on just terms. Exploring how that works in the different scenarios, if the territory is acquiring land and there is the property right to use that land, that may be characterised as an acquisition of property, and that can only proceed on the basis of a just-terms acquisition based on the constitutional and Self-Government Act restrictions. We are actively looking, in our review of the legislation and the policy work that we are doing, at what those provisions look like now and whether there is further support that is needed to those legislative provisions.

THE CHAIR: I have a strong interest in that review, and if we do not get to it, I will lodge questions on notice. I remain confused. Mr Rynehart has told me that the current provisions cannot allow for a lease termination in this situation, including on just terms with compensation. Mr Bennett said something slightly different. If it was possible to terminate the lease with compensation, you are going to have to correct the record, because then I would like to know if you did any kind of assessment about what that compensation was. If it was five bucks, I reckon you should have gone ahead and done it.

Mr Rynehart: For clarity, the consideration of compensation and just terms were considered as different concepts in this decision, so compensation itself and whether it equated to just terms was part of the decision-making.

THE CHAIR: Did Access Canberra consider what the quantum would have been in an acquisition?

Mr Rynehart: I do not believe so.

Dr Vaile: No, we did not.

THE CHAIR: That was clear. In that January to April decision, when Access Canberra decided not to proceed with a lease termination, they did not make any commercial assessment as to whether it would cost government $1 or $1 billion. There was no assessment.

Dr Vaile: No formal commercial assessment was made.

THE CHAIR: That is great. That was clear. I have had this question put to me many times and I have asked it a few. The lease requires the operation of a pool and restaurant. It looks like they are in breach of the lease. Did Access Canberra consider enforcing the terms of the lease rather than enforcing the terms of the act?

Dr Vaile: The first thing I would say is that the lease permits; it does not require, and that means that there is a situation where we are looking very closely at what courses of action are available to Access Canberra under that definition. Could you repeat the rest of the question?

THE CHAIR: What I am trying to get to is—I believe the leaseholder is in breach of their lease because they are not operating a pool or a restaurant—did Access Canberra consider enforcing the terms of their lease? We have been told that Access Canberra considered they could not enforce the terms of the Planning Act. Access Canberra did not make any assessment about the quantum involved in an acquisition. Did Access Canberra consider if they could—government as the leaseholder—enforce the terms of the lease?

Mr Rynehart: I may need to come back on notice. I cannot recall whether there was a formal assessment of that. I do recall being in conversations around it, around the comparative differences, but I cannot recall. I may need to come back on notice about what was actually considered specifically.

THE CHAIR: Please take that on notice. That question was taken on notice. The question is: did Access Canberra consider whether they can enforce the terms of the lease, not the terms of the act, but noting that the act does require that a lease be used for its purpose? If the lease says the site is to be used for this purpose or this purpose and it is used for neither, it is in breach of the lease.

Mr Rynehart: I will come back on notice for that as well.

Mr Engele: Just in relation to that, it might just be worthwhile giving a little bit more about the policy work in relation to the permissive nature of some leases versus the prescriptive nature. I think that goes to the heart of your question.

THE CHAIR: It can be quite specific, because I have read this lease, so we actually do not need general case information here.

Mr Bennett: This particular lease gives the lessee the right—it says, "The lessee may

use the land for one of the following purposes," and it lists three purposes. It is characterised as a permissive lease. It provides permission to use land, and it restricts the uses of land down to a certain category. That is distinct from another type of lease, which may say that the lease must be used for the following purposes and must have certain hours of operation and the like. There are distinct categories and classes of leases.

Ms Clay, in terms of the idea of establishing breach, in order to enforce the legislation and the provisions of the Planning Act and the controlled activity orders we need to establish breach and we need to establish breach of the lease purpose clause. That comes back to whether the particular lease is written in a permissive way in that it permits certain uses or it requires or mandates certain uses. That is necessarily a consideration of the particular terms of a lease and the particular conduct that is going on about whether a breach of the purpose clause of that lease is going on in that particular scenario. That necessarily depends on whether it permits certain things to happen or it requires and mandates certain things to happen.

THE CHAIR: Do we have examples of Crown leases that have "must" provisions?

Mr Green: I think this particular site, back when it was first put out as a rental lease by the commonwealth back in the 70s, was very clear on what those expectations were in terms of specifying hours of operation, maintenance requirements down to particular elements and the age limit of participants that could attend the venue without supervision of adults, for example. This lease in and of itself, when it was held by the commonwealth government and was a rental lease, is an example of that. I think we can happily provide a copy of that on notice to the committee.

When the commonwealth government made the decision to sell this lease, they sold it as a commercial lease. Again, I am happy to provide the correspondence that is on file to that point. It does show the progression of the Big Splash site from a rental lease with very strict conditions around operation and use to the lease that we have today when it was sold by the commonwealth as a commercial lease.

THE CHAIR: Yes, please; we will take that on notice—thank you. The government submission lists that there is no regulatory action underway for the Big Splash site now, which would include, one assumes, no inspections, no controlled activity orders and no fines. Why is there no regulatory action, given that the lessees have said that they cannot sell it and they are not opening it?

Dr Vaile: It is not subject to a formal regulatory action at this point. However, my team are out there monitoring the site on a regular basis, including yesterday morning.

THE CHAIR: Are they considering issuing fines?

Dr Vaile: They are considering what actions are being taken on the site. For example, the most recent hole in the fence has been rectified in accordance with the communications between my team and the lessees. We have also noted that preparatory building materials have arrived on the site as of yesterday morning as well.

THE CHAIR: For what?

Dr Vaile: That remains to be seen, but in preparation for 1 November is what we understand.

THE CHAIR: You are the leaseholders and the regulators. How do you not know? If they have got building materials, have you not asked them what they are building?

Dr Vaile: We certainly have talked to them. We understand that their intent is for an unlicensed family restaurant.

THE CHAIR: They are building a restaurant?

Dr Vaile: "Building" could be interpreted on a number of terms, but they have building materials there and they have said that they are looking at that aspect of the use of the lease.

THE CHAIR: A restaurant is a building.

Mr Rynehart: We are awaiting formal correspondence from the lessee relating to how they believe that they are meeting the lease obligations.

THE CHAIR: If they have building materials on site, have they got a DA? They are not going to put up an unapproved construction, are they?

Dr Vaile: Obviously, we have not delved into the pallets or anything else, but it looks to be fencing materials.

THE CHAIR: Okay.

MS BERRY: When did you see the building materials?

Dr Vaile: Yesterday morning.

MS BERRY: I was just there last week, and I just wanted to make sure that there was not new stuff—or there is new stuff.

MS CARRICK: I would like to start with Phillip pool and then I will go on to other things. I want to clarify the ownership of the pool. The government will say that it has been owned by the private sector, but my understanding is that there was a 99-year lease issued in 2008 that was backdated to 1999. So, up until 2008, it was ACT government-owned and it was on 10-year leases that then stopped because of an issue with who would pay $180,000 worth of maintenance and then it went on to sort of no lease for a while until it was sorted in 2008 and backdated to 1999. Can you clarify the ownership of the pool?

Mr Engele: We may have to take that one on notice, unless someone has the details here.

Mr Cilliers: I do not have those specific historical details.

Mr Steel: Are you suggesting that there is a controlled activity matter that is of interest to this inquiry on that site?

MS CARRICK: That is a lease question about what is still the current lease, in fact.

Mr Steel: But does that relate to a controlled activity or is it—

MS CARRICK: It is related matters about the lease, so we will get to the controlled activity.

THE CHAIR: Would you like the committee to make an assessment as to whether the majority of the committee considers this another relevant matter? We can do a quick conference and decide.

Mr Steel: No; you can do whatever you like. I am just asking—because I am interested—if you think there is a controlled activity matter, given the scope of the inquiry is to look at that. We could talk about every lease under the sun, but I thought we were talking about those where there was a matter of a controlled activity as specified under the Planning Act.

MS CARRICK: We will get to some controlled activity orders on that lease that I am talking about, but I am trying to clarify the ownership of the pool, because it has been in doubt. When the lease was transferred to be a 99-year lease and then it was in the hands of the private sector for them to be able to sell, because prior to 2008, my understanding is that it was an ACT government pool and so the private sector could not sell it. Anyway, can we clarify that? So that is on notice?

Mr Cilliers: Ms Carrick, I have just pulled up the title of that site and it is in private ownership, NG Landholdings No. 20 Pty Ltd, currently.

MS CARRICK: Currently?

Mr Cilliers: Yes.

MS CARRICK: Yes, it is at the moment. I am asking about when it changed from ACT government ownership to private sector? It was around 2008. But, anyway, it is something that we need to clarify, because there is a lot of confusion about this issue. I will go back to the controlled activity orders in the past on that lease. But, right now, we have this current lease. The lease that I was just referring to is the current one. There are DAs for the first two towers; however, there is no lease variation. Without a lease variation, are we not operating on the existing lease at this point in time?

Mr Cilliers: My understanding is that the towers were approved subject to a lease variation to permit those.

MS CARRICK: Yes, that is right. So the lease variation is a condition of the approval.

Mr Cilliers: Yes.

MS CARRICK: So, without a lease variation, how can Geocon start the development? They put fences up and they have disconnected the pools. How can that happen before there is a lease variation in place?

Mr Cilliers: It is common practice to determine an application subject to a lease variation, and that depends on at what point out a milestone for the lease variation. The final milestone is obviously prior to occupation. In this case, I have to look at a specific approval and how it was structured in terms of that. It is also a possibility that it could have been prior to commencement of construction to require that lease variation.

MS CARRICK: Maybe we need to quickly check that. If that is the case, would we not do a controlled activity audit when they have started to commence the pre-construction works on that site? Anyway, I will keep on going while we look at the notice of the decision here. Is it 187F or 187H? There have been a number of them actually.

Mr Cilliers: I actually have the approval here in front of me. The approval states, "The approval does not take effect until the grant of the Crown lease." So, for that particular variation, the approval does not take effect until the Crown lease that permits the approved development is granted over block 2, section 22 Phillip.

MS CARRICK: So that means they should not have started pre-construction works until they got the new lease, the lease variation?

Mr Cilliers: They are for the substantial elements—the actual towers and the use of the land.

MS CARRICK: Does it specify what they can do pre-lease update and what they cannot do?

Mr Cilliers: There were various amendments to the application that went into those timeframes. If you allow me a minute, I can look it up.

MS CARRICK: Perhaps you could take it on notice and clarify what they can do before they get their lease variation in place and what they cannot do.

Mr Engele: Yes; we will take that on notice.

MS CARRICK: So that would clarify whether there should be some controlled activity order on the current—

Mr Engele: We are taking it on notice because there could have been DAs that allowed for works to occur prior, noting the substantive DA would then be subject to the lease variation. So we will get the full chronology.

MS CARRICK: Yes, get that. I have got to say that that is a bit of a problem for the community, because we never get the final. I am not sure that the final approval ever goes on the website. Does it go on there?

Mr Engele: The notice of decision?

Mr Cilliers: It does.

Mr Engele: Yes.

MS CARRICK: The very final one?

Mr Cilliers: Yes.

MS CARRICK: Okay. Over the years, with this particular lease, the pool closed in 2021-22, that summer season, and also 2022-23. It remained closed for almost three seasons. Why wasn't there a controlled activity order in place at that stage? There was a failure to repair the pool. It had a big crack in it. Maintenance was used as a reason. So why wasn't there compliance? Why wasn't there an enforcement of doing the maintenance to open the pool over three seasons?

Mr Engele: That is probably a question for Access Canberra.

Dr Vaile: I may have to take the answer to this on notice, but the most recent interactions have actually been this year. I do not have a record of the prior interactions at this point. One of the things that may well have occurred—and I will get this to put on notice—is that we may have been told that a DA was being lodged and time may have been given for that development application to be lodged. I think that that is probably the most logical answer for some of that time, but I will check the actual records.

MS CARRICK: Can you also take a notice what inspections were undertaken from around the beginning of 2021 up until the end of 2022?

Dr Vaile: Yes.

Mr Rynehart: We will absolutely provide everything that we have.

MS CARRICK: And what inspections had been taken over, say, the last five years. There had been a lot of correspondence, ever since the announcement of the ice rink in 2016, that the site was no longer financially viable. Can you also take on notice what representations the owner made to the government about the site being financially unviable? Is it the case that the government was then looking to develop the site to meet the developer's needs and there was a lack of interest in maintaining the site? It did run down.

Mr Rynehart: I am not sure I can speak to that element, but I was just thinking, when you were mentioning before about number of inspections and other actions, I think partly the challenge with this is it cuts across two acts, the Planning Act and the new Planning Act that came in in 2016—the previous legislation. The reality is that a controlled activity order is not the only action that is available. Often, and most commonly, we engage with a lessee when we have complaints and when we have information available to us and work through to bring them into compliance. That is ultimately our aim in all cases. So it may or may not result in a controlled activity

order. In fact, they are quite rare. But, ordinarily, we can work through a process that brings the lessee into compliance before reaching that point. But we will come back on notice on the information we have.

MS CARRICK: Thank you. The pool ran down over a long time and the commitment to the ice rink did not help. It is unclear how the government enforced the compliance of the lease to maintain the facility, because you must know that there was a lot of "disgruntledness" about the state of the amenity around the toilets and the condition of the site.

Mr Rynehart: I think, Ms Carrick, the challenge is often that what the law enables us to do. We can only apply the law. We can only apply the legislation that exists and we can only apply it in accordance with the lease of the day. I will not provide commentary on the state of the facility for this site or for any others, but we will come back with where our engagement was over that period of time and what actions we took and how we worked through a process with the lessee at that time.

MS CARRICK: With the commitment to the ice rink, what assessment was done of the impact on the pool, in the context of competition policy?

Mr Green: I do not think that is a matter that we can respond to, Ms Carrick. It probably sits within another portfolio area in relation to sport and rec.

THE CHAIR: Is that a matter that you would like to take on notice?

Mr Green: I think it is a matter that is best responded to by another area of government. It probably does not relate to a controlled activity; it relates to some policy.

THE CHAIR: This inquiry is quite broad ranging, and it is about lease and use of land. If you read the terms of reference, they are quite broad ranging and may include any other relevant matter.

Mr Green: I understand that that is the case. The reference to economic feasibility as part of a separate proposal in Tuggeranong and its impact on Phillip is not something that we have to hand. So I am suggesting that it is best responded to by another part of government. We can take that on notice for that part of government.

THE CHAIR: Yes, take it on notice; thank you.

MS CARRICK: When you commit to another facility that impacts the financial viability of another facility, who is looking after the public interest of the facility that is being affected? Ultimately, it ends up in the loss of the lease, basically. So who looks after the public interest for the site that is being impacted—Phillip in this case?

Mr Engele: Does this go to decisions of government to build or support another facility? Is that the sort of proposition you put?

MS CARRICK: Yes, there is that side of it and then the whole running down. When you look at the FOI documents and all the to-ing and fro-ing, it appears that the ACT

government moved from being, "This is a community facility site," to "How are we going to change the zoning to enable the developer to develop the site?' The correspondence became very developer-focused. So it appears that the ACT government was an accomplice to changing the Territory Plan.

Mr Green: I think the government made decisions around changes to the Territory Plan but it also reflected, in those changes to the Territory Plan, what other requirements would need to be provided upon redevelopment. So, in terms of government's consideration in relation to that, there was clear consideration, because it reflected changes to the Territory Plan. If upon redevelopment—I do not have the exact wording from you but I am sure we can provide that to you—if there was to be a redevelopment of that site, the facilities would need to be upgraded. It also reflected, from my recollection, the ice facility element as well. That was considered and through the strategic planning documents, the Territory Plan, that is where those considerations were to make sure that there were facilities still in the pipeline and deliverable as part of any future redevelopment.

MS CARRICK: When the impact on the community facility was being discussed over years, why was there no discussion with the community about it and why was it never brought up in the pop-up sessions that led to the Woden district policy?

Mr Green: I do not know the answer to those questions. I was not involved at the time around pop-ups at events. But what I can say—and I think we have clarified this in other hearings—is that changes were made to the Territory Plan, there was consultation on the Territory Plan and the Assembly considered the Territory Plan and that was ultimately agreed in the last term of government. So I think there are levels of scrutiny that are applied at varying degrees throughout a process, whether that is through community consultation processes, through committee hearings and inquiries or through the Assembly floor itself. But there has been consideration of what that proposition looked like in relation to the provisions that were put into the Territory Plan for the Phillip pool site.

MS CARRICK: So, during the years of discussions with the owner, Glencora, there was never any transparency with the community about what the issues were and the future of the pool in terms of developing it?

Mr Green: I cannot comment on that; I do not know.

MS CARRICK: Okay; perhaps then, prior to the Territory Plan coming out, can you can tell us, for the previous five years, where there was advice to the community about the issues with the pool, the lease and the future of the pool?

Mr Green: Again, I do not know whether that is something we can necessarily provide. This is a private lease and there are decisions that private owners make in relation to their lease. Speculating and commencing community discussion around speculative proposals is probably not a useful exercise. But, again, I do not know what the owner at the time did in relation to discussing it with community, given it is their private proposal on their private development on their private site.

MS CARRICK: There is a lot of history here and years of service with the

government. Maybe somebody knows about the years of discussions with the developer about the lease.

THE CHAIR: I think, Fiona, if you want to put something on notice, government can come back and get you information on notice. If they do not know the answer here, that is okay, but if there is something that you want, ask for it on notice or lodge it on notice. I think that is okay too.

MS CARRICK: Will do. I will just ask a couple more questions on this. When you are looking at the change of lease—because ultimately that is what this is all about; the redevelopment of the site changes the lease—how come you used Batemans Bay? Let me just say one other thing first. Why is it that you never include Weston Creek when we talk about the population forecast? If you look at the National Capital Plan, it is one town, Woden/Weston Creek. Why is it we never include Weston Creek forecasts when we are talking about the town centre? It is Weston Creek's town centre as well. The Territory Plan cannot be inconsistent with the National Capital Plan. If you have a look at the hierarchy of urban centres, it is Woden/Weston Creek—one town. Why don't we say that? And why don't we include Weston Creek's population forecasts?

Mr Steel: I am not aware of any inconsistency in the Territory Plan and the National Capital Plan. If you have got an example, I can have a look at that.

MS CARRICK: I do have an example. When I asked about this in my motion, my very first motion in December 24, which came back in January 25—it talked about why the decision was made to downgrade the pool from 50 to 25 metres—you only referred to Woden's forecast, and its old forecast too.

Mr Steel: That is not in the Territory Plan.

MS CARRICK: Sorry? That is not inconsistent.

Mr Steel: There are requirements in the Territory Plan for this site. I think that is an important point to make—that contrast with the Big Splash site, where there are no specific requirements like there are on the Phillip site.

MS CARRICK: This is a prescriptive lease.

Mr Steel: It is very prescriptive in the Territory Plan about what is actually required on the site. That is what is in the Territory Plan, not the population forecast.

MS CARRICK: When you are looking at the size of a pool and you are telling me you downgraded the pool from 50 metres to 25 metres based on Woden's old population forecast, not knowing that you were going to densify in the southern gateway and what have you—you knew that at the time—why didn't you include Weston Creek's population forecast, because it is their town centre too?

Mr Steel: There was extensive consultation as part of the Woden Valley district strategy about urban densification within Woden. That was consulted on with the community at the time that the planning system reform was going through.

MS CARRICK: But that is not answering my question. It is Weston Creek's town centre too. The pool is in the town centre. It services a very large catchment.

Mr Steel: We agree it services that, and certainly Stromlo would help to service Weston Creek as well with the new Stromlo pool, which is obviously a new pool. I would certainly point you towards the government's response to the Auditor-General's report in relation to the changes at the Phillip pool site, where the government has acknowledged that the level of what was termed a community needs assessment was not to the standard that the community expected. The government acknowledges that, as the previous minister put that on the record. We have since undertaken an up-to-date community needs and recreational infrastructure audit in December 2025.

THE CHAIR: Sorry—can we just get that clarified? Was it not done to the level to which the community expected, or was it not done?

Mr Steel: There was a level of analysis done, but it was not at the standard that perhaps it was held out to be. That is why that record was corrected on that matter. Pointing to the government's response, it also notes that it was not ideal, in retrospect, that the change to the Territory Plan on that site, which was first made in the new interim Territory Plan, was made at the same time as the whole Territory Plan was being introduced for the first time. Ideally that will not happen in the future because there will be discrete major plan amendments that are brought forward for consideration that will have the required documentation to support them and that engage the community on discrete planning amendments rather than what was at the time a massive change to the Territory Plan.

THE CHAIR: We might need to move on.

MS BERRY: I have some questions around controlled activity orders. We have had a bunch of witnesses come in today and talk, from both the perspective of a developer but also the community, with regard to controlled activity orders as they stand now. I do not know whether the review will be considering the work around controlled activity orders. If I just talk a little bit to put some context around this, with regard to controlled activity orders there has been a view from the community that there is more transparency around what the controlled activity order might be and what the developer or landowner or whatever is doing to meet the requirements under the controlled activity order. Is that something that could be considered under the review?

Mr Green: Yes. I think more broadly, Ms Berry, the findings from this committee will inform that review as well.

Mr Bennett: With our review we are going to look at a range of these case studies of the compliance actions and talk with the regulatory team about their experience of applying the law. We will be looking at the controlled activity order processes and powers in the legislation, in particular looking at the controlled activity item about failing to use land for its leased purpose and the requirements for establishing a breach of a lease to then access the controlled activity provisions and then how that flows into the penalty regime that might apply when you have been able to establish a

breach of failing to comply with that controlled activity order and then what a range of options there are for the penalty framework as well so that we are not just taking action as a one-off instance and then not actually then getting compliance as a result of that.

There is the penalty aspect to the way that the Planning Act operates. There is also the desire that the purpose of these compliance provisions is to bring people into compliance with their lease and with the terms of the development approval. We will be looking at a range of options that there may be for legislative reform to strengthen that penalty framework to make sure that Access Canberra has the range of tools available to it. That will then extend into looking at the provisions around lease termination processes and the powers that apply there and then exploring, as we mentioned earlier, the interaction with principles around acquisition of property and just terms and whether any amendments are required to support those provisions. The review process that we are undertaking will be wideranging in relation to lease compliance and explicitly consider the controlled activity powers and processes as part of that review.

MS BERRY: That is positive news. I am sure that all the witnesses who have been here today will be happy to hear that. On acquisitions, there was concern from the property group about acquiring land, that that might interfere with investment into the town and that there might be a fear from developers that the government could just acquire land without compensation or for any reason. When you are considering that process, is it to consider whether you can with compensation? We have had now this discussion around whether or not you can or cannot acquire land if the activity order or the lease is not being complied with, but we cannot at the moment.

Mr Bennett: If the government wants to acquire land, there is a range of options available to government to take that course of action. The government can enter into commercial agreements with private owners if they want to acquire that land. There is also the Lands Acquisition Act, which sets out the powers of compulsory acquisition and where that can be done by agreement or by a compulsory process. If government wants to acquire land, there are opportunities available. We are talking here about whether compliance action may result in the acquisition of land, not that the government wants to acquire a particular block, but when the government takes compliance action, if the result of that compliance action is an acquisition of property by the territory, we will be exploring the implications of that and what that means.

Mr Steel: I think the decision of the independent regulator is the decision of the independent regulator in relation to the power that they have, as opposed to me as minister, in relation to lease termination. I think there is an interesting policy question here about whether government in certain scenarios should effectively be basically compensating or rewarding someone for bad behaviour. I do not know what the mortgagee's view is in this case, but I know they want to offload the site. I think that is pretty clear. I think they would probably agree with that statement.

I think there is a genuine policy question in here about whether we want to compensate on just terms and reward bad behaviour of continued lease noncompliance. I do not think everyone in the community would be happy with that, and it may actually send the wrong signal to other lessees that if they do the wrong

thing, the government will buy you out, basically, in every scenario. I think that that is an interesting thing. It has played on my mind throughout this as this investigation has gone on—about how we send the right incentives to lessees to do the right thing and keep their properties in use. I think the right approach at first instance in terms of the guidelines is to try and work with lessees to bring the site back into use before heading down that much more serious path. Nonetheless, we need to look at the range of powers available to the regulator and whether we can strengthen those.

I think penalties actually might be a better opportunity there because they do not reward the lessee. At the moment the penalty is far too low—about $48,000 for a corporation. I do not think that necessarily is high enough to send the right message, and a penalty would not necessarily engage the just terms compensation requirements of the Self-Government Act and the Australian Constitution, so that is something that we will have a think about as part of the review process.

MS BERRY: Will the review process include consultation with different groups, like the property group and perhaps some of the witnesses who have attended this committee hearing?

Mr Bennett: We are doing an internal review at the moment. Once we finalise that and provide a package to the minister, I think we will make a decision about further consultation on what any recommended changes might look like, and if there are those recommendations that come from that, we put that out for a conversation.

MS BERRY: It does not sound like there is much difference between what you are doing and what we have heard from witnesses, so I am not really particularly concerned that it is outrageously different, but I think witnesses would like to know, especially some who have been campaigning around these issues for many, many years, that they—

Mr Bennett: Our team who is doing this review has been working through all of the submissions made to this inquiry and will very carefully look at the outcomes of this inquiry in the report. That has been a very key community input into the work that we are doing and looking at expectations around how different parts of the community expect the planning system to operate.

Mr Steel: I think that is an important point, because what I have certainly learned over the last 12 months is that there is a bit of a gap in understanding in the community about the nature of leases, which are complex. They are complex issues—the difference between permissive leases and leases that have strict requirements, what is in the Territory Plan and whether there are requirements for that site in the Territory Plan or not. There is not a requirement in the Territory Plan in Big Splash's case. There is in the Phillip pool's case—then the complexities around the lease termination and property rights in just terms. I think there is probably a level of education and engagement that is useful with the community so that there is a better understanding about how the leases operate.

I think some people think the leasehold system as a whole does not provide people with property rights. That is not true; the Constitution is very clear that there are strict property rights that exist in the territory despite the leasehold system. The leasehold

system gives maybe a bit more control over what can occur on a site, but people have private property rights, and that makes up a major part of our common law system in Australia, and it needs to be respected. It means that the powers are also that we can offer the Territory Planning Authority and Access Canberra acting on their behalf are constrained, so we do need to I think have a conversation with the community about the level of constraint that that puts on the government in terms of how far we can act in relation to someone's private property. A bit of engagement on those issues I think would be useful about the nature of leases, about the nature of the Territory Plan requirements and about the powers, or lack thereof, that the regulator may have to be able to deal with sometimes what the community is seeing on sites around Canberra.

Having said that, the government's view, which is expressed in my statement of planning priorities, is that we want Access Canberra to be out there enforcing leases, particularly in areas where there is community concern, which we think is focused on unused shops, particularly local shops more so than others but other group centres could potentially be part of that as well, and then also the recreational and community sites that are not being used as well. Those are where I think there has been a lot of the community's focus, and that is where I have asked Access Canberra to also focus in their work, but there are concerns that come up about unused residential sites and industrial sites and those sorts of things as well.

MS BERRY: I just wondered if there was anything that could be done in the meantime, because people are really frustrated and feel let down.

Mr Steel: Well, the first thing I say is—

THE CHAIR: I am so sorry to say this. I might actually ask you to take that on notice. We have got a few more quick supps, and we are going to lose you in two minutes. I would love to know the timeframe of the internal review. I would love clarification as to whether the government considers this committee is conducting your public engagement on that internal review or whether government considers that is government's job. Those are my two quick supps. Fiona, what were your two quick supps?

MS CARRICK: My quick one was I just want to know what the investigation is at the Manuka hotel and why it has been going on for 12 months and if it is the same investigation or different investigations. The second thing is that you say for Manuka hotel that the number of cinemas is not in the notice of decision, but when you have a plan and a DA gets approved, not all those elements go into the notice of decision, so I do not understand what that has got to do with it.

Mr Bennett: We will be progressing this internal background research policy development component of the review throughout the remainder of this year, and then I think that early next year, as the minister suggested, we would be coming for a conversation with the community. What we have learnt, our experience of all the case studies and then a range of options for discussion with the community in the first half of next year would be the proposal for that, but we do not have those timelines particularly locked in because—

THE CHAIR: That was enough.

Mr Bennett: of this sort of inquiry and they are complex matters.

Mr Green: I think the second part of your question was a short answer: "No, this committee is not doing our consultation work for us."

Mr Bennett: We will take the Manuka hotel on notice.

THE CHAIR: Given that we have got 1,046 complaints out and Access Canberra's issued three fines, is there anything that Access Canberra can do with their current powers that they are not doing?

Mr Steel: I will hand over to Josh Rynehart shortly, but what I would say is since I have made the statement of planning priorities and Access Canberra has been engaging with the focus on the shops and the recreational facilities, there has been quite a lot of work underway at various different levels of the regulatory pyramid, starting with education and engagement with the lessee, and that has actually seen tangible action. At Richardson shops we have started to see tenancies being put in place, which is pleasing, after a long period of time where that shop was empty. We are seeing that at Duffy shops now with the old Sun Doo Chinese Restaurant that is now being tenanted by a commercial gallery. There has been action occurring. Obviously at other sites the regulatory work that has stepped up has actually resulted in lessees undertaking work, and some of that is still occurring, but I will hand over to Josh Rynehart to talk.

Mr Rynehart: Ms Berry, your original question referenced transparency. One of the things that I have been thinking about over the last few months as we have worked throughout this is that I think we can find a way to be more transparent in the way that we come to decisions in this space. We do absolutely have to balance that against that we need procedural fairness and offer fairness to the entities that are actually affected, but I think that there is some thinking for us to do about how it is that we can be a bit more transparent and open with the community about the reason how we formed positions, and that is a piece of work that we need to undertake.

We do continue to focus on planning and the compliance in there. I think that the reality is that the significant amount of complaints ordinarily we can resolve without having to get to enforcement, and I think that is a positive outcome, but often it is not visible because we simply resolve it at a lower level.

MS BERRY: I was going to ask about the complaints that Ms Clay keeps referring to around the thousand or something. Are they resolved complaints? Is that information you can provide to the committee? Complaints is one thing, but if it has been resolved, then that is good.

Mr Steel: We can take that on notice, but I think it is probably helpful to talk about, which is briefly mentioned in the government submission, the work that is starting on setting new times and then what flows from that.

Mr Rynehart: Can I just correct something I said very early on. I think I refenced sections 360 and 364; I should have referenced section 457 when I was speaking

earlier.

THE CHAIR: On behalf of the committee, thank you for assisting with your experience and knowledge. Thank you Broadcasting and Hansard. Any member who wants to ask questions on notice, you have five days to upload them.

The committee adjourned at 3.52 pm.