



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON TRANSPORT AND CITY
SERVICES**

(Reference: [Inquiry into Urban Forest and Planning Legislation Amendment Bill
2026](#))

Members:

MR P CAIN(Chair)
MR A BRADDOCK (Deputy Chair)
MS Y BERRY
MS L CASTLEY

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 28 SEPTEMBER 2026

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Acting secretary to the committee:
Mr A Walker (Ph: 620 50199)

By authority of the Legislative Assembly for the Australian Capital Territory

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Amended 20 May 2013

The committee met at 12.35 pm

BERRY, MS ASHLEE, Executive Director, Property Council of Australia, ACT and Capital Region

THE CHAIR: Good afternoon, and welcome to the public hearing of the Standing Committee on Transport and City Services for its inquiry into the Urban Forest and Planning Legislation Amendment Bill 2026. The committee will today hear from environmental groups, the building and construction industry, 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 the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

This hearing is a legal proceeding of the Assembly and has the same standing as proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the Assembly.

The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

This afternoon, we welcome Ashlee Berry, from the Property Council of Australia, ACT and Capital Region. Please note that, as a witness, you are protected by parliamentary privilege and 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 now proceed to questions. I have a question regarding the Draft Guide for Tree Removals on Design Grounds. Noting that the Property Council is supportive of the bill, you have raised some concerns that maybe it is not specific enough to guide builders and developers. Ms Berry, I draw your attention to the examples at the back of the draft guide. One shows where a protected tree could be removed and another example shows where that would not be the case. Do you think that a builder or developer who is looking at a plan with the lease owner, and maybe with an architect, have enough to work with to say, "Yes, we will get this approved before the DA process"?

Ms Berry: Potentially, for some of the single-dwelling examples, but with respect to what we need overall—and probably our criticism of the Urban Forest Act in its current form—there is a lack of certainty. What we have stated over and over again in our submission, particularly in our submission in 2022, as well as in this latest submission, relates to developers on these larger projects. We are not really coming at it from the point of view of a knockdown rebuild, the smaller end of missing middle or a dual occupancy; we are looking at these bigger blocks, which are often older, which often

have a range of trees on them, including mature trees.

How does a developer, when they identify a site that has lots of trees on it, go through the process to identify, “This is likely to be removed,” or “We’ll have permission to remove this tree; this one would not be”? I am not sure that those examples go far enough. I do not know whether it is possible for the directorate to identify every single type of example. I think that is asking a little too much of them. It is just about getting them to understand that there are a range of situations.

Potentially, they could go back through decisions that have been made over the past several years and look at how often, what types of questions they were being asked to determine when it comes to trees, and make sure that the examples that they put in the guide at least cover a portion of them. It will not fit everything. It will not cover everything, but giving a lot of certainty to industry is what is really needed at the moment. That was the crux of our request.

THE CHAIR: Have you, in your conversations with government, suggested, “Here are some other examples that would give guidance to stakeholders so that they have some level of confidence in putting an application in or finalising a plan”? The government will be appearing before us this afternoon, and I may well be asking similar questions.

Ms Berry: I am not sure that we have given them specific examples in terms of guidance, but that is certainly something that industry can do. I know that members speak to them all the time in terms of, “This is guidance or advice that we could have had at the beginning that would have been really helpful.” We would very much welcome the opportunity to work with government on that, to determine, “What else could go in there?”

It is a challenging one because each block, as I said, is very different. We need to make sure that the examples that government use cover enough of the scenarios that we are likely to have, or they at least have enough specifics to give some certainty to industry, particularly at this time.

MR BRADDOCK: Ms Berry, you recommend that “no financial contribution applies to canopy loss already offset on site unless a clearly identified residual impact remains”. We all know that, if you replace a mature tree with a sapling, you are looking at 20-plus years for rectification of the canopy. Is that a clearly identified residual impact in terms of the time it takes for that canopy to grow back in place, under your recommendation?

Ms Berry: Yes, that is the intention of what we have put in there.

MR BRADDOCK: There could be the possibility that you replace one mature tree with two saplings, plus a financial contribution, as long as it is commensurate with that canopy loss, acknowledging that that does vary over time, as the tree grows in place?

Ms Berry: Correct, yes.

MR BRADDOCK: Thank you. I just wanted to clarify that.

MS CASTLEY: Do we have any idea of what that might look like? Would it be cost

prohibitive to go ahead with building?

Ms Berry: I meant that any cost that is getting added on to a development is impacting feasibility. It is a huge issue. Again, we need developers to have a choice. That is probably the key here. At the moment there is not a lot of flexibility or choice under the legislation, particularly because you do not get a decision until the very end, until you are waiting for your DA to be approved. That is when you find out, ultimately, whether or not you can remove trees. You go through an entire process; then you might be told yes, or you might be told no.

If, at the beginning, a developer has a choice and is told, “Okay, you can remove this tree, but because we’re looking at loss of canopy, because of replacement, it will cost you a certain amount.” A developer can factor that into their design, and to the way that they want the project to look and to stack up. They may then say, “Okay, that’s actually too much. That’s too much of a financial hit. We’ll keep the tree and we’ll design around it accordingly.”

That needs to happen at the beginning of the process, not after they have spent 12 or 18 months, or more, going through a development application process, only to be told, “Actually, you now need to go back, redo all of your design, redo all of your architectural drawings, look at how many units, how many dwellings,” depending on what sort of building we are talking about, and what sort of space that you are able to work with, and then make a determination.

It is a cost. If you have it up-front and you know, you can factor that in, and you have that choice to make a decision. The problem with the current legislation is you are not finding out definitively what you can and cannot do until the end, and too many costs are getting incurred and essentially just thrown away.

MR BRADDOCK: With that sequencing issue, Ms Berry, if you get the approval at the start and then you go through the DA process, assuming that some DAs get through, some do not and some are given up by the developer, I would hate to see a tree that has been approved for removal be removed at the start. If we then go through that DA process and something does not happen, we might have removed a tree for no purpose whatsoever. Would you be of the view that it is acceptable that, even if you have approval to remove a tree, you do not do so until you have gone through that process and you are ready to start the development?

Ms Berry: I do not see an issue with that. I understand what you are saying. You do not just want to have approval for the tree, and nothing eventuates. I would have thought that, as long as you have approval, perhaps part of that approval is that you do not take any action until such time as your DA is approved. I do not see that as being problematic, unless there are safety concerns or other issues which would be dealt with. Ordinarily, I do not see why that would be an issue. It probably makes sense for that to be the case.

MS CASTLEY: I have a question about how much the decision-makers need to know to assess the trees. Is it helpful for them to have that full design? What are you hearing from builders and developers? What would they like to see changed in order to make things better, when it comes to this?

Ms Berry: We need some certainty and clarity up-front. Ultimately, that is the key message. A developer will get a concept. I am hypothesising here. They might purchase a block of land; then they will think, “Okay, I can build so many dwellings,” or “I can build this type of building, and I will be able to do that. These two trees might be problematic, so we would need to remove those to complete the vision,” so to speak, and to make something stack up. They would look at scenarios with and without certain trees.

Ultimately, it is about them being able to determine, “For this location, for this type of dwelling, I need to be able to build eight townhouses, 50 apartments or whatever it is, and I can’t do that aesthetically, I can’t do that appropriately, with the trees in the position that they’re currently in.” That is when they need to be able to go to the City and Environment Directorate, and have an easy way of making an application, without needing to put in an entire DA.

I want to make that point really clear. We cannot do an early DA and then what is almost like a second DA later, which is the formal part of it. We need a quick process that can still look at the merits of removing or keeping the tree, and have the ability to make a binding decision. That is the key part. It cannot then be reassessed when it comes to the DA stage. Obviously, there are appropriate administrative requirements that need to be carried out, but it needs to be binding, as far as it can be, to give that certainty; otherwise, we are back to square one, where you go through an entire process, you have your design, you have everything organised, and you find out that you cannot remove a tree.

The key is that we have that certainty; we have a quick and efficient process up-front that is not a DA within a DA. That would be disastrous and it would put us backwards.

MS CASTLEY: Yes, that was going to be my next point—the risk of the duplicated DAs. It almost makes it not feasible to go ahead, and we will have people walking away.

Ms Berry: Absolutely. We need to be doing everything we can at the moment. Obviously, we have a demand for more housing. On the one hand, we support urban infill. It is really important. We need more homes that are well located, close to public transport and close to amenity. We should be looking at density in our existing suburbs. To do that, there needs to be appropriate give and take, essentially. We will be constantly weighing up, “Is this tree worth homes?” and playing them off against each other.

We need to get the balance right. Each site will be different, and there will be some trees where the decision that is made is, “No, they shouldn’t be removed.” In other circumstances, the decision will be, “Yes, they can be removed. They can be appropriately replaced.” It is a matter of going through that process. It is not an easy process, but we need to be able to do it, if we are going to grow our housing stock, as I said, in well-located areas, close to public transport, close to amenity, in our existing footprint.

MS CASTLEY: In your opinion, are the current rules an obstacle when it comes to solving housing affordability and accessibility?

Ms Berry: The current legislation, as it is, yes, it is. It creates uncertainty. We said from

the beginning, back in 2022, that we had concerns about the way that the legislation would operate, in causing problems from a housing delivery perspective. We support the current bill. We think that it will provide a lot more certainty to members. It does need some tweaks, as we have set out in our submission. It is certainly not perfect, but it is a good step forward, and we are willing to continue to work with the directorate, with government and with the Assembly to get it right. Having early implementation reviews is really important, to make sure it is working from everyone's perspective, and we are getting the outcomes that the territory needs.

THE CHAIR: You are supportive of the bill, and you would like some more certainty on certain aspects of it. Do you think there is anything substantively missing from the bill that would address the concerns that developers and builders are bringing to your attention?

Ms Berry: Nothing specific, other than reiterating that we need to get the balance right and we need to make sure that this does not become a DA process within the DA process. That would be catastrophic, to be honest. It would be problematic for members across the board, whether it is delivering missing middle housing or whether it is delivering hundreds of apartments somewhere. It needs to be taken into account that this has to be a quick administrative process that still looks at all the merits and has the appropriate experts within the planning directorate making these decisions. That is the key part of that.

MR BRADDOCK: The definition of “desired planning outcome” is absent from the bill and the guide. With the table that you have underneath the recommendation “Consideration, including the weight and relationship, should be given to classify relevant considerations”, is that what you perceive could potentially be that definition of “desired planning outcomes”, or the framework to apply for that objective?

Ms Berry: Yes, they are the things that we are saying need to be considered. Defining “desired planning outcomes” is very difficult, and I can understand, perhaps, why that was not put into the bill. But I think that is important, because there needs to be an overarching, “What do we actually want here? What is the objective?” If the objective was just to get more homes, you would say that every tree can be removed. But that is clearly not the case, and nor should it be. That should absolutely not be the case. It should be a matter of saying, “How can we get the balance right between maintaining the trees that we need and delivering housing?” That is tricky. It will be difficult in a lot of circumstances.

If you look at outcomes, we have Territory Plan outcomes. We have strategic outcomes, in terms of housing, infrastructure and design. Again, it is about making sure that there is appropriate tree cover and canopy in not only our existing urban areas but everywhere, and looking at solar access, looking at safety, and looking at the landscape outcomes as well. I think that the experts can make a determination and can design a framework and a definition that would encompass all those things.

MR BRADDOCK: Ms Berry, I totally get the fact that you are saying you do not want a DA process within a DA process. The problem is that, with the design outcomes that you have in that table, for example, a lot of that is dependent on what would come through the DA process. How is it possible to assess against those at the earlier stage?

Ms Berry: I think it should be when you are looking specifically at, “Here is the concept. Here is the tree. Here is the plan for said block. Please make a determination as to whether or not we can remove a tree.” It is when you are looking at, “We need X amount of homes in this suburb. This is what we are planning on.” The planning directorate should be able to make a call. If you look at blocks and there are three trees right within the building envelope, and they are perhaps all scattered around, it will be very difficult to build a number of dwellings on that block.

Yes, we need a definition, but in really simplistic terms; when you are looking at specific blocks and you are looking specifically at what developers want to develop, it should be straightforward, even with looking at those things.

THE CHAIR: We will have to close this part of the hearing. We thank you for your attendance, Ms Berry, on behalf of the Property Council of Australia. I do not believe that you have taken any questions on notice. Again, thank you for your attendance and for participating in this inquiry.

COPLAND, MR SIMON, Executive Director, Conservation Council ACT Region
GIACON, DR JOHN, Acting Chair, Committee, Ginninderra Catchment Group
PIX, MS WALTRAUD, Member, Friends of Mount Majura ParkCare Group
READ, MS BARBARA, Treasurer, Friends of Mount Majura ParkCare Group
ZEIL, MR JOCHEN, Convenor, Friends of Mount Majura ParkCare Group

THE CHAIR: Thank you, we are into our second session for this inquiry. We have many witnesses for this session. When you first speak, please state your name and the capacity in which you appear. Please note that, as witnesses, you are protected by parliamentary privilege and 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.

MS CASTLEY: I believe this was mainly in the Friends of Mount Majura ParkCare submission, but about invasive trees: do you know how frequently they are being protected?

Mr Zeil: What do you mean “how frequently”?

MS CASTLEY: How many invasive trees have we got? How often are they being protected? Is it a problem?

Mr Zeil: Well, in the case of Callery Pear, which is our main concern in the moment, the ACT government has planted about 12,000 trees across Canberra. There are other trees that have been planted, like nettle trees, and for all of them, we have evidence that they are starting to invade the reserves of Canberra Nature Park.

MS CASTLEY: And yet the government continues to protect them? Or is there a review?

Mr Zeil: The problem is the following. As far as I understand, the Urban Forest Act excludes protection of declared pest plants. But in this case of Callery Pear, that tree has not been declared yet. Although it is declared—officially classified—as environmental weed in Victoria, but not in the ACT. In Victoria, it is being assessed as a moderately invasive weed in an early stage of invasion, but with a very high potential to cause significant environmental harm if it spreads further into natural ecosystems. And this has actually happened to a catastrophic extent in the US, and it is beginning to happen here in the ACT.

MS CASTLEY: Thank you, that is helpful. Do you have any other?

Mr Copland: So yes, Callery Pear is a great example of what many community groups would consider to be a weed—an invasive species. That is, as Jochen said, there is strong evidence of it invading our nature reserves. But the ACT government does not just—it is not listed as a pest, but they actually actively plant it in suburbs. They still actively plant it. And there has been a lot of pressure and discussions between community groups and the ACT government to get that plant, that tree, to stop being planted.

We understand that, in suburbs, sometimes native trees are not the best. So, there are a

lot of discussions about what is the kinds of ones that would be more likely to spread to nature reserves. Callery Pear is a great example of one that we should not be planting, but the ACT government continues to plant. And because it has not been declared a pest, it is protected—so you cannot go and cut them down. It is harder to do that work.

MS CASTLEY: I understand. Thank you.

Ms Read: In fact, any tree on public land is protected. Every tree is protected on public land under the Urban Forest Act, and that includes pest species which have been declared.

Ms Pix: Like Cootamundra Wattle.

Ms Read: Like Cootamundra Wattle, for instance.

THE CHAIR: Does that align with your understanding, Mr Copland?

Mr Copland: Yes, I may have misunderstood my understandings there, yes.

THE CHAIR: Yes, okay, thank you.

Mr Copland: These folks will know better.

THE CHAIR: I have a supplementary on that line and that is, I mean, is this something that the bill itself is required to address, or is it just through a regulatory amendment of an existing scheme?

Mr Zeil: You have the opportunity now, with the amendment, to correct that flaw in the original Urban Forest Act. By, for instance—just to reiterate and expand on our recommendations—the Urban Forest and Planning Legislation Amendment Bill should amend the Urban Forest Act 2023, with the effect of explicitly excluding tree species from protection that have invasive potential; not only those that have already been declared a pest.

And the second would be that the amendment bill should amend the Urban Forest Act with the effect of specifically adding biosecurity expertise to the Tree Advisory Panel that provides advice to the conservator. Currently, the members of the Tree Advisory Panel established under the Urban Forest Act must have demonstrated experience in fields such as arboriculture, forestry and horticulture, but not in biosecurity.

And the third recommendation we make, that the MIS 25, which is the Municipal Infrastructure Standard Part 25 Plant Species for Urban Landscape Projects, is being reviewed in the moment. But as a precautionary principle, there should be a moratorium on propagating, selling and planting of tree species with invasive potential, including Callery Pear.

THE CHAIR: Okay, thank you. Any other supplementaries on this line?

MS CASTLEY: No, that is fine.

THE CHAIR: Okay, I have a question related to the draft *Guide for tree removals on design grounds*—in other words, prior to the DA application process. There are a couple of examples, and I am interested in each of your comments. In one case, here is where a protected tree would be allowed to be taken away; and there is an example where, no, it would not be approved. I am interested in each of your views on whether those examples, from your organisation's point of view, acceptably capture the tolerance that has been anticipated here, or not. We might start with Jochen. If you do not have a comment on that, that is okay.

Mr Zeil: No comment.

Dr Giacon: Same; no comment.

Mr Copland: I cannot speak to the specific examples. I can get back to you on that one, if you like?

THE CHAIR: Of course you can.

Mr Copland: But can I speak to the broader concept, if that is okay? I think this formed a core part of our submission to both the act and the design guide. So, the context is the Conservation Council is very in favour of increased densification and support the ACT government doing this. But I think that there is often a false choice that is being made between densifying and keeping our urban forest. And we are seeing the impact of that, where despite our canopy cover target of 30 per cent, our canopy cover in the ACT is going backwards, which we do not consider is good enough.

We are concerned that these kind of design principles—this idea that there is an easier ability to remove trees, based off design requirements—that the current wording is too vague in general, and that it could allow for developers to use design in vague terms, to be able to remove trees that they previously would not have been able to remove, or that they should not be able to remove.

Specifically, we have concerns about the definition of a desired planning outcome, which is listed in the bill. If we talk about desired planning outcomes, we know the ACT government has a desired planning outcome of missing middle housing. We could envision, without a proper definition, that any developer could come in and say, "This block has five mature trees on it, but our desired planning outcome is missing middle, so we want to get rid of them all." And it is easy enough to get rid of them. And so, I think there is a bit of concern there, that that desired planning outcome, particularly when it references broad strategic documents the ACT government has, could be used to use a way to get rid of trees when it should not be done.

Our strong belief is that there needs to be a strong presumption in favour of retaining mature native trees in particular. So, we are talking about the older bigger trees. These are the ones that you cannot just replace because it takes 100 to 150 years for them to grow. And so, we have to still maintain that presumption of retaining those trees, and we are worried that this "desired planning outcome" discussion could make it an easier pathway to get rid of those kinds of trees because whatever this definition is, which does not really exist, overrides the biodiversity importance of mature native trees.

THE CHAIR: Barbara or Waltraud, any thoughts? You do not have to, by the way. We might throw to John; he has got his hand up here.

Dr Giacon: So, Ginninderra Catchment Group would certainly very strongly support maintaining mature habitat trees. I guess I would raise an associated point. I live near Jamison shops, and I would look at Jamison shops, median strips, Canberra High School and Bunnings and see all of those as areas where there is huge potential for tree planting which seems to be ignored at this stage. So, there could be a massive increase in tree cover in those four areas, and it would not impact on any of the—you know, it would add substantially.

THE CHAIR: I might come back for that with a fresh substantive, but any supplementaries on that?

MR BRADDOCK: I am not sure if you watched Ms Berry's evidence earlier from the Property Council, when she was talking about the desire to have the decision about the tree made early, before they then go through the DA process.

And there is a tension there in terms of your recommendation saying the removal needs to be dependent, and that design constraint being unreasonable. So, I am just wondering: do you have a view as to where that decision should fit into that process so you can consider that aspect?

Mr Copland: Yes, look, and I understand from the Property Council's position that early decision making is important because you do not want to go through the whole project of doing design, investing money and then being told, "No, you cannot remove this tree."

I think, again, we strongly are in favour of a presumption, particularly for mature native trees, that they should be retained. And so, there should be some stronger—should maintain strong regulation around that. If we can figure out a way to have earlier decision making, I think we would support that—but not at the cost of losing these really important habitat trees.

I am not a legislative writer; I am not a person who writes these kinds of processes, so if we can figure that out, I think we could be supportive of it. But we are concerned, particularly, around the vague definitions; that we are going to use these vague definitions as a way to get rid of trees that we should not be getting rid of.

MR BRADDOCK: Do you have any recommendation of what desired planning outcomes should be?

Mr Copland: I do not have a specific one. I think there needs to be some work done around that, because at the moment it is just far too vague.

Mr Zeil: So, what is the problem with a rule that 100-year-old trees should not be cut down, and in a very early stage to saying "You design around that tree"?

THE CHAIR: I guess that is really what the subject—that is the broad subject matter. I will take that as a comment, but I might ask for a substantive from Mr Braddock.

MR BRADDOCK: Canopy contribution agreements: how do you see these working at the moment under the current legislation, and how do you see this bill in terms of their operation? What changes might you like to see, to actually make sure they can work?

Mr Copland: We are worried about an over-reliance on the canopy contribution agreements. This is very similar to other offsetting schemes that you see, that there is a kind of an inherent weakness associated with these kinds of schemes.

Again, I am going to keep talking about mature native trees. If we agree to cutting down a mature native tree and replacing it, going into canopy contribution or replacing it with two other trees, it takes another hundred years for those trees to grow back. You cannot actually get back the habitat benefits of those trees, and the benefits to our community of those trees.

And so, there is an inherent risk—and I think we have seen this somewhat—that developers just take the canopy contribution as sort of a cost to doing business. They, you know, will just factor that into the costs of the construction and, instead of trying to find ways to protect those trees, it is easier to just do the canopy contribution. And I think that is a real concern.

So, we believe—and you know, I will say this over and over again, particularly mature native trees—that removing them should be a last resort and that the canopy contribution agreement should be a last resort. It should be the final thing you do before you have to see if you can protect the tree in the first place. Particularly, again, when we are talking about mature native trees.

MR BRADDOCK: Are you able to provide any details where you have seen that have been factored in the cost of doing business?

Mr Copland: I do not have specific details. One of the really challenging things about this—and I am sure you are all encountering this through this thing—is that this legislation is extremely complex. We have been struggling to get our heads around it, and we have found—and we have made this recommendation—that this whole process has been very confusing for a lot of the community, particularly the environmental community where many of us did not receive any sort of briefing, engagement with government prior to this release.

The Conservation Council did. We received one small briefing from the ACT government. We understand that the ACT government had day-long workshops with the construction industry, but did not do anything similar with anybody from the environmental community. And so, we have been scrambling to try and get our head around this legislation. I can firmly admit that I do not have my head around it in depth because there was very little work done to bring any people in this room, and others, onto really understanding what was being proposed—apart from very short briefings that were made available to us after we pushed very hard for them. But I do not believe they were made to anybody else.

THE CHAIR: Well, good thing we have a committee inquiry, and you can sort of express yourself—

Mr Copland: Yes, so I say that because I apologise if there are some bits where I just do not know the answer.

THE CHAIR: And look, can I just say as a general comment, if you have got some other thoughts subsequent to this hearing, please provide them promptly because we have a deadline on when we have to produce our report. Any other supplementaries? John, did you want to add something?

Mr Giacon: Just that GCG certainly has a recommendation that a move towards value-based tree protection is the way to go. And I think there is a suburb just this side of Mulligan's Flat where there is a quite number of very old trees that have clearly been protected, and my understanding is that there was cooperation in design in that area which took this approach of valuing old trees and making sure they stayed there.

MR BRADDOCK: Just to clarify, are you referring to Forde?

Mr Giacon: I think so.

Mr Copland: Throsby.

THE CHAIR: Mulligans Flat, yes.

MS CASTLEY: I think you may have touched on this a little, but I am wondering how the council weighs up the environmental and ecological benefits of tree protection compared with the social benefits of abundant and affordable housing. Can you talk about that relationship?

Mr Copland: Yes, absolutely. Look, we appreciate that both things are important and we are very supportive of further densification as the way for the city to grow as well as a way to ensure we have affordable housing. But I do think that there is often a false choice presented around housing versus the environment. We see this all the time, and I do not think it necessarily has to be that false choice. You can have good design with abundant trees—and that is the kind of city I think we would all want to live in.

And so, there are there is probably two components of this that I think are really important. One is areas in new suburbs where you see practices, if you go out and see how new suburbs are developed, where areas are completely clear-felled and destroyed. And it is because it is cheaper to do that. We have been told that directly that, "That is the cheapest thing to do, so that is what we do."

That creates this barren-earth effect that means that places like Molonglo, currently, are significantly hotter than the rest of the city during heatwaves, which actually has significant social impacts on people's health, these types of things. So, I think we could be looking at new ways to design new suburbs.

Then I think the bigger question is around densification and whether we can design townhouses, apartments, etcetera, that can retain older trees—or ensure that trees are incorporated as part of the design.

To reiterate, I am going to say this over and again, our biggest concern is native mature trees. And so that is where we think there needs to be a stronger red line because those are the trees that provide essential habitat for endangered species here in the ACT. Australian native trees, compared to the rest of the world, are particularly important because when they get older, they start to hollow; they form hollows and that is where our native species live. That does not happen until they are about one hundred years old, frequently. And so, you cannot just replace that. The moment it is gone, those hollows are gone, and it takes a long time for them to come back.

We are seeing a kind of death by thousands of cuts with mature native trees here in Australia—in the ACT—and that is a real concern. So, I think we just need to figure out how we can protect those ones in particular, and then do better work around our design for other trees that we have got.

Ms Pix: I have a comment. I just suggest that you go on Google Maps and look at Throsby and see the black roofscape where the houses are covering whole blocks. I think there was a lot of breaking the rules in terms of footprint of housing blocks. This is not densification; this is just huge houses built.

And the problem is, then, that you cannot have a tree where the house covers the whole block. I think that is a point to make. So, if the Urban Forest Act tries to achieve a cooling down with a canopy of 30 per cent in the built-up city areas or suburban areas, you cannot achieve that with the current regulations or the current rules which allow these huge houses on blocks.

Probably you would be better off, in terms of climate change, if black roofing—black cladding—is not a choice people can make.

Mr Zeil: There are some conflicting problems we have. We have a biodiversity crisis, we need to prepare cities for heat waves and we have the problem of building more housing. One of the things Waltraud just mentioned is an endemic Canberra problem, and that is huge houses.

The other problem is that in the newer suburbs plots become smaller and smaller, houses become larger and larger and the verges become smaller and smaller. The problem with the tree cover there is that the verges are so narrow that it is only a small selection of very often invasive trees that can fit there, so there needs to be much more planning going into how to actually compensate for these narrow verges. There are clearly solutions for that by having islands for trees that would also be used as a traffic-calming measure and so on, but it is again a matter of priorities. What is the first priority? Cooling, biodiversity and also the amenities of people seeing vegetation where they are living.

THE CHAIR: Mentioned a bit earlier were offsets in a negative sense as well as in a perhaps positive sense. What role do each of your organisations see for an opportunity to use a vacant parcel of land as an offsetting feature to an adjacent development where there might be consideration given to “We don’t need all the canopy there because we can have plenty over here”? I know this is a general question, but I might go to Simon first.

Mr Copeland: I think there are a couple of issues associated with offsets, particularly in the ACT context. We have been engaging around offsets—the types of offsets you talked about—particularly around land offsets, for development for quite a while. I think a couple of the issues that we have faced are a lot of offsets that are chosen are often on land that was never developable in the first place and is in turn set aside as an offset, but because it was never developable it was never going to be at risk in the future.

We frequently see situations in which offsets are chosen, they become part of the Canberra nature reserve and they end up being managed worse than they were before being an offset. That is particularly related to instances in which offsets have been previously farmland or agricultural land and became offsets and in fact the previous property manager was managing the biodiversity better. That is often a resourcing issue, because they have more resources to do that, so we actually see land being degraded because of that.

The final issue we have around offsets in the ACT is that we are running out of land to offset, particularly on some of our more important ecosystems—here I am talking about grasslands, which obviously is not about tree canopy because they are more open land, but also box gum woodlands. These are both two threatened ecosystems that really we should be looking at protecting, particularly grasslands, 100 per cent wholesale because there is not much of it left, so to offset it really is cutting into an ecosystem that is quickly dying.

There is one other final one, and this goes to the canopy cover question about offsetting canopy cover. Canopy cover does not just have benefits for the biodiversity, it has benefits of humans as well. I just quickly was finding this report that I found from the City of Sydney which found that increasing canopy cover in Sydney could have a \$1 billion dollar benefit in terms of people's health in terms of lowered health costs because people are healthier. That was getting the City of Sydney up to 40 per cent canopy cover, which is more ambitious than our own but would have huge health benefits. You can get some of that from having that in a nature reserve, but you cannot get that entirely from having that nature reserve. You need to have trees down your street. You need to have trees in your backyard or in your courtyard or whatever, because that is where you get the real health benefits. It is how it cools your house and how it cools you. It means that you can go outside on a hot day. It is all these types of things. Offsets can have a bunch of different associated problems, so we like to avoid them as much as possible.

Mr Giacon: I think the point has already been made. You cannot offset a hundred-year-old tree with a tree that you just planted. In terms of ecological value, you cannot do an offset. In terms of canopy cover, I have already mentioned that there are median strips that could have a huge number of trees on them. There are a huge number of parking areas which are bitumen and so contribute considerably to heating. I do not know whether they could be in an offset system, but that would only be offset for small trees that have very limited ecological value. Similarly Canberra High School—just looking at where are the vacant areas around Canberra that could have more trees on them.

Mr Zeil: You can do a certain amount of offset maybe for biodiversity, like blue-green network connections or whatever, but when you build high-density housing, you cannot offset the heat problem by having a little park at the end of it. You need to integrate it,

and it is a real challenge. Maybe Australia should look more at high-density living in Europe to see how it can be done.

Ms Pix: Basically, I can only agree with what Jochen said. When you plan for high density, you cannot offset the loss of vegetation, cooling vegetation, by having then a little patch somewhere. That does not offset the benefits—the habitat benefits, everything, social benefits—of distributed vegetation. I think Barbara and I are very much concerned about biodiversity and the invasiveness of protected trees under the Urban Forest Act at the moment. That is our biggest concern.

MR BRADDOCK: Correct me if I have got this wrong, but I understand the research is that tree canopy cover within 40 metres of the residence is the most critical.

Mr Zeil: This is the 3-30-300 rule. I can give you the—

MR BRADDOCK: I have not heard that one.

Mr Zeil: How far you have to go to see a tree or how many trees you see from where you are, how far you have to go to actually be amongst vegetation and the middle thing, the 30—I am not quite sure, but I sent you a paper. There is a brilliant guy in Melbourne who analysed cities in Europe and here and developed that scheme to look at heating or cooling, wellbeing and biodiversity.

MR BRADDOCK: That seems to align, because I was about to say that 40 metres is critical for the urban heat island effect.

Mr Zeil: Yes.

THE CHAIR: Before I go to Mr Braddock's substantive, again, if you have other things you would like us to look at, please send them promptly.

MR BRADDOCK: I am just trying to figure out how we craft the legislation to fully consider the ecological value. I am not sure if you have got any ways, Mr Copland, that we might be able to utilise to ensure that that is fully considered as part of any decision-making around a tree. Do you have any suggestions there?

Mr Copland: I do not think I have any specific suggestions about how you would specifically craft the legislation. I do not know if I can answer that question for you, sorry.

MR BRADDOCK: I will pass on to Ms Castley then.

Mr Copland: Shortly. There are a couple of thoughts here.

Mr Giacon: Can I make two comments. Someone like Michael Mulvaney, who is studying gang-gangs and so on—there are people like that who could look at a tree and would come up with a set of criteria: how old is the tree, how many hollows does it have and so on. There is a particular thing I am interested in. I live near Gossan Hill. There are sugar gliders on Gossan Hill. As I wander around the streets one of the questions I ask myself is: can a sugar glider get across this street? Connectivity is

another value of trees and also how far the little birds fly between one tree and another, so that connectivity issue. I am sure you could get someone who could come up with a set of criteria which would give you an ecological assessment of a tree.

Mr Zeil: And do not plant invasive trees.

MS CASTLEY: The Conservation Council submission talked about—I would like you to please explain the meaning of “exhaust all other options” when it talks about redesign and things like that.

Mr Copland: I think we talk about this in terms of desired planning outcomes. I think this consistently goes back to the question you asked previously about the need for housing and the need for biodiversity protection. It goes back to the concern that we have around this desired planning outcome that we are going to create the licence for developers to jump to that rather than exhausting other options such as redesigning their building or designing a building around a large tree, because they see that they could get more yield, for example, or have more apartments or it would be an easier design to do this while getting rid of the tree. We believe that there needs to be—I will reiterate again—particularly around these mature native trees, a stronger emphasis on the protection of that tree. We should be looking at whether you can design it in a different way. Can you still make a profit with one fewer apartment where it means that we still maintain this important asset for our community and our biodiversity at the same time? One thing I did want to say, and I will use this opportunity to say, is I do not think this question of trees versus housing is necessarily—I will continue to say it is what I consider to be often a false dichotomy.

Mr Zeil: Yes.

Mr Copland: One perfect example of that—this data has just come out quite recently—is the City of Sydney. It is much denser than the ACT. This is just the city centre. Some recent data that has come out has shown that it is only up to 21.7 per cent, but they have increased their canopy cover by six per cent since 2008 while densifying. It is the City of Sydney we are talking about—huge towers going up, yet they have gone from 15.5 per cent canopy cover in 2008 to 21.7 per cent now. They have a target of 27 per cent tree canopy cover. That is lower than what we would ask for here obviously, but it is a much denser place than Canberra is ever going to be.

I think there are other examples we can look towards. Their report says it is one of the few Australian local areas to consistently grow canopy cover in dense urban environments, but obviously we can learn something from that, because I do not think the City of Sydney is a bad place for developers, but yet still they are managing to achieve this. If they can do it, we can certainly do it here in the Bush Capital.

THE CHAIR: I did ask this of the Property Council representative as well. Do you think there is anything that is actually missing from the bill from your perspective to enhance the city you think we should be planning and developing? Apart from clarity of terms and more certainty and noting the comments about the invasive species, is there anything else that is missing from the bill that you think ought to be added?

Mr Giacon: I am not sure if this bill is the place for this, but there is a focus on canopy

cover, and trees are only a very small part of habitat. So just focusing on trees is going to lead to an explosion of noisy miners, which are going to chase everything else away. I do not know if this bill is the place to have it, but I think there really needs to be a substantial emphasis on good habitat rather than just canopy cover.

THE CHAIR: That is a relevant comment. Anything else?

Mr Zeil: We support it fully.

MR BRADDOCK: Does that tie in with your recommendation 4 about biodiversity-sensitive urban design?

Mr Giacon: Yes.

MR BRADDOCK: Is that the point you are trying to make there?

Mr Giacon: Yes.

Mr Copland: Just on John's point, if we look at our small woodland birds, for example, which are the types of species that people from Canberra Birds tell me consistently they are very concerned are in decline, they do not live in big trees; they live in bushes. If you walk around Canberra, that is where you will see them, on the ground, not in the trees. I think there is a really good point to be made there.

Ms Reid: Talking again about invasive species, I think the fact that in the act you have to apply tree-by-tree for permission to remove a tree should be changed when dealing with invasive species so that you do not have to do it on a tree-by-tree basis. If there is a whole swag of Cootamundra wattles, for instance, why should you have to apply tree-by-tree for permission to remove them?

Mr Zeil: It would be too frivolous is what I wanted to say.

THE CHAIR: Too frivolous? We would never think that of you, John. If you are that view, that is your decision. We have got five minutes to go. If you can restrain yourself to a one-minute closing statement, each of you witnesses. I might just be interrupting if that goes longer. Unless you do not want to say anything further.

Mr Zeil: With Callery pear we have the next cane toad, the next buffel grass, the next serrated tussock if we do not act now.

Mr Giacon: There is something like 4,000 hectares in Canberra which is mown. In lots of that area there are self-sown trees which are minimally expensive to guard. All you need to do is put in a stake rather than pay the \$500 or \$600 which it costs the government to plant a tree. I think there is a potential for hugely expanded tree cover on currently mown land, but it would require innovation.

Mr Copland: I do not think I have much more else to say apart from what is in our submission. We think that this legislation was very forward thinking when it was introduced, and we appreciate the ACT is at the forward-thinking stage. We do have concerns about this amendment walking some of the protections back, particularly for

our mature native trees. We have covered a lot of that in our submission, so I will just leave it at that.

Ms Pix: Nothing more.

Mr Giacon: Who do we send comments to—email?

THE CHAIR: To the committee email, which is on the committee website. Thank you so much for your attendance today. If you have taken any questions on notice—I do not believe there were any, but if there were, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof of the *Hansard*.

Short suspension.

BROOK, MR MARK, Chair, Practice and Planning Committee, Australian Institute of Architects

GAUGHWIN, MR JAMES, Member, Sustainability Committee, Australian Institute of Architects

HARRIS, MR SCOTT PHILLIP, Director, Workplace Relations and Policy, Master Builders Association of the ACT

KOCMAR, MR JASON SHAUN, Committee Member, ACT Chapter, Australian Institute of Landscape Architects

NEELAGAMA, MS ANNA, Chief Executive Officer, Master Builders Association of the ACT

THE CHAIR: Welcome to our building and construction industry panel for this inquiry. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Any false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

We will get right into questions for this session. I note that the government has provided the *DRAFT Guide to tree removals on design grounds* to allow slightly earlier processing of removal of a tree, before the full DA process. There are a couple of examples in the back of that draft. One is where, from the government's policy point of view, they would approve removal of otherwise protected trees, and there is another example where they would not approve removal. They are for single residential dwellings. Do you have any thoughts on those examples as guides? How useful will that be for people who are thinking, "Will I do something on this block of land? What will I be able to do?" We might start with the Master Builders Association.

Ms Neelagama: Our main message to this inquiry is that we support the delivery of housing. Unless we get this right, we risk no meaningful change moving forward. Scott might pull up those examples. We have nine recommendations for this inquiry. The principal one is around the legislative timeframe, which is the 10 days, which can be stopped and reset continuously. If you reset it on day 10 and you do that 100 times, you then attract a 100-day delay. There needs to be accountability to ensure the expedited path is there. We made two submissions to this inquiry. One is against the approval criteria. We talk in detail around how that needs to clearly look at how it affects site constraints, whether reasonable alternatives have been pursued, impacts on canopy, and the basis for objections on the grounds of design, which must be practical.

THE CHAIR: Are you saying you want to table something for the committee to look at?

Ms Neelagama: No—we have already given you guys our submissions.

THE CHAIR: Okay. Sorry—I was not sure.

Mr Kocmar: Our submission talks about project officer discretion and things like that—trying to understand and put a box around it—and understanding what meets the criteria for pre-approval of tree removal and the hierarchy of the weighting of a tree. In our response we also mentioned the practicality of a submission, but also the landscape topology of where the trees are. The examples show single dwellings, but obviously there are tree removals for mixed use developments and greenfield developments. It is

about having an understanding and the hierarchy of what is a higher value tree within the urban context.

In our submission, we mention that having criteria about early consultation is great, but to have early consultation to say, “That’s a really high tree for the site. We want you to retain that one rather than the low trees over here.” There has to be broader context—maybe more dialogue early on with the Tree Protection Unit to talk about site specifics—because every site is different and every tree is different on a site. Criteria for a tree in an open paddock is totally different to one in an urban environment. We need some premises around that in the act to give us a bit more guidance. We welcome early consultation within the process, but need some more premises around it so that we get a better understanding for our clients. There is the practicality behind it as well. We need a better understanding when we go to a site for a client and then say, “No—we will struggle to remove this one” or “Yes—we should be able to remove this due to X,Y and Z.”

THE CHAIR: Thank you.

Mr Brook: I cannot speak to the specific examples, unfortunately. I cannot recall them and do not have them in front of me. The institute’s position is that we are broadly supportive of this change—similar to Master Builders—as long as the expedited timeframe is, in fact, faster than it was previously. The fact of the matter is that we would have to have specific examples of projects that have had to go to DA specifically to have trees removed on planning grounds—inappropriately planted by a previous owner or something like that. Providing homeowners and developers an opportunity to get a fast pathway to make investment decisions or make decisions about their home is really critical. A 10-day working period, separate from the DA pathway, will alleviate pressure on our planning system and will hopefully deliver faster DAs and more homes. We are broadly supportive. We have some recommendations, or clarifications that we are seeking, where there is confusion or conflicting information.

Much like the Australian Institute of Landscape Architects say, there needs to be a clearer definition of what defines a high-quality tree. There are no criteria or outlines for what characteristics define a high-quality tree, so we need examples. We have examples where a qualified arborist has made a determination on a tree and that has been overruled by the government. Who is actually the authority to say? Otherwise, there are some minor tweaks and changes that we recommend.

Mr Gaughwin: One of the things we foresee as being a possible issue with the new approval pathway is making sure that the interaction with entities is aligned. Various other departments will be looking at projects for approval following this planning approval pathway. To put it in real terms, an example of that might be when we have works within the tree protection zone of a street tree permitted on planning grounds or when putting a new driveway across a verge. We want to make sure that we do not have that decision overridden by the CED later on when we have that driveway assessed by them.

Mr Brook: The building approval process.

Mr Gaughwin: Yes. And what the processes will be for conflict resolution.

Ms Neelagama: That is an excellent point. We really need to have a final decision so we can move forward with the project and not have any shadow of doubt cast over the project. There needs to be a decision and then we can move forward.

Mr Harris: Chair, the second part to go with that is the amount of documentation you have to submit from the start. It is no different. The only part this legislation is really changing is the 10-day limit on the government. There is actually no decrease in the documentation parts of the design you have to go through as a builder or architect. The arborists are coming and there are other plans. You still have to submit all that documentation to go with it, and there is a cost. It is not a quicker process. It is quicker for the government to sign off on it, but it is no quicker for the business or the builder to get it in place.

THE CHAIR: Thank you. We can always take those as opening statements. Are there any supplementary thoughts on that? I started with a few examples.

MS CASTLEY: Yes. I have a bit around the value framework and how it would operate in practice. You touched on that. Could you explain the difference between a medium-value and a high-value tree?

Ms Neelagama: If you could define it, we would appreciate it!

Mr Kocmar: There is criteria in the act at the moment that talks about the health of the tree. It lacks where it sits within the landscape, within its site and within the broader context, and the longevity of the tree. We can talk about a healthy tree, but it could just be a high rating because it is, for example, a six-metre-high tree versus a 20-metre-high tree. As it currently reads, if it has a dense canopy and its health is good, regarding the character of the tree, it will get a high rating—as well as a 20-metre-high tree. There have to be logistics or a mechanism to bring in its landscape or amenity rating as a tree for the future, not just its health and vigour. That is where that is coming into play—when you are mapping out a site in the early stages, on the planning side of things, rather than saying, “They’re all healthy. They’re all doing great.” On the planning side of things, it is probably: “In this broader context, we should be keeping that tree over there rather than the four or five down the side.”

MS CASTLEY: That makes sense.

MR BRADDOCK: This is for the Master Builders. There is your recommendation about the reasonable alternative test, which I think you were starting to touch on, Mr Harris. You are aligned with the Property Council, but you are in tension with the Conservation Council in terms of: “How do we ensure that we have explored the reasonable alternatives before we actually make a decision to remove the tree?” And there is the level of detail required. Can you please educate me on where you think that level of detail and assessment should happen?

Mr Harris: It is always hard to answer that particular point and go with it from there. The one that I bring up all the time from members is when they put a subdivision on a block and they have a tree sitting there, and the tree cannot be removed because it falls within the protected species type, but the whole planning for the block is put out because

you cannot build on that area. We are asking for reasonableness: “If we have to re-divide or subdivide that block to go with it, what can you do to make the contribution? Can there be contributions to go with it from there? Can I re-divide my whole block or do I put the driveway down the side, but does it cut through the root system on the tree at the same time?” As we said, if we could get that first lot of planning up-front to say, “Yes—you can remove that type of tree” or “No—you cannot remove that type of tree because of what it is,” it would make it a lot easier to design what goes on the block and what goes further down from there. An alternative test is saying, “For these types of trees it is a no, unless they are not healthy”—those that can come out easily enough—“but these types of trees have to stay” or they have to be removed and put into another area, or a contribution is put on.

MR BRADDOCK: So there could be different thresholds for reasonableness, depending on the value of the tree?

Mr Harris: The value, the location, the age of the tree to go with it, and its canopy cover. It would then come down to how much of the site is impacted by that tree being on it at the same time.

Mr Kocmar: How we read the act was that you could have early consultation and get approval on planning grounds if you demonstrated that the tree is in a really bad location—right in the middle—and you cannot get the density because it is in a medium-density area. That is how I started to read the act. The change is that you could have early consultation. You talked about the documentation required to demonstrate that. The practical solution is: “Have you tried everything to get that medium density by keeping the tree or does the site not work with that tree there?” We need some premises around that—let’s call it the practicality of the diagram—to demonstrate that the planning of the site does not work if the tree is retained in that location.

MR BRADDOCK: What level of evidence does not create too much impost for the industry but allows the government to make an assessment of: “Have you validly ruled out every other option?”

Mr Kocmar: Yes—that is what is in our submission. We can put promos around to our clients. At the moment, when we do a submission, there are always more comments and more comments. As you were saying, make it easier to make a decision—“You have shown three or four different schemes and we see that the site doesn’t function without the tree removal.”

Mr Harris: It is not about going through every single option. That is currently one of the issues I hear from members—“We have to demonstrate every single option or every reasonable way to get around it,” instead of once or twice. As a builder, you have to demonstrate: “I’ve thought about cutting the tree back and I’ve thought about putting a whole new plan on here. I’ve done all this.” Then you get to the end and the answer is still: “No—you can’t remove the tree.” That is time. That could be anything from one month to six months to twelve months down the path.

MR BRADDOCK: There is also the balance. If there was a viable option but it was not submitted and the tree was removed because that option was not recognised, we have lost that contribution to the urban environment.

Mr Harris: We agree with that, but how many steps do you really have to go through as a practical stage to get to that?

MR BRADDOCK: That is exactly what I am trying to figure out.

Mr Brook: What this is trying to achieve for, essentially, the 1N applications is an expediated pathway for minor variations to the planning approval to make it easier to understand what is going on. We need very clear examples from the government on minimum documentation and what the documentation looks like—mud-map guidance. The earlier we are able to submit plans, or loose plans, that show, “Is this a viable option? Is this not a viable option?” You can do that quite easily with very high-level plans. It is the additional documentation and more dimensioning and more layers of information that gets hard. Proving some high-level concept and mud-map drawings is not that difficult, and the faster that happens the better it is for everyone. The better it is for the owner and the better it is for the government.

The government is capable of developing: “This is what a floor plan option looks like and this is the level of documentation that we require.” It could be just external wall dimensions and, basically, hand sketches or a survey. I think that would be sufficient to assess the option. There could be a rating for the trees on the block and probably an arborist’s report stating what they are, what quality they are and the value they are to the public, and then there could be three options that show that a block is suitable or not suitable.

Mr Kocmar: Yes. With that, you start to put premise around it and ask, “What would the site look like if you kept a tree and kept its two-meter canopy offset and things like that? What does that look like? How many buildings are there? Is that practical or not?” or, “If you didn’t have a tree, what can you deliver there?” It could be as simple as that. It is a bit open-ended in the act at the moment, saying it is at the discretion of the officer reviewing the plans.

MR BRADDOCK: Should you get the pre-approval to remove the tree, would you be comfortable that it would be subject to a finalised DA approved by the government—saying, “I’d hate to see that tree being removed”, and then you do not submit a DA, you do not do anything with the block, and we have lost a tree?

Mr Brook: What we are saying is that this is an avenue or pathway to not have to get a DA. The majority of these projects are going to be exempt projects that go straight through to a certifier. The purpose of this is to limit the pressure on the planning so that we can end up with more missing middle projects and we can have more housing.

Mr Kocmar: I agree with that. I would also agree it is on both sides. We go from the ones with single dwellings or multiple dwellings on a site. I agree with that. But then there is also mixed use development or broader master planning on a site with, for example, multiple towers, without knowing, before doing a DA, that a tree is sitting in the middle or over there, where a basement and things like that can go. It fits two purposes, including for the private development side of things, but that brings up planning of a site as well. So we could sit down collectively and say, “These are the options if we retain this tree or this tree.” Or is there a premise that we can go to the

site—“We have these trees and we give them a rating of high, low or medium.” “We all agree that these trees need to be retained, and the other trees can be removed for the development.” I see it working on two grounds. That would give the industry assurance—that they have a pre-meeting before they do all the work that they need to do to get to a DA stage and then being knocked back—“No—we really think you should keep this tree over here and get rid of that one over there.”

MR BRADDOCK: I will rephrase the question. My goal is to stop the needless removal of a tree for a project that might stop and not go ahead—ensuring that does not happen until the project is shovel-ready and going ahead.

Mr Kocmar: Yes.

Mr Brook: It could be as simple as saying that it is subject to a commencement notice being issued by a private certifier, before a tree can be removed. I think the government should really try to see this mechanism as a way to keep private, small-scale developments out of the DA system. We already have a lot of projects unnecessarily clogging up the system. The chain reaction is making assessment time slower. This has the potential to stop a lot of projects needlessly going to DA, because that is what we have done historically. We have entered projects into DA assessment just on the grounds of getting a tree assessed—on planning grounds.

THE CHAIR: On an otherwise exempt—

Mr Brook: Yes. I have projects in the office that are exactly that. There is the other part of it. We are talking about single housing, but I think what Jason was trying to talk to was confidence in progressing forward with a DA. On larger projects, we are not talking about one tree holding up a project. “We are consolidating three blocks and we are putting in medium-density housing. There are 14 trees on the site and we want to remove three or four. Under this option, it is these three. Under this other option, it is these two. Under this option, it is—whatever. Which trees are we considering to be high-value? Which are we considering to be low-value?” There might be a couple of weedy eight-metre trees and some beautiful gums. We all agree the gums should be retained, but those other trees should not limit our ability to deliver housing when we are going to have greater canopy as part of our other requirements. That is the certainty that we are looking for.

Mr Kocmar: Let’s say you want certainty. I do not necessarily think that, for a single dwelling—if that is approved—a tree can be removed. They are going to build their thing. It is the part of the certifier. With this wider planning way, that will be covered within a DA, and then there is the canopy contribution that you have to give back by removing those trees. What Mark was leading to was great, in the sense that it gives certainty that it is going to fast-track the DA because you have done that early consultation.

Ms Neelagama: You have certainty to move forward and you do not risk other agencies coming back and telling you, ‘Actually, no—the tree has to stay.’”

MR BRADDOCK: I understand.

Ms Neelagama: For a well-designed development—in missing middle housing, for example—if you need to remove a tree, there is going to be a replanting program and a landscaping program around that. It is not like we are removing a tree forever. We are actually replacing it with more vegetation and more trees, and that is what good design—what these guys do—will achieve. But we can only do that if we know we can remove trees that make it impossible to build or impossible to establish a construction site, and that is why a true 10-day pathway is so important.

MS CASTLEY: Can you explain to us the impact of this legislation not going ahead—practically? How much does it cost? We all want homes. I do and you guys do. Can you talk about what that looks like, practically, if the 10 days are not a true 10-day turnaround or, indeed, if it does not go ahead?

Mr Brook: It is hard to quantify the actual value and it depends on the scale of the project, but you can imagine—

MS CASTLEY: Can you explain, then, what it looks like now and possibly how long it takes?

Mr Brook: Yes. I will talk to two projects. Firstly, a single dwelling block and an extension renovation to an existing house. If a previous owner of a block planted, for instance, six pine trees which are inappropriate and have grown to a massive size, and then someone purchases the block and wants to extend the ex-govvy house to make it more sustainable, with north-facing living spaces—they want to put on a master bedroom or a living space, under the current pathway, rather than getting a design done and going to a private certifier, getting it approved and then getting onsite within a few months, they will have to take the project and pay all the requisite fees to arborists, architects and everyone involved in the project. They have to submit that as a DA application, so they might spend tens of thousands or twenties of thousands of dollars to get the planning pack together, without any certainty that the project is going to go ahead. This is for an individual homeowner, so the government can come back and say, “Oh, no—those are high-value trees” or “We’re not allowing approval of those on planning grounds.” “If the trees are unhealthy or if they are going to drop limbs, there are other pathways, like this, where we can get approval without going to a DA.” That is what an individual homeowner is going to face.

If you are talking about a development project, the quantum is even greater because a lot more consultants are required to deliver a DA pack for a multi-unit development. You have civil engineers, hydraulic engineers, electrical engineers, architect fees, all the holding costs associated with holding up a big development, and a multiple-month DA process—six months or 12 months—that may require a full redesign because there was no way to get an understanding about the most important trees or if it was possible to remove a tree. You are also asking us to develop multiple options. Then you are going to go for the DA and maybe have to redesign the whole project because you were not certain about which trees were really important. Architects and landscape architects do not want to remove trees willy-nilly, but we do like certainty about what is a hard line and what is not a hard line.

Mr Kocmar: There is nothing against the officers assessing that. They have the criteria. They are going to say, “These are losing limbs and these are a weed species.” They

have criteria with which they can approve certain trees. They can only deny removal because they cannot act on the planning ground side of things.

Mr Brook: Speaking to a specific example, one of the demonstration housing projects that I am aware of—a demonstration housing project that predated the missing middle legislation that was there as a guidance—spent seven years in the approval process. It was specific to those projects. There was always going to be a really long timeframe because it had to go to the Legislative Assembly et cetera. Because of that timeframe, consultation was done with the Tree Protection Unit, which retained three large trees and removed one. It was approved in principle by the Tree Protection Unit. There was a change in Tree Protection Unit officers. After receiving a DA, it was then denied on the grounds that those trees should be kept. Information provided was not sufficient, even though they previously said it was, and then they would not provide any guidance on what specifically needed to change. There were no specifics. It took six months for that to be resolved.

MS CASTLEY: To be clear, the way it looks at the moment is that it could—I do not even know what I am asking. I am quite shocked that it could take that long and then a decision could be overturned.

Mr Brook: Yes. It is responsible. At the moment, the Tree Protection Unit makes decisions based on an individual officer's assessment of the quality of a tree and its value for attention, and different officers can make different assessments. One of our projects was submitted twice and two different officers made two different responses.

MS CASTLEY: You need a framework.

Mr Brook: Exactly.

Mr Kocmar: We get it—trees are not black or white; they are all going to be different—but, to help the officers assessing these things, we need to bring the criteria back so that everyone is singing from the same sheet. That is what the issue is at the moment.

MS CASTLEY: That is very helpful. Can you get your own arborist to assess a tree?

Mr Brook: We are required to get our own arborists.

Mr Harris: In the 10-day cycle, you have to submit that too. To get it through quickly, you still have to have that there.

Mr Brook: We always get an arborist report and it is submitted, whether it is going through DA or whether it is going through the Tree Protection Unit. We always do because we know it is going to be requested. The challenge is that sometimes that arborist report is ignored by the—

MS CASTLEY: That is my next question. The Tree Protection Unit can look at that and say, “No. We disagree.”

Mr Brook: Or the Planning Authority—whoever is assessing it.

Mr Kocmar: It happens quite regularly. It is not a rarity that a qualified arborist's report is dismissed by a unit member.

MS CASTLEY: Thanks.

THE CHAIR: I have a kind of related question. Do you think there is an opportunity in the bill to create more consistency in decision-making? And, if it is not in the bill, what do you think is needed?

Mr Harris: I will go to the first part, Chair. It is probably more to do with the approval process documentation, on the regs et cetera, not the legislation itself. The regs can be altered as needed and are a lot simpler and easier to meet what the community wants and what is happening out there on the site at the same time. That would be my suggestion: it is more about the regs and code, not the legislation itself. But the legislation refers to those codes and regs that have to be developed and put in place. That would give extreme certainty on what the assessment criteria would be and how to go about it.

THE CHAIR: The government has published the *DRAFT Guide for tree removals on design grounds* with criteria and examples, and also draft urban forest approval criteria, were you to have time to attend to those. Is that enough or do we need something further?

Mr Kocmar: There has to be a rating with regard to the value of the tree in the topology it sits within the site—its location—because that changes everything. It goes off its species and its future benefit to that area and amenity, but you are going to get a different rating when you are talking about greenfields or urban environments. It is going to be totally different to a single-dwelling site. I think it would be great if the officers had criteria themselves—you still have to go through the planning side of things—where they could support the removal on planning grounds, because at the moment it is on health or weed species or a certain tree. But, if they had the expertise on how the tree will form in the future context, from where it sits, that sits within an item where they could approve its removal. The context where it sits is not practical for its retention or future use of a site. We are not saying we want to remove every tree or anything like that. It is just about the practicality of it and making sure that it meets everyone's expectations.

It is getting there with the act, but, if we could add early consultation and actually meet—because we can never sit down and talk through a project with officers. I think it would help if we could meet and talk, or even meet onsite and say, “Here are the trees. What do you think? I agree that is a higher tree. What about this damage here?” They are a living thing, so seeing it in person is key. I know that burdens the officers as well, but I think that would help, because then it fast-tracks the design. Everyone is on the same page—“Yes—we agree with that.” It is documented. And, when you submit back in those 10 days, you can say, “We’ve been onsite and we all agreed that is the best tree for the site, moving forward.”

Mr Brooke: Those initial consultations would save everybody time and money. It is quite clear. As much as we try to make an efficient process to develop drawings and plans that are indicative of what we are trying to do, we spend quite a lot of time

investing in good solutions. So, if we can have initial consultations onsite with these members, that would go a long way before pen hits paper.

MS CASTLEY: Is it just a given that no-one meets you onsite?

Mr Brooke: There is no phone number to call. There is no email to contact and no number to call.

Mr Kocmar: Even when we get comments back from the DA, you cannot sit down and talk it through without going through a—

Ms Neelagama: Chair, can I answer your question directly? Do you mind? There needs to be clearer criteria to remove as much subjectivity as possible. It needs some additional practical case studies and examples. It needs a lot more consideration around greater transparency of decision-making. Everybody gets lost in the current system, and we are given answers and there is no real basis for them at times. And there need to be published examples of previous decisions or precedents to enhance that accountability.

THE CHAIR: Recent decisions?

Ms Neelagama: Yes. Implementation will ultimately determine whether this bill succeeds or fails, and the culture within the department responsible for driving it. Everything has to increase accountability of operations.

THE CHAIR: Do you regularly get reasons for decisions? Is it on request or do you just get the decision?

Ms Neelagama: We regularly get requests for additional information.

THE CHAIR: But what about when you ask for the reasons for—

Mr Kocmar: We do not get the chance to have that conversation—“What do you mean by this?” We jump through all the hoops because we want to try to get it approved, but—and this is where we are getting back to having really clear criteria that they benchmark back to—we are getting a lot of assessments lately that are in the grey zone, outside of the current standards or what we need to provide as requirements.

Ms Neelagama: There is no formal or structured feedback process.

Mr Brooke: There is no clear feedback process and no clear avenue to get clarification or ask those questions—why or “What if we did this?”

MS CASTLEY: Where would the MBA draw the line between a legitimate tree retention design requirement and one whose cost or yield impact makes it unreasonable? Does that make sense?

Ms Neelagama: We have a common goal, which is to deliver more housing, and we have to have the grounds on which we can consider the economic good of putting that housing in. I will talk you through a case study where the Tree Protection Unit knocked back the removal of a tree in Farrer. The initial application was so that they could put

in a duplex. They were only able to put in a single house in the end. So, instead of accommodating two families, we accommodated one. We were unable to remove the tree that had significant issues. It is already damaging the new build. Instead of inviting more housing and instead of providing safe housing, we now have a client, a homeowner, who will have to deal with these tree maintenance issues recurrently for the rest of their time in that house. That is a really good example of where it is not only about the economic good of more housing, which we all support, but it is also about creating safety issues and expense issues for people who live, vote and are employed in Canberra.

MS CASTLEY: And want to add additional housing to the stock of the ACT.

Ms Neelagama: Correct. I have thousands of examples like this, particularly as it relates to missing middle housing, which is better for everyone. It has existing interoperability with energy, it is better for the environment, people are living in more well-located suburbs, and the cost of construction is less. Overall, it is a win, win for Canberra. But, when a single tree is inhibiting that, that is a replicable example across the whole of the ACT. You guys know. You live and breathe this.

MS CASTLEY: Can you appeal?

Mr Kocmar: In the scheme of things, we never want to chop trees down. We never want it to get to that. We are going to lose the bush character if we start doing that. In the scheme of things, it is probably more about: “You can keep that tree, but maybe do this, this and this to keep it.” We choose the criterion that we have to be two metres outside of the canopy, and that reduces all our buildable margins a bit more. We used to get pretty close to a tree and it lived; it was fine. There is the understanding of which trees we are planting on a site. There is the criterion where you have to have deep soil that allows for all the future trees to grow into, and that is fine in that scheme of things, but we will not be able to build from boundary to boundary. So we are covered there. But it needs to be more practical, saying, “This tree could be retained,” or “If you get rid of that big one, keep this little one because that is going to grow to its conditions.” There has to be that practical conversation at the start of a project.

Mr Gaughwin: Adding to what Jason mentioned about building in proximity to canopies and how it used to be different, at the moment the tree protection zone, as stipulated by the bill, is the canopy plus two metres, but that actually differs from the Australian Standard, which talks about just the canopy, I believe. I am unsure why this bill goes beyond the Australian Standard. It is funny. There are quite a few technicalities where the bill seems to pick the Australian Standard, and then in other instances it makes its own. As an industry, we are unsure why that is the case.

MS CASTLEY: Thank you. That is helpful.

MR BRADDOCK: Could I check: what is the standard number? I know it was in someone’s submission and I cannot find it in front of me.

Mr Brooke: The Australian Standard says that the tree protection zone is the canopy zone, which is estimated to be the root zone of the tree. It is in our submission. This legislation says that the tree protection zone is the canopy plus two metres on all sides.

MR BRADDOCK: That is AS 4970?

Mr Brooke: AS 4970 says it is just the canopy. This legislation says it is the canopy plus two metres.

THE CHAIR: There is no other national standard that has “plus two metres”—

Mr Brooke: AS 4970 is the national standard.

THE CHAIR: But there is no national standard that says that you have to add two metres?

Mr Brooke: When we are trying to build smart and clever, especially under the guidelines of missing middle housing, every metre counts. The extra two metres is an enormous amount of space.

THE CHAIR: Yes.

MS CASTLEY: Regarding the example you just gave us, how was the decision made? Was that Planning? Who made that decision?

Ms Neelagama: That was from the Tree Protection Unit.

MS CASTLEY: You cannot appeal, or that just takes longer and more money, or it is just a solid, “That is our decision. Done”?

Mr Harris: A decision can be appealed through ACAT , but, again, it is time.

MS CASTLEY: It is too hard.

Mr Brooke: If it is not a DA, you could take it to the Planning office to overrule the Tree Protection Unit on planning grounds—if they have decided not to remove it for whatever reason—but then you are going through two application processes, the delays associated with that, and, following that, ACAT.

Mr Harris: That is why you go down the DA process and the BA process, because you do not muck around with that. You just put in your application, straight in.

Mr Kocmar: That is where Mark was going before. It sounds like they would have done a tree damaging activity. To the defence of the tree unit, they cannot rule on planning grounds. They can only rule on the tree and—

MS CASTLEY: Whether it will drop a limb, and all that sort of stuff.

Mr Kocmar: Will it drop a limb, if it is—

Ms Neelagama: I do not think we should sort of hypothesise—

MS CASTLEY: No—

Ms Neelagama: A case study was just mentioned to provide a good example of where it is leading to poorer housing outcomes.

Mr Kocmar: What we are getting at is that this act could help fast-track that as—

Ms Neelagama: Correct. And you could have approached that project with certainty from the outset.

Mr Kocmar: Yes.

MR BRADDOCK: But, to exhaust the design options, you need that element of planning assessment, albeit, you do not want to replicate the whole DA process. I hear that loud and clear.

Mr Kocmar: No—you want to fast-track that.

MR BRADDOCK: It is not just going to be the Tree Protection Unit guy ruling: “Did you really rule out that point in the design?”

Mr Kocmar: Which I think is important.

MS CASTLEY: And compensation for the homeowner who could not do what they wanted to do.

Mr Brooke: It is important to have planners with planning expertise making decisions on planning grounds. It is super important that whoever is making the decision—

Mr Kocmar: It is not the arborist.

Mr Brooke: has the capacity to make a decision on planning grounds.

THE CHAIR: It sounds like we could keep talking for quite a while. On behalf of the committee, I thank you all for your attendance today. If you have taken any questions on notice—I do not believe any questions were taken on notice—they should be provided within five business days. The committee will now suspend proceedings for a break.

Short suspension

CHEYNE, MS TARA, Attorney-General, Minister for City and Government Services, and Minister for Transport

ORR, MS SUZANNE, Minister for Aboriginal and Torres Strait Islander Affairs, Minister for Climate Change, Environment, Energy and Water, Minister for Disability, Autism and Neurodiversity, Minister for Housing and Homelessness, and Minister for Equality

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

BENNETT, JAMES, Executive Branch Manager, Building, Design and Development Branch, City and Environment Directorate

BRYANT, BENJAMIN, Manager, Environment and Sustainability, Icon Water

COX, MS KIRRA, Executive Branch Manager, Data, Projects and Improvement

DAVIS, NICOLE, General Manager, Infrastructure Services Group, Icon Water

FITZGERALD, MR BRUCE, Deputy Director-General, Transport, Territory and Municipal Services, City and Environment Directorate

SENDABA, MS BETHEL, Executive Branch Manager, Climate Change, Energy and Waste Policy, City and Environment Directorate

THE CHAIR: On behalf of the committee—Minister Cheyne will be joining us, I believe, shortly—I do welcome the Minister for City and Minister for Climate Change, Environment, Energy and Water Ms Suzanne Orr MLA; Minister for Planning and Sustainable Development Mr Chris Steel MLA; and relevant officials. Welcome Minister Cheyne, Minister for City and Government Services. Will each of you identify yourselves for the record.

Ms Cox: Kirra Cox, Executive Branch Manager, Data, Projects and Improvement.

Mr Fitzgerald: Bruce Fitzgerald, Deputy Director-General, Transport, Territory and Municipal Services, City and Environment Directorate.

THE CHAIR: If ministers are happy with my introduction of them, they can just nod or something. We also welcome Icon Water, but they are not here yet. I will get them to acknowledge themselves when they arrive.

Please note as witnesses you are protected by parliamentary privilege and 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 go straight into questions. I will start off. I am interested in which office ran the consultation with stakeholders and community on the bill.

Ms Cheyne: Mine.

THE CHAIR: We had some feedback during the session with our environmental and Landcare groups—that is their feedback—that they never felt adequately consulted. Would you, Minister, describe the consultation process you went through? With whom? Was there a different approach to the construction and development industry compared to the environmental groups? Perhaps if you have got a stakeholder list and a timeframe of consultation, I think the committee would appreciate that.

Ms Cheyne: We can talk through the consultation. I guess the origin of this bill is important, because while it covers trees on public land, where we were really finding the rubber hitting the road or where the friction was came down to trees on public land that were close to residential land or trees that were on private residential land. Quite a lot of early engagement began with industry. Certainly, we did bring in other stakeholders as this moved along, but that is its origins.

I would also note separately—I think this distinction is actually critical for this committee—that we have got the bill and the bill is what you are inquiring into and reporting on and that is where the recommendations will be, but it should be considered with the fact that we have also gone out on specific approval criteria and tree removal guidelines through a broader YourSay conversation engagement. That is really where we are finding and still believe that that is where people are most interested in what is going to meet the thresholds for trees to be removed. Certainly officials can talk through what that process has been, but that is much broader than the consultation on the bill itself. I will hand over to Ms Cox.

Ms Cox: The consultation on this bill was really informed by the very clear objective we have to try to work out whether or not it was meeting its legislated objectives as a new piece of legislation while also balancing all of the other priorities that government has and the way that legislation interacts. To that end, we decided against advising the government to do another quite large YourSay consultation where we have a discussion paper, put out surveys and do that, which informed the original development of this legislation, and instead tried to focus on if it is actually meeting its objectives. We are somewhat limited by being able to tell whether it is meeting its objectives because a key component is the canopy provision framework, which, of course, requires that trees are replanted when they are removed, and where often a financial contribution is made. Those trees take a little while to grow, so you cannot know for sure whether it is meeting a lot of its legislated objectives after one or even two years of operation.

In terms of how it was interacting with other legislation, really, we targeted stakeholders who represented peak bodies in the development side, so stakeholders that you have heard from today like the Master Builders Association, for example, but we also wrote to stakeholders on the environment side to see whether they had any feedback about the effectiveness and operation of the legislation. We had a meeting with some of those stakeholders who did respond to us and indicated an interest, so it was really tailored to the interactions that were happening with the legislation and whether or not people had expressed an interest in giving us their experience on how it was working so far.

THE CHAIR: Like I said, could you provide this committee with a list of the stakeholders and the types of consultations you undertook.

Ms Cox: Yes. We have kept a register of all our stakeholder interactions. We can provide it.

THE CHAIR: That would help clarify any concerns perhaps and give the committee some things to think about.

MR BRADDOCK: We received feedback from the Conservation Council that industry stakeholders had the opportunity for a day-long workshop, whereas they received only

a short briefing from you. They thought they were not in a position to provide a fulsome submission to this inquiry due to that lack of consultation. Is there a reason why that did not seem to occur?

Ms Cox: I would say there was no day-long workshop. There were two roundtable discussions that construction industry representatives were invited to. That was led by Minister Cheyne.

Ms Cheyne: They were not full days, trust me.

MR BRADDOCK: Whatever the length—two round tables with industry. Where was the—

Ms Cheyne: We had two round tables covering a wide variety of different matters. The first one was much broader than the second one. The second one largely concentrated on this but also some other legislative proposals that we had, because we were really trying to test our understanding of how the bill was interacting with them in practice so that we were not solving the problem that was not actually the problem, and that is what we were testing.

I contest that the briefing received by the Conservation Council was short, and certainly I am surprised to hear that, to be honest, because I think Mr Copland and I have a good relationship, and he has always been welcome to follow up with any questions. I am just trying to recall whether this was a presentation item at the Nature Conservation Forum or at the—

Mr Fitzgerald: Environment, Transport and Planning Forum.

Ms Cheyne: Yes, that one.

THE CHAIR: We will welcome your description, as you are able to provide it, of the stakeholder engagement.

MS CASTLEY: On the guide that went out for consultation, on the YourSay website for tree removals it lists a tree management plan among application requirements while the explanatory fact sheet says, “A tree management plan may be required.” Will it be mandatory for every application or only where relevant?

Ms Cox: A tree management plan is not necessary if you are just seeking to remove a tree because you do not need to then manage the health of that tree during a development process or works in a tree protection zone. It is required if you are proposing to do works in a tree protection zone, or if you were to get an approval that, for example, allows you to remove one tree but not another, you may need a tree management plan for the other tree. If it is simply a removal and that removal is approved, then you would not require a management plan.

THE CHAIR: I think we are going to get something back that describes your engagement with the different groups.

MR BRADDOCK: I have just got a question on whether any modelling or analysis has

been done in terms of the impacts if this legislation, if passed, on the tree canopy cover for the ACT?

Ms Cox: Yes, in terms of the modelling. The modelling is done on the lidar data. We are in an in-between period, because the legislation is so new where we have past data; we do not have yet a full analysis of the data post the legislation being in place. Even if we did, because the legislation has in it an inherent hierarchy that we wanted you to keep the tree and then if not, replace it and then if not, make a financial contribution, we have seen a lot of people opting in to replacing the trees on site, and those trees are going to take quite some time to replace the canopy. Even if the legislation is working really effectively in the first five or 10 years, you may see a small decrease or no increase in canopy cover as the replacement trees grow and mature and actually genuinely replace that canopy.

MR BRADDOCK: My question was relating to this particular bill. Is there any analysis or modelling that has been undertaken to give us the assurance that this bill might not be detrimental to canopy cover?

Ms Cox: As compared to the legislation as it stands?

MR BRADDOCK: The current legislation as it stands.

Ms Cox: No, not against the bill.

Ms Orr: Mr Braddock, if you do not mind me just jumping in there—Suzanne Orr, Minister for Climate Change, Environment, Energy and Water—I think the core of your question is: how are we making sure that we are maintaining a healthy canopy cover across all of the ACT, particularly in the context of climate change? While this bill will interact with one aspect of that, it will not be the only aspect that it interacts with, and the mapping around the lidar studies and the canopy cover actually happens across a range of different units within CED, including some that report to me, and that is the work that they look at as to how all the different components come together. I think if you are drawing a line through that this bill is the determinant of that canopy cover, I think that is probably a little bit simplistic. I also would suggest that if there is a particular part within it that you are concerned about, it is probably more packing that apart from the bigger conversation.

Ms Cheyne: The go-to modelling—it is going to depend. What we have sought to do with the legislation, as Ms Cox accurately described, is that it is not simply about us making it easier to remove trees or trees that would otherwise under the current legislation have been exempt. What we are trying to do is make it clear that these are the grounds that you can expect to be considered that may lead to this outcome, but there has to be consideration for the tree's location, its developable area, species, condition, life expectancy, ecological value and the consequences of the proposed design.

Consideration also has to be given to reasonable design alternatives, including a design alternative that seeks to retain the tree where possible. It also does not apply to registered remnant or heritage trees. If it does satisfy a desired planning outcome, again, that assessment is based on whether the development contributes additional housing,

supports a more compact city, uses available land efficiently, improves access to community facilities and infrastructure or supports other planning objectives, and it also considers environmental consequences, including ecological corridors, existing tree value, replacement of landscaping, shade, amenity and site permeability. It is not what the consequences are for the canopy and how we model that; it is working at the earliest stage with the proponent who wishes to engage with the tree, whether it is to prune it or remove it, to see if there is a better design outcome that retains the tree. If not, are other objectives going to be met that justify its removal? Again, if it is protected, if it is heritage, if it is remnant or registered, it is not going anywhere.

Ms Cox: I think it is helpful to consider that those decisions are already being made. There is already a trade-off inherent in our legislation that allows a Planning Act decision under the Territory Plan to approve a removal of a tree that may be not permitted under the Urban Forest Act. That exists, and it happens in the development application.

What we have sought to do with the amendments in this bill and the substantive amendments to the Planning Act, which my colleague Mr Bennett can talk to, is make that a standalone process rather than having it as part of a DA, so it can be brought forward in the development cycle. You can also then scrutinise that process quite a bit more. What we have sought to do is publish a guideline about how those decisions get made, so rather than that happening deep in the assessment of a development application where all of our stakeholders get together, we have sought to be really transparent about how that decision gets made and make it a standalone process. On that basis, it would not allow new trees to be removed; it is just a more effective and transparent process.

THE CHAIR: I just want to pick up what the minister said. You said it is not designed to make it easier to get rid of a tree, and yet the new pathway would seem to make it a quicker process to get rid of a tree where that is going to be the decision. I am not quite sure what you meant. If it is not easier to get rid of a tree, why bother having a new pathway if that is not the case?

Ms Cheyne: Because it is about providing certainty earlier in the process. The panel that you had just before was reflecting consistently that they would have preliminary conversations, but they were not decisions at the beginning, and then at some point that thinking might change or a decision might be made or a decision is made by someone and then changed by someone else. What the design grounds pathway does is it provides an alternative pathway but also a pathway at the beginning of that process so that that certainty is there. That is the distinction.

THE CHAIR: That sounds easier to me.

MR BRADDOCK: Before I am accused of asking simplistic questions, I am asking: why should the public have faith in the government's homework that it understands that these changes would actually lead to an improvement to the urban forest or not?

Ms Orr: Mr Braddock, let me just start by saying I did not think your question was simplistic, and certainly I did not want to give that impression. I think I was saying it is just a complex matter, which I think you can appreciate. I might ask Ms Sendaba to

come up and just talk about some of the work we are doing around the urban forest and the mapping from a climate change perspective, because I think that is the—

THE CHAIR: Minister, while that is happening, we have got four officials who have not identified themselves or their role; we might just step through that, starting with Ms Sendaba first.

Ms Sendaba: Bethel Sendaba, Executive Branch Manager, Climate Change, Energy and Waste Policy, CED.

Mr Bryant: Ben Bryant. I am with Icon Water. Manager, Environment and Sustainability.

Dr Davis: Dr Nicole Davis. I am the General Manager of Infrastructure Services Group at Icon Water.

Mr Bennett: James Bennett, Executive Branch Manager, Building, Design and Development Branch in the City and Environment Directorate.

Ms Sendaba: Just to make some general comments then around modelling, there will be a range of changes over time that will impact tree canopy cover across the territory. There is a range of different programs and specific things around planting, but also in the policy space which I look at we have got a project on foot at the moment that is looking to develop up a model that will be able to give us some predictive information around the pathway to that 30 per cent target, and that will be able to test different scenarios out and understand those differences around the impacts of planting regimes as well as other development changes et cetera as we continue to work towards that 30 per cent target.

MR BRADDOCK: Just confirming, there has been no analysis on the basis of this bill and its measures as to the impact of that?

Ms Sendaba: No.

Ms Orr: Mr Braddock, can I just ask a clarifying question to give the best answer to your not simplistic question. With the question you are asking as to the modelling to the bill, what is the expectation or what is the linkage you are seeing between that modelling in this bill and what is the actual—

MR BRADDOCK: As I was saying, how do we have confidence this is actually going to be an improvement to the urban forest by passing this bill?

Ms Orr: Improving in the sense of seeing more trees or not seeing a reduction in tree canopy? What you see as improvement is up to your—

MR BRADDOCK: That can include many elements. As you said, this is complex in terms of canopy cover, the maturity of trees, the ecological value and so forth, but I am checking to see: has the government actually done the analysis to show that this bill is a net positive to the urban forest or a net negative?

Ms Cheyne: In the way of it being a net positive, if we have a scheme—as we have had with the bill in its current form—as you have heard from industry, that people have been frustrated with, then people take matters into their own hands, and that does result in a net loss of our canopy.

What we are trying to do with this bill—again, I really, really insist that the committee looks at the guidelines and the criteria that went out for public consultation. Do not stop or change your considerations of the bill, but they really should be read together. For starters, we are really trying to make clear here are the circumstances that might favour the removal of a tree, here are the circumstances that will favour the retention of the tree. That is detailed in the draft guide that has gone out, so that helps people who are genuinely trying to do the right thing work within the guidelines to understand. That will help better education of industry over time. I expect that over time we will get fewer applications where it is probably not going to be approved for removal. We consistently state that we want to be confident that alternative layouts have been considered that would retain the tree. If those alternative layouts exist and can be done, then that is what should be done and that is where the decision will land.

MS CASTLEY: I am wondering: what administrative arrangements will ensure the original tree assessment's supporting expert evidence and reasons remain visible to subsequent decision-makers, including when assessing officers change? That came up in our last hearing, where there have been a few scenarios that this has occurred. I am just wondering if anyone has got any thoughts on that.

Ms Cheyne: How do we ensure consistency of decision-making if officers are changing?

MS CASTLEY: Absolutely, which also goes to that certainty.

Mr Bennett: The way the process works at the moment is these applications to remove a tree are made through a development application process. If it is a regulated tree, that then gets referred to the conservator and officers within the directorate who have delegation on behalf of the conservator and the urban treescape and tree protection team to provide advice on that application. What then happens is we have an internal group within our decision-making teams called the—I think their current name is the Assessment and Environment Advisory Panel. This is an internal group that gets together that has the representatives of the Territory Planning Authority, who are the decision-makers on a development application, and also the representatives from the conservator's office, who are providing advice about the quality and whether the tree should be retained or not. Under the legislation, the application gets referred, and then those officers in the conservator's area will provide advice on the quality of the tree, its location and what sort of ecological value it has. Then the Territory Planning Authority and that team will have a discussion about whether the tree can be retained, what other designs are potentially achievable onsite, and they will make a decision.

Even though that tree may be a regulated tree for its height, it may be of a low quality, so in those instances, although the conservator's office cannot support the removal of the tree under their legislative obligation, in that conversation they can say, "This is a tree of low quality and doesn't necessarily need to be retained," so they will support the planning authority approving the removal of that tree, or they will provide advice to say,

“That is a tree of high ecological value. It has a very important role in the biodiversity and the connectivity of that area, and it really should be prioritised for retention.” Then that advice is provided to the authority, and they can then make a decision based on that advice.

What we have done with this process here is document that conversation that happens around the advisory panel table for the first time and really make clear what the factors are that might support removal of the tree and what those factors are that might support retention of the tree. For transparency and to support consistency of decision-making, we have tried to document that here, being really clear about what a good planning outcome looks like—and a good planning outcome that also reflects these environmental considerations. The decision-makers will need to consider this guideline that documents all of that when making that decision, and we have internal processes within our decision-making teams about referring applications to this panel for discussion, managers and decision banks to make sure that there is that consistency of decision-making.

MS CASTLEY: It is an in-person onsite assessment, from the government’s perspective, that reports back to this group?

Mr Bennett: At the moment the tree protection team may go out onsite and do an assessment of that tree. In the new process here there will be a requirement that a tree assessment schedule is provided as part of that application, and that tree assessment schedule has to be prepared by a certified project arborist of minimum qualifications and skills and experience. We are asking for a suitably qualified person to provide information.

MS CASTLEY: Don’t they have to do that now?

Mr Bennett: It is not a documented requirement about who can make that application at the moment. It often is done by that, but we are trying to raise the bar to support the quality of this process.

MS CASTLEY: I thought one of the people in the last session said that is an absolute requirement. While it might not be an administrative arrangement, in the last session they did talk a lot about that this 10-day turnaround could be iterative. It could just keep going endlessly for the approvals. I am wondering if there is something that I have not read to make that 10-day turnaround, from the government’s perspective, a response that is sure, hard and fast. Does anybody have thoughts on that?

Mr Bennett: We have an equivalent process here at the moment that is called an exemption declaration process that our Territory Planning Authority team manage. This is about making decisions within a 10-day timeframe under the legislation, and that team consistently meets that timeframe, because what we are trying to do here is take all of the other referral entities out of this decision. This is just a decision about the design grounds and whether that block and that tree and that design are the most preferable way forward. It is limiting the assessment to that, so it does not need the full 35-day assessment period, with referrals to all the other entities and agencies and public notification. We are limiting the assessment here to design grounds, tree quality and considering the extra information of designs that have been submitted in the application,

so we think that that is very achievable to do within that 10 days, and the team have relevant experience in delivering on that timeframe.

MR BRADDOCK: I am not sure of its application, but let's see. The landscape architects in their submissions state:

... approvals under utility legislation often override previously approved planning and landscape outcomes ...

I am just wondering about that intersection between the utility legislation and this tree approval process. Is that going to happen, or is that still going to be separate?

Ms Orr: That is also not a simple question, Mr Braddock.

MR BRADDOCK: It is my specialty, obviously.

Ms Orr: I know. And it is not awkward at all that we now have the utility and us here sitting at the same table.

Mr Bennett: There is a legislative hierarchy that applies there. If we are talking about activities to manage tree canopy around utility assets that are put in place and that they have clearance zones around those utility assets to prevent issues like bushfires and damage to those assets, that hierarchy is not changed by these processes that we have.

THE CHAIR: What is Icon Water's view on the impact of the bill?

Mr Bryant: We recognise that it is quite complex, as we discussed already. These are green easements that act as corridors for us to have utility services, telecommunication services, as well as urban living canopy. What we are asking for is to have some more clarity, some protocol, which we are seeing in some of the associated instruments, to say how we proactively deal with potential conflict. That is things like minimum separation distances. It is things like having appropriate species selection, because we want to make sure that we can cohabitate in these corridors.

THE CHAIR: Mr Bryant, if it is complex for you, what must it be like for stakeholders who are lodging applications? That is an open question. What is being done here to make it easier and more certain for applicants to say—

Ms Cheyne: I have got a great example for you actually.

THE CHAIR: You have got a what, sorry, Minister?

Ms Cheyne: A great example for you. Go to the guide for tree removals on design grounds, table 3. As I said, we have got a table that has characteristics that favour removal and characteristics that favour retention. A characteristic that would favour removal is if a tree is significantly conflicting with the required vehicle access or essential services such as water, electrical and transport easements which are not able to be relocated, whereas, if a tree is not significantly conflicting with any essential services, it is more likely to be retained. We are providing the characteristics that favour retention or favour removal. When it comes to utilities, if the tree is impacting the utility,

it is likely going to be removed unless there is some other outcome that can be achieved that retains the tree while also not affecting the asset. You can imagine when it is a critical asset like that there probably is no other solution.

THE CHAIR: I will get on to my substantive. You have actually led into my substantive, really, about the *DRAFT guide for tree removals on design grounds*. I do note that the lead paragraph includes the following sentence:

This process has been established to provide a quick and easy way for proponents to obtain a decision from the Authority on whether tree removal could proceed on planning grounds without needing to lodge a development application ...

which seems to contradict, Minister, your statement that—

Ms Cheyne: Not at all, Mr Cain. It does not.

THE CHAIR: it is not going to be easier to get rid of a tree, because that is what it says.

Ms Cheyne: No, it does not say that at all. It says it will be easier to obtain a decision, not easier to obtain a decision that removes the tree.

THE CHAIR: I have a question for the planning minister. Minister, there are two examples in that guideline: one where a tree removal would be supported and one where it would not be supported. We discussed these examples with the Property Council earlier, and they were mindful that there is some guidance for single dwellings there, but given your priority for the missing middle in the territory, would you like to see some examples that touch on other than single developments—residential developments?

Mr Steel: It may be possible to provide some examples like that. As an example, in the missing middle housing reforms we have provided a comprehensive *Missing middle housing design guide*, which has a very large number of block scenarios in it, because every block is going to be different, so you cannot necessarily capture every single one of them—we tried to in a large extent in that one. The principles I think remain the same. These are the sorts of principles that were being considered anyway by the internal panel and have now been effectively enumerated in this guideline so that it is transparent to everyone about the basis for decision-making.

One of those particular parts of the guideline of interest that I thought I would make a reference to is just around the primary building zone of the property, which is on page 8 of 18. Looking at the area of the block where the tree is situated is relevant to the assessment. If it is located in the middle of the block, it probably would fall into the primary building zone and therefore might be considered by the panel for potentially being removed, noting that under the previous process under the current Urban Forest Act and the current Planning Act trees were being considered for removal in those areas already on design grounds through the development application process. Effectively what this is doing is making it more transparent about that.

Ms Cheyne has just alerted me to the guidelines again around the characteristics favouring removal of a protected tree. The first one is that the development delivers

additional residential dwellings and includes a mixture of dwelling types and sizes within an existing urban footprint, which is a characteristic favouring removal in there. We certainly support missing middle housing outcomes, if that was your question.

THE CHAIR: Are you confident that this guide for tree removal is not inconsistent with your design guides on planning?

Mr Steel: Yes, it is consistent.

THE CHAIR: There is no inconsistency that will cause people to puzzle it out?

Ms Cheyne: When it says “additional residential dwellings”, and it includes a mixture of dwelling types and sizes, that sounds to me like more than a single dwelling.

THE CHAIR: Would there be scope to put some examples of such dwellings within this guideline?

Mr Bennett: Mr Cain, the examples that we have provided there do relate to single dwellings. The primary purpose for when this guideline and design grounds process will be useful is when the development is otherwise exempt from requiring approval. If you have a development proposal, and the only reason that that development needs development approval is because of the tree removal, this process will allow you to get that 10-day decision on tree removal, and your development can then proceed through the exempt development pathway.

Under our rules, that exempt development pathway is only available for single dwellings. The real benefit here comes from being able to access the exempt development pathway for single dwellings and take your single dwelling development and/or extension out of the DA process and put it into the 10-day process. That is the primary benefit that comes from this new process.

There is a secondary benefit for those applications that will also need a DA, such as missing middle developments or larger apartment buildings, if they interact with a tree. You can use this process to make an application and to get certainty about your design proposal and whether that design layout, as it is crafted, could then be supported through a subsequent DA process.

THE CHAIR: But not to remove the tree, if it is approved, until the DA commences?

Mr Bennett: With an apartment building, for example, you would still need to get development approval for the apartment building, but you can have the certainty up-front through this process that, with that design layout, and where you have put it, on the development area on the block, that could be supported. You can get a 10-day decision on that, and you can have the certainty that the authority will support that development footprint on the block and that tree removal; then you can invest the money into the detailed design process, rather than lodging a development application and hoping that you get the tree removal outcome that you want, and you have had to spend hundreds of thousands of dollars on your detailed design, without having certainty about that development footprint outcome. We are trying to provide that earlier “yes” or earlier “no” on that design proposition up-front.

Ms Cheyne: Exactly.

THE CHAIR: You are saying there are two discrete categories that this could apply to?

Mr Bennett: Yes.

THE CHAIR: Otherwise exempt developments that may just need a tree dealt with, and those that do need a DA but they can get the tree approval in principle, without doing anything to the tree, I am assuming?

Mr Bennett: For that design grant, yes. They will need to get subsequent approval for that broader development application, and the tree removal aspect of that does not take effect until a building approval is issued for that development. That is the really important part here; you need to commit to that design outcome in the building approval process, rather than just saying, “I’ve got my approval to remove the tree on any particular design.” This is about getting people to commit to the particular design outcome that they have put through the process, which was the thing that was assessed to say, “Yes, that’s a reasonable outcome for the tree to be removed in that instance.”

THE CHAIR: Think of it what you may, but that helps me to understand this a bit better. I have to say that the document itself does not really speak to that.

MS CASTLEY: With respect to something that Mr Braddock raised earlier, that would confirm that no-one can just get the tree removal approval, knock it down, and not proceed with the building?

Mr Bennett: That is right. You will need to invest significant time, effort and money to get a building approval, and it takes effect on the issue of the building approval, which is the moment before starting construction.

THE CHAIR: Unless it is an otherwise exempt development; they can just deal with the tree as they want, if it is approved?

Mr Bennett: No.

Ms Cheyne: No.

Mr Bennett: No, you will still need go ahead with that building approval development. You will just be exempt from getting development approval, but you will still need to go through the building approval pathway.

THE CHAIR: Okay. They cannot do anything until the DA is approved?

Mr Bennett: That is correct.

Ms Cheyne: The fact sheet on the bill is pretty clear.

MR BRADDOCK: A few submissions called attention to the fact that “desired

planning outcomes” are not defined. How does the government plan to explain what those are, and should that be defined under this bill?

Mr Steel: In the guidelines that, largely, has been the intent. If I can go to the guidelines, it starts off, in the first sentence, by saying that the intent of the bill is to “better align the Urban Forest Act with the delivery of government priorities, such as housing and infrastructure, whilst still meeting the objects of the legislation”. It also makes reference in the guidelines to the outcomes in the Territory Plan. If you go to the Territory Plan itself and look at, for example, the outcomes in the RZ1 zone in the residential zones policy, that includes the outcome of “development respects valued features of the neighbourhood and landscape character of the area and does not have unreasonable negative impacts on neighbouring properties”. It also talks to providing for a range of housing choices in a suburban setting, which is primarily low density and low rise. The guidelines themselves add further detail to that. I will hand over to Ms Cheyne.

Ms Cheyne: I will start with the glossary. “Desired planning outcome” is included in the definition in the glossary, consistent with what Minister Steel has just said. Also, there is the list that I was going through before. The list says, “Does it contribute additional housing, support a more compact city, use available land,” et cetera. It also refers to environmental consequences, ecological corridors et cetera. It is not made just by counting how many additional dwellings a development produces; there are the objectives with which the government is assessing it. I will hand over to officials.

Mr Bennett: Mr Braddock, that is feedback that we actively engaged with during the development of this document and through the process. We have added the broad definition of a “desired planning outcome”, and being a funnel so that, at its highest order, it is set out in the Planning Strategy. As we move through the different layers of the planning system, we get the district strategies, the minister’s statement of planning intent, design guides, and the Territory Plan, which describes the objectives for each zone.

In this guideline itself, on page 10, we have sought to give further detail to what planning outcomes we are talking about and designing. There is a heading there, “Planning outcomes and design impacts”. That talks to the detail of the considerations of what a good planning outcome looks like. That materially might mean slightly different things in the different context of each site and the surrounding area—what is proposed, what is proposed to be retained and what is proposed to be removed.

The document tries to give open transparency to the considerations that the planning officials will be looking at in those applications. The removal of one tree amongst a block that has 100 trees is different from removal of one tree of a very high quality on a block that has only one tree.

These are contextual matters, but there are a checklist and a list of considerations that the decision-makers will need to work through. We have done our best to provide the mix of considerations that the planning professionals will be looking at.

Ms Cox: The design guide is intended to be made through a disallowable instrument by the minister for planning, so it will be a statutory instrument. It is providing more of that nuance. While we have called it a guide, it is not optional. It will be mandatory for

decision-makers to have regard to the guide in making any decisions on this process.

MR BRADDOCK: Should the definition sit within the guidelines or should it sit within the legislation itself? We have received feedback, as I said, from submitters saying they were seeking that to be within the actual legislation.

Ms Cox: That question goes in part to the agenda of the government, and in part to the need for flexibility around what we mean by a positive planning outcome, in terms of what that contribution looks like. It does allow us to look at this design guide and make changes as we need to, around what those planning outcomes and the desired planning outcomes are, without having to come back to the Assembly. Of course, the public service would welcome any comments that you might have on the appropriateness of that definition and its location.

Mr Bennett: The other planning documents that we have referred to talk about desired planning outcomes at the different levels that are in those documents. The Territory Plan, for example, sets out a range of zone objectives for each zone. That is supported by design guides that talk about what good design and good outcomes look like for those different typologies that are being built.

Planning outcomes are defined at a range of levels, depending on what that document is, what its purpose is in the system and what it is trying to do. The higher order Planning Strategy talks about desired planning outcomes for the city. District strategies talk about desired planning outcomes for districts. The Missing Middle Housing Design Guide talks about what desired planning outcomes look like for missing middle housing in the context of that document.

We think it is appropriate that we define those outcomes in the documents themselves so that they have the context of what they are referring to. But they all have a hierarchy; they sit underneath the Planning Act, they sit under the Planning Strategy, district strategies and under the minister's statement of planning priorities, and they flow down accordingly from that.

MS CASTLEY: My question is similar to Mr Braddock's question earlier, on modelling what is being done about the tree canopy. I am wondering what modelling has been done on the housing industry if this bill does not go ahead. What do we expect the impact to look like?

Mr Steel: If it does not go ahead, it will simply take longer for these decisions in relation to trees associated with a development to be approved, not approved or approved with conditions. The current situation will remain, which is that a DA will be required for removal and there will not be that 10-day pathway for the decision to be made earlier.

MS CASTLEY: So housing will be slower.

Mr Steel: The decision-making process will take a longer period of time, in relation to trees. Also, importantly, there will be less certainty for proponents in being able to finalise designs, if they do not understand what the final decision by the conservator will be in relation to a tree that is on the block. It has potential cost implications for

them, if there need to be significant changes to the design, to take into account a decision that is made at a later period in the assessment process.

Ms Orr: On the modelling, there are so many scenarios that could play out from whether there is tree removal or not—the shape of a proposed dwelling or building, and where the trees are. It is different, site by site. We can talk about modelling, and try to quantify, “How long is a piece of string?” You could have 100,000 different scenarios that could play out when we think about, “This is what it could be if any of these approaches were taken.” That goes to some of Mr Braddock’s questions earlier around whether we have done modelling. What this does, from the perspective of the minister for the environment, is provide a transparent assessment process for making decisions, so that you get that consistency and that administrative fairness in looking at it.

Ms Cheyne: The feedback that we have heard consistently is that the current process is costing an inordinate amount of time and money—and, in some cases, the industry feels, an unfair amount. If they had guidance at the beginning or a decision at the beginning, they would have pivoted, done something different or whatever it might be. But they are spending a lot of money and getting to a point where everything else might be approved, but not the tree removal, and the whole thing has to go back to the drawing board. Providing that certainty as early as possible, with as much guidance as possible, is what we are aiming to achieve.

MS CASTLEY: How will you evaluate whether the reform has been successful? Are there any plans for that?

Mr Steel: There is already an evaluation framework in place through CED, as part of the planning system reform implementation project.

Mr Bennett: From a planning perspective, we are going through a process across our directorate of having appropriate assessment processes for the types of applications that are coming in, and trying to make sure that we have fit-for-purpose processes, and the right processes, and that we are not asking people to do 10 things to get an application approved if they only need to do two. The example here is that, if this is an otherwise exempt development—so we are happy with the built form outcome, except for the tree—there is no additional benefit in putting someone through a 35-day DA process if we can put them through a 10-day process.

That is about getting a faster “yes”. It is not about getting more yeses; it is about getting to a faster “yes”. What that means for us, in terms of success, is that we are taking applications out of that more onerous process. We are able to put them into a less onerous process. While there is a benefit to home owners, applicants and industry in that, there is also a resourcing benefit to the directorate. We can then focus our time and effort on more complex applications, on resolving projects that have a lot more risk attached to them and resourcing those processes.

Internally, for the directorate, there is a reallocation and a re-prioritisation of resources, to try and make the system more productive and more efficient, so that we have applications going through the right pathways. Ultimately, we can have more applications considered and decided upon, and have those processes work more efficiently for the resources that we have within the directorate.

MS CASTLEY: With those processes that are there—decision-making templates, peer review arrangements, calibration processes, and all of that—I cannot see where that operational arm has been stated in the bill. Is that what you are talking about here, with the processes between—

Mr Bennett: These are the statutory processes. We will create the internal administrative processes to support these arrangements in our decision-making teams. We already have equivalent processes in different areas. We have processes and templates that we can quickly put into place and adapt, to support decision-making processes like this. It is about having a more productive planning system—having people spend less time in approvals processes, so that they can get faster yeses or faster noes, rather than have that uncertainty, holding costs and waiting periods, while they are waiting for applications to be considered.

Ms Orr: I am glad Mr Bennett added in the faster “no”, because the minister for the environment was about to jump in and say that it is not just about saying, “Yes, you can remove your tree.” Sometimes we do say no, too. That is the whole point; it is about having that decision-making there, and that balance up-front, so that you have that certainty.

THE CHAIR: Which minister’s department is responsible for these decisions? I think I know the answer, but we have three ministers here.

Ms Cheyne: We are all ministers for the City and Environment Directorate.

THE CHAIR: Yes, but which minister is—

Ms Cheyne: You asked for the department.

THE CHAIR: Whose officers are making the actual decisions, say, under this tree removal guideline?

Mr Bennett: Under the design grounds process, those decisions are made by the Territory Planning Authority.

THE CHAIR: Okay, planning.

Mr Steel: But there is input from the conservator, as part of the process.

THE CHAIR: Sure.

Ms Cox: The bill also requires the minister to consult with the conservator on these guidelines. They were heavily involved in the creation of the initial guidelines. Should the planning minister wish to make changes to the guidelines, they would also be required to consult with the conservator before progressing that.

THE CHAIR: Is there any obligation to consult with city services or environment?

Mr Steel: It is all part of the one directorate. The one directorate has come forward with

this legislation.

THE CHAIR: For those other ministers with those discrete responsibilities, is that an obligation as well, or are you doing it from a planning point of view?

Mr Steel: Yes, we have all been consulted on the guidelines that we have put forward for consultation.

THE CHAIR: No; when it gets to a decision being made.

Ms Orr: The decision happens as part of the statutory planning process, which is not necessarily—

Mr Steel: On the individual applications. On the actual guidelines, yes, we are all involved in the development of the guidelines and the decision.

THE CHAIR: But the decision-makers are with the Planning Authority?

Mr Bennett: The independent statutory Territory Planning Authority will make the decisions under the framework that has been set.

THE CHAIR: We have heard this afternoon, particularly from construction stakeholders, about consistency of decision-making. Would one application on an individual officer's desk be dealt with in the same way if it was on another officer's desk?

Ms Cheyne: We went through this in detail earlier, in Ms Castley's line of questioning.

THE CHAIR: We have heard that this is an issue. What are you doing? Is this bill an opportunity to improve the consistency of decision-making?

Ms Cheyne: Yes, and it is also an opportunity to provide clear guidance about what is being considered, so that those considerations are addressed in the application. I will refer you to what was said earlier in this session, Mr Cain, when Mr Bennett spoke at length about how we are ensuring that there is consistency between decision-makers.

Ms Cox: There is an element of subjectivity in this, both for the design grants process and for anything else under the Urban Forest Act. To achieve consistency, we do things like guidelines and criteria, and we have suitably qualified people. In terms of the planning decisions, those decisions will be made by people who are suitably qualified in our Territory Planning Authority and are appropriately delegated.

It is the same for any other decision under the Urban Forest Act. They are made by qualified arborists. While something might look inconsistent, and two cases might look identical, there may be factors that are not so obvious, to those of us that are not expert arborists, that significantly affect the weighting for a tree being approved or removed, which is why that subjectivity exists. While we always aim for consistent decision-making, the factors that go into the consistent decision-making for this are inherently complex. Sometimes we can see things that look inconsistent at first glance, but, on closer inspection, there are different factors at play.

THE CHAIR: What internal processes are there, so that your various decision-making officers are all aware that, “When we have this sort of scenario again, we will make this same decision—either yea or nay”?

Mr Bennett: That is the intent of the guideline. It is not just a guideline for applicants; it is a guideline for decision-makers. That is why we have the decisions at the back. In comparison with the exemption declaration process, which this is very similar to, where you can apply to the Planning Authority to get a minor encroachment approved, just beyond what is the boundary of an exempt development—that is called an exemption declaration—we have produced a range of material over time to support not only applicants but also decision-makers around consistent decisions, the sorts of applications that we will approve and the sorts of applications that we will generally refuse.

That decision-making record will be built up over time. We will have a register of that. We have internal processes and procedures within the Planning Authority. We have managers reviewing applications. We have internal meetings and discussions on applications that might be pushing the boundaries in certain areas, to make sure that we are making consistent decisions and that we are making the right decisions in the circumstances.

THE CHAIR: Part of that process is about being open to stakeholders that say, “Hang on, last week you said yes, and now this week you’re saying no to the same thing.”

Mr Bennett: On those, it is about being very clear about the reasons that decisions are made on particular applications, and what those factors are, especially the factors that maybe, over time, get more weight than other factors. As Minister Steel mentioned, the developable area of the block, the primary building area of the block, may, over time, become a very strong consideration. There may be other things, like how many dwellings you are adding to this development to improve housing supply, that may become a consideration, or it may be that trees of a certain species and ecological value may, over time, become clear boundaries in that decision-making process. That is something that our teams do as a daily practice; they have these processes in place, and the support processes, to work through complex applications.

THE CHAIR: Which includes an openness to stakeholder feedback—honest feedback.

Mr Bennett: Absolutely. Part of the evaluation framework that the City and Environment Directorate have for the new planning system is a stakeholder survey that we run, to get people’s feedback on how those processes are being administered and what the user experience of the planning system is.

MR BRADDOCK: Section 36(2) amendments include, under “canopy contribution agreements—conditions”, in paragraph (b), “a condition determined by the minister”. Why is this particular power required? How do you envisage it being used? How will it be transparently used? What prevents it from being weaker than the conditions in paragraph (a)?

Ms Cox: We have a number of powers in this legislation that account for the fact that

a piece of law is not going to respond to every situation. One of those is a disallowance power. What we felt was needed, in looking at the effectiveness of the legislation, was to be able to account for the differences that may come up, without using a disallowance power. That is a more serious ask. You are disallowing something that the Assembly has passed and, as such, it should require a level of scrutiny.

This provision would allow us to brief the minister to accept a condition of an approval that might be slightly outside the bounds of what would otherwise be allowed under this legislation. It is a power that is somewhat undefined, because it is responding to the things that come up that are a bit unusual. For example, if you have a site that is being developed for a community facility that is heavily treed and the trees are being removed, they may have a financial contribution in the hundreds of thousands of dollars, and it may not be in the public interest for them to pay that entire financial contribution. This provision will allow the minister to make a different decision in that set of circumstances.

Of course, it is not going to be used all the time. No minister will want to be briefed on every second application. There will be an element of discretion within the directorate about when a minister is briefed on an application for potential consideration of a different condition.

MR BRADDOCK: Coming back to the other parts of the question, what is the transparency about its use, and how do we ensure that it is not a watering-down mechanism?

Ms Cox: With any decision made under the legislation, all canopy contribution agreements would be discoverable, so we can report on that. I do not think there is currently a requirement for that to be reported on annually, in the annual reports, for example, but it could be—how many times the minister used that power and to what effect. Certainly, all of that information would be discoverable.

Ms Cheyne: It would be a brave minister that used it willy-nilly, Mr Braddock.

MS CASTLEY: In the previous hearing we heard that the ACT is different from the Australian standard when it comes to the canopy plus two metres. Is anyone able to explain why we used to do that and now we have added the two metres?

THE CHAIR: I think it was the Institute of Architects that raised that point.

Ms Cheyne: We have had a different tree protection requirement, or a statutory definition, for a while that has been different, as I understand it. Our definition, as proposed, is not simply an additional two metres on top of the Australian standard. There are different methods of determining what is required. Our statutory definition is based on canopy extent and minimum protection around the trunk, whereas the Australian standard uses a calculated root-zone approach. If we are talking about retaining canopy, this is pretty critical for that.

I think the issue that industry was raising was how two different approaches can interact in practice, especially if there is some technical advice that says you could do some construction closer to a tree without impacting it or compromising it. There is a

provision within the act that provides for an alternative protection zone to be specified in an improved tree management plan. There are additional exemptions for particular low and moderate impact groundwork.

THE CHAIR: On behalf of the committee, I thank you all for your attendance today. If you have taken any questions on notice—I believe there were some—please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

On behalf of the committee, I would like to thank all our witnesses who have assisted the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible, and no later than five business days from today. This meeting is now adjourned.

The committee adjourned at 4.04 pm.