LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

(Reference: Planning and Land Bill 2002)

Members:

MRS V DUNNE (The Chair)
MS K GALLAGHER
MS R DUNDAS

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 8 OCTOBER 2002

Secretary to the committee:
Mr D Abbott (Ph: 62050199)

By authority of the Legislative Assembly for the Australian Capital Territory

The committee met at 9.21 am.

JOHN FUTER and

ALAN MORSCHEL

were called.

THE DEPUTY CHAIR (Ms Gallagher): On behalf of the Standing Committee on Planning and Environment, thank you for coming this morning. I am Katy Gallagher, the deputy chair, just sitting in for a moment before Vicki Dunne arrives, and this is Roslyn Dundas. Before you give evidence, I will read the standard advice to witnesses.

You should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. This gives you certain protections, but also certain responsibilities. It means you are protected from certain legal action, such as being sued for defamation for what you may say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

If you would identify yourself for the record and then make an opening statement, we can kick off from there. Vicki will arrive shortly.

Mr Futer: My name is John Futer. I am the executive director for HIA for the ACT and southern New South Wales region. I appear today on behalf of members of the HIA. Thank you.

THE DEPUTY CHAIR: Do you wish to make an opening statement?

Mr Morschel: I am Alan Morschel, manager of planning and development for HIA ACT and southern New South Wales. No thanks.

THE DEPUTY CHAIR: Do you want to move straight into questions about your submission?

Mr Futer: Actually, I was going to make a longer submission. Do you want me to carry on?

THE DEPUTY CHAIR: Yes, please.

Mr Futer: Okay. The HIA notes the government's plan to restore a greater role for the public sector in subdivision design and planning. However, it also notes that the plan envisages a continued role for the private sector in land development and sales, and we certainly commend that part of the bill. The HIA considers that the best way forward, with respect to the bill and the government's plan for control of land development, is a balanced approach that recognises the ongoing role of and contribution from the public and private sectors, as occurs in other Australian jurisdictions.

We believe that the government needs to provide a strong strategic planning framework for future land release and development guidelines, to use joint ventures between government and industry, and to retain private sector land subdivision and servicing. We believe that government needs to develop and maintain a five-year, forward land-release program that addresses choice of product and location across Canberra, which would include inner city, as well as greenfields sites, for development.

A number of major development companies with best practice industry standing have been established in Canberra in the past. They are still here. Most of those companies have now extended their expertise interstate. Removal of a significant role for the private sector in land development may see this expertise and jobs move interstate, a very big concern. Retaining the private sector land, planning and development processes will reduce the level of financial risk to the government, maintain the continued involvement of experienced staff, reduce public sector budget outlays, and maximise flexibility in the timely response to market demand.

I am sure that everyone on this committee is familiar with the bill, and of course the bill does make allowance for the land agency to act alone in relation to land development. We believe that the government's acting alone in relation to land development—and we do know what the future plans of government are in that respect—has not been justified on the basis of whether the benefits to the community outweigh the costs. We believe that there has been a failure to justify the plan on the basis of net community benefit. We believe that equal or greater benefits can be achieved through regulatory and planning powers that do not require the displacement of a competitive private sector industry.

The costs of the ACT government's resumption of land development have not been properly assessed nor understood, and an objective assessment of costs and benefits will not support the government's position. That is our belief.

Land development is already one of the government's most highly regulated activities. Regulation should act in the public interest, but inappropriate regulation can also increase costs and inhibit diversity and innovation. Before the government makes a final decision to resume public sector land development, it should analyse the regulatory and planning framework to assess the extent that existing arrangements contribute to the system failures that the government believes have occurred. We do not believe that has been done. The government must identify reforms that will enable essential competitive pressures and scope for innovation to be maintained.

This review should be undertaken in consultation with industry, and consultation is essential to ensure the industry has an opportunity to express its views and that those views are properly tested.

The benefit to the territory from control of revenue and profits cannot be relied on to justify the government's plan for land development, that is with government as the sole land developer. Such a rationale can be used to justify public sector monopoly control over any area of enterprise, and that is a concern to us. Reliance on revenue as the basis for justifying a public monopoly is inconsistent with the Council of Australian Governments agreement on national competition policy, which provides that the retention or establishment of a public trading enterprise must satisfy a public interest test.

If a public sector agency is responsible for both the land bank or land disposal function, and land development, it conflicts with the public sector's regulatory and planning functions and threatens competitive neutrality, and it ignores some of the costs involved.

We believe that the plan has been announced, if you will, prior to any real financial analysis, notwithstanding that land development will, if it proceeds, be one of the government's largest financial undertakings, if it acts alone. The budget impact and implications for debt should be subject to review to ensure full and proper disclosure, and to assess the adequacy of proposed financial management systems and practices.

A public sector development monopoly for land also involves significant indirect costs. These include a monopoly which prohibits new entrants to the industry, stifling innovation. Again, this is if they do act alone in relation to land development. Innovations in urban design are generated by the competitive processes that we now experience. There will be few, if any, benchmarks to access cost effectiveness, and few incentives to improve productivity.

A public sector monopoly will increase uncertainty and distort the pricing mechanism. A public sector monopoly will rely directly or indirectly on the credit standing of the territory. It will have a real or perceived influence over the planning and regulatory framework in which it operates. It will increase uncertainty and risk for any future private sector role in the ACT, should that resume after a period of government monopoly.

Monopolistic powers result in a balance of risks inconsistent with the public interest. Elaborate public sector management strategies do not provide an adequate substitute for competition and exposure to the consequences of financial failure, where commercial and market risks are involved. There will be little to prevent the public sector bearing higher than commercial risks, in order to undertake forms of development which are inconsistent with community demand, but which, nonetheless, will be undertaken by taxpayers' funds.

Equally, there will be little to prevent the public sector operating in an overly risky and adverse manner, by restricting supply and increasing prices to protect the financial viability of its land development projects. We believe that there should be an assessment of the net community benefit to be gained from any sort of intervention, and we believe that that analysis needs to take place very shortly.

What I have said is probably more than we put in our submission, but I feel these comments needed to be put on record. As I indicated at the beginning of my deliberations this morning, we do see that an immediate role for the private sector has been outlined in the bill, but we do know that it is intended that that role will erode over time. We are concerned about a government monopoly, as are our members. We are now open for questions. Thank you.

MS DUNDAS: Can I jump in and ask a question relating to another part of your submission?

Mr Futer: Sure.

MS DUNDAS: You focused quite heavily in your statement this morning on the land development side, and I am sure that there are questions about that, but I just wanted to ask a quick question about another subject. Do you believe that the independent planning authority should be instigated as soon as possible, to give direction to and lead the coordination of the overall planning for this city?

Mr Futer: Yes.

MS DUNDAS: Under this bill, do you see the independent planning authority as actually having that role, as being independent enough to carry out the tasks that you would like it to carry out?

Mr Futer: The question of independence is probably something that should be examined in some detail. People throw around the term "independence". I suppose we have an idea as to how the organisational chart works in government. However, if it is a more independent authority than the one we currently have, and we have somebody who can speak the language, someone we can work with, we would be quite happy for that to go ahead. We actually support that concept.

Again, I leave this issue of independence hanging in the balance, because we are aware that this body is probably not going to be totally independent, according to the legal definition of that word. However, the planning authority is certainly going to help the situation.

MS DUNDAS: Because of the separation between the planning authority and the government?

Mr Futer: Yes. We believe that that would be a proactive move.

THE CHAIR: John, how do you see that that would happen, given the structure that is set up in the bill?

Mr Futer: At the moment, what we are doing is having meetings with the minister, for example, and some of his advisers from time to time. It is difficult to get meetings with the minister. I appreciate the minister's background: he is not a planner, and I am not a planner.

We are in situations where I have to bring up the experts from the industry—people such as Alan, and people such as our members—to talk to the minister. The minister feeds that back, or he might have an adviser or two at the table. It is difficult to get meetings with the minister: he has a very busy schedule, I appreciate that. In a lot of ways, however, we need someone we can get on the phone to who can speak the language immediately, directly. Obviously, that function reports back to government. However, we need someone who is able to sort out the political issues, if you will, from the issues of quality, design, the needs of the community, and the needs of business—those sorts of issues.

We think that such a person would be a help. Obviously, this has not been tried yet. We would certainly reserve judgment on that position until after it began.

THE CHAIR: But you are willing to give it a try?

Mr Futer: Yes.

Mr Morschel: Could I make a comment?

THE CHAIR: Yes.

Mr Morschel: As I understand it, the position of a chief planner will take a higher level within the bureaucracy than the current departmental or agency head of PALM. We believe that the status that will come to the planning authority, because of what the bill proposes, will help planning throughout the territory, and therefore benefit our members.

THE CHAIR: You are saying that, because PALM will cease to be, in some sense, a branch of DUS, and will be slightly to the right and above, or slightly to the right and equal to it, that will afford it status?

Mr Morschel: Yes. A problem for many of our members has been the power that PALM has been able to hold within the department. Considering the number of agencies operating within DUS, and the powers that they have over planning issues, the hope is that the new authority will be able to take more of a leading role in, and give more certainty to, discussions associated with waste management and so on.

THE CHAIR: Would you give us a couple of examples? You are saying that waste management and perhaps the role of the other agencies are examples. What other agencies impinge on the planning principles?

Mr Morschel: A number play fairly equal roles at the present moment: heritage, environment, waste management, and roads and traffic, for verge crossings and all of those issues. In many cases, the industry would prefer to see one organisation, preferably a planning organisation, take the prime role in driving planning objectives through, rather than some of the circuitous discussions that have taken place. That is not a criticism of individual PALM officers. I think they do very well within their roles.

THE CHAIR: However, you are seeing it as an interplay of equals?

Mr Morschel: Yes, good summary.

THE CHAIR: In the consequential amendments, it seems that all of those roles, such as the role of the conservator—heritage is not touched by this, but we have draft legislation—are still going to be there, and will still affect the way a planning organisation does its work. Have you had a chance to absorb the consequential amendments?

Mr Morschel: No, I cannot comment directly on those. I suppose I am going on with what I originally said about the status of the position of chief planner. Who that person is is important. That person will be able to play a very critical role in the years to come. It is a very important position. However, we support it because we think it is a better arrangement than the current arrangements. Having a chief planner who is able to lead

discussions and debates, and possibly take the view for the better outcome, rather than trying to work the system, is preferable.

Mr Futer: Integration is a difficult problem. We do have a lot of people involved in the process, and it is difficult. I do realise that legislation has been established to set up these separate bodies, but we see them as having very much a coordination role—to bring everything together and advise industry and, in turn, take advice from industry. At the moment, we are finding that process very difficult.

THE CHAIR: Moving on from the matter Roslyn raised regarding the structure of the independent planning authority, you see that it is important that we should get that under way, but at the same time you have what could politely be called reservations about the land allocation area. You are in favour of one bit and opposed to the other part of the legislation—and probably the industry as a whole would be opposed implacably. How would you see that we might reconcile that as a committee?

Mr Futer: If there is any way of moving ahead with the independent planning authority at this stage, if we are able to separate that somehow and move ahead on that, and leave these other issues while a little more debate continues, that would probably be the best way to go.

Mr Morschel: We do not see them necessarily having to go hand in hand. However, as John said in his submission, there are components of the wording of the legislation for the land authority that we do not have a problem with. John talked about joint ventures and working hand in hand. It is the particular clause that talks about "alone"—I think that is the terminology—that concerns our members.

MS GALLAGHER: Is that 3 (a), "the land agency may exercise its functions—(a) alone"?

Mr Futer: 3(a).

Mr Morschel: That is the component that gives our members concern.

MS GALLAGHER: In your submission, John, you talk about a government monopoly, a public sector monopoly. I am interested to know more about that because, certainly, the discussions I have had with the minister have indicated that the idea of entering a market as a land developer was not based on 100 per cent control of land development in the territory. Are you drawing that from that clause in a worst case scenario, from your point of view, or have you been told that the government's intention is to operate alone?

Mr Futer: Yes, that is why we did not want to play too much with the wording of the document.

MS GALLAGHER: That is why I am asking you if you know anything else.

Mr Futer: Yes. Certainly, some of the statements that have been made by the Treasurer in relation to the government's future plans—such as slowly starting out with joint ventures, and gradually moving into development on its own—are what we are concerned about. The legislation does allow that to happen—for government to go up

there and form its own monopoly. I understand that the government is not expecting to do this overnight. Of course not. It is going to tap into the expertise of industry.

May I say, if they were going to set up their own monopoly, that would be the best way to do it, obviously. However, we are concerned about the erosion of the private sector involvement in the development industry, because we believe the territory is still fairly young. However, we believe that it has been experiencing an evolutionary process: we have built this up over time, and we have learned from it. Most developers currently in the city have been here for some time. They are unique to this area and are even expanding outside. We do not have a lot of people coming in. The expertise is there. The risk is there now. They carry that risk so, if something goes wrong, it does not affect the public purse.

In other words, if a large parcel of land is bought with the idea of getting 500 blocks out of it, but no-one thought about the trees or the environmental aspects of it that prohibit development, and then only 350 blocks can be obtained, despite the fact that they had bigger ideas and paid a high price for it, the private industry will wear that. They actually have the expertise to make those judgments, if you will. The government does not have those resources.

I know the minister has indicated that the government would hope to seek out those resources over time. Without the accountability that you have from private industry, we cannot see how it is going to work. If someone is not accountable, it is never going to work.

THE CHAIR: It will be accountable through annual reports and through the observations and the scrutiny of the auditor-general. Is that not enough?

Mr Futer: I should probably have said that it is a case of having no individuals involved. Those who are operating individually, making these decisions and doing the assessments for private industry, are directly accountable. It is their hip pocket: these people have a direct financial interest in it.

THE CHAIR: Are you saying that ABC Construction Company has its money on the line.

Mr Futer: Yes.

THE CHAIR: And that if project does not go ahead or does not work the way it has been planned, it is their mortgage, whereas, if a group of public servants are doing this, it is the taxpayer who pays, and there isn't that same wake-up-at-night-in-a-cold-sweat imperative.

Mr Futer: It is the taxpayer.

MS GALLAGHER: But it is a corporation, it is a commercial enterprise, the proposed land agency, so surely the people working within it—

THE CHAIR: But they are not—

MS GALLAGHER: It is not their money.

THE CHAIR: Yes, it is not their money.

MS GALLAGHER: Still, you are making a presumption that that would affect the way they would operate. I think it is probably a little unfair to just say that they will have less interest in seeing their organisation work, because it is not their money on the line.

Mr Futer: I'd say, if it is your own money on the line, you take a much greater interest. There is also the issue of experience and knowing the property market within the ACT. This is probably a minor point, but I am very much aware of the fact that our members—developers—already have a tough time getting staff. I am not sure the government would have any easier time of it. It is very difficult in this town to actually get people who know what is going on.

As a matter of fact, that is a concern that we brought up the other day. A lot of the talent in this town is ageing and we are not seeing a lot of new talent, if you will, coming up through the ranks. It is slowly, but we are concerned about the pool of expertise in the town. Right now, it is adequate, and certainly those people are employed. I think it is probably a common problem. I am not going to say it is absolutely unique to the ACT. There are fears, here, that the government may not be able to select the right people in any event. It is going to be difficult.

THE CHAIR: What sort of talent do you think is missing?

Mr Futer: I do not want to mention personalities, but we have people in this town who are entrepreneurs and who have been here for some time. Some of them have worked for PALM, they have worked for government agencies, and they have worked for private enterprise elsewhere in Australia, in their younger days. They are here now, in town, and they are the brains behind most of the developers we have in the ACT. Because of their entrepreneurial flair, if you will, I cannot imagine that those people would want to move over into the public sector. That is no offence to the public sector, but I am saying that it is the mindset of a lot of the talent in town.

MS DUNDAS: To a certain extent you are implying the worst case appointment scenario to the land development authority and hoping for the best case scenario in terms of the independent planning authority.

Mr Futer: We have hopes either way. I take your point. It is not a perfect world. As I mentioned to Madam Chair, we do have high hopes of the independent planning authority and the person who is going to be in that role. I did indicate that we may have to reserve some judgment on it. It is like everything that you put into play: obviously, there will be a honeymoon period and then a period to assess things, as we move through them. However, we think the process is a good one. We think the theory is a good one. However, we do not share the same views, if you will, about the government being able to take over a major role in land development and acquire the necessary skills.

MS GALLAGHER: Surely, John, industry would oppose land development by the government in any way it was set up or arranged, because it is your market. Why would you want another player coming in, and a player like the government? Is it fair to say that you would oppose it under any arrangement?

Mr Futer: It might not be totally fair to say that. Yes, we are protecting the interests of the industry as you are protecting the interests of the government. I make no apologies about that. However, if we adopt an academic point of view on competition policy, and those other public policy issues regarding financial risk, and the ability of industry to compete openly, yes, we are opposed to it. As I say, I certainly make no apologies for protecting the industry, but we do that within limits.

Obviously, if the industry is not able to do something, it becomes much harder to defend. However, we believe that we are defending an industry that has a very good track record, an excellent track record. We also think that the public point of view would be best served by private industry doing this work. If government wants to share in that, that's fine. We do not have a problem with a joint venture arrangement.

MS GALLAGHER: Like Yerrabi.

Mr Futer: Yerrabi, yes. I am not going to say it was excellent, but it is like any other development. Yes, that is probably not a bad example. It worked.

THE CHAIR: You said before, Katy, that you didn't think it was the government's idea to adopt a monopoly.

MS GALLAGHER: I have not heard that before.

THE CHAIR: Okay. Can I just go back to this. I am just reading from the PowerPoint presentation that I was given by the people who gave a briefing to my party room on the Planning and Land Bill. I will table this for the rest of you later. Under, the methodology for return to government land, it says:

> In 2003-04 government land development will begin with approximately two-thirds of the greenfield releases being retained for development by government.
>
> Approximately two-thirds of these government releases will be developed through public private partnerships (joint ventures), with the remainder to be done solely by government.
>
> The remaining one-third of the overall greenfield release program will be sold to the private sector.

That's 2003-2004.

> In 2004-05 the greenfield land releases will all be retained for development by government, half through public private partnerships and half solely by government.

So it does say that, by the end of 2004-2005, the land authority plans to be the sole dispenser of land, not just the person who sells it. It says that all the development decisions will be made by government, and that some of those things would be then

carried out by joint ventures, and some of them would be carried out solely by government. That sounds to me like a monopoly.

Mr Futer: Those are consistent with the statements that have been made by Ted Quinlan, the Treasurer.

THE CHAIR: I can table these. This is just a set called the land development financial modelling. It was a PowerPoint presentation that was given to me. That sounds to me like a monopoly. I want your comments on this, Alan and John. The minister has often said that he sees Landcom in New South Wales as a model for the land development authority here. However, it seems to me that there is an essential flaw there, because Landcom is not a monopoly in the market.

Mr Futer: It competes with the private sector, yes.

Mr Morschel: It is on quite a different scale too, of course. The size of New South Wales's operation is—

Mr Futer: Much bigger.

Mr Morschel: We can't deny that we could all travel to Sydney and Landcom could show us some very good developments that they have been doing, which are quite innovative and quite proactive. We think that is a result of the competition that Landcom has been experiencing, as opposed to a monopoly situation.

I think the territory is also different because we have only one tier of government. I would think that Landcom, being able to operate and break through some of the council issues—planning in New South Wales is in some ways a lot more complicated than in Canberra, because of the levels and roles of councils—has probably been able to play an important role in many areas by being that—

THE CHAIR: Overarching.

Mr Morschel: Correct. Exactly. We don't believe Canberra needs that, because of our one tier of government and our relatively small scale. As John has said, a number of those land development businesses that have grown up in this town, as they have naturally grown and been successful, are moving interstate to implement their expertise and get the benefits of that.

THE CHAIR: I see the point there. This is out of left field, and I have been out of town for 10 days, but I did notice today, as I flicked open the paper on my way to work, that the Institute of Architects has again floated the idea of a chief architect. I gather their proposed position would coordinate with the chief planner. Do you have views on the notion of a chief architect?

Mr Futer: We have not had a chance to get our heads around that. I know that it has been mentioned to us, but we have not really seen any paperwork about how the two positions would coordinate, so I would have to reserve judgment on that.

We would support any overarching role that can bring expertise into a certain area, and that shortens the number of people and steps that you have to go through to get something done, particularly if those people have the particular knowledge that is needed to keep the process moving. That is probably all I can say about it, Vicki, not having seen any paperwork on it. Again, we want to try to bring things together and integrate them as much as we can, so we are dealing with fewer departments, fewer people, people with expert knowledge and people who do consult with industry. As I say, it is very hard to get meetings with several people, to ascertain a point of view or whatever. It can be very difficult.

Mr Morschel: Regarding the chief architect, we know the Institute of Architects has been talking about that for a few months. We have not seen any details from them about exactly how they envisage that position, except just what you have described, in which it is shoulder to shoulder with the chief planner. We meet with the institute and a number of other bodies interested in planning issues in Canberra, so we will certainly take that up, from our own self-interest. Just as John says, our industry's perspective is that we would prefer not to have too many layers of control and input and so on. Maybe we will talk that one through further.

Can I just make a comment to Roslyn, please? You made a comment earlier about our principle of looking for leadership from the planning authority. I think it would be very bold on our part to say that the private sector should play a greater role in planning, because planning has a lot of regulatory controls. Although many of our members would like to get hold of the rubber stamps themselves and get rid of the bureaucrats, I think that is an unrealistic expectation. In the reality of the system, we do look for good strong competent organisations to take us forward in that area, and that is why we have advocated that the planning authority be established as quickly as possible.

I do not know whether it is of any use and whether we are allowed to do this, but that is a publication that the national body of the HIA produced 12 months ago now. Obviously, it was produced in the context of the many of our bodies that are associated with state governments and local councils, and the associated frustrations. However, I still think that it contains a number of fundamental principles that our members are looking for to help them do their business better and smarter in the country.

We have provided some examples, here in town, ourselves. At the back of the book there are some examples of what PALM was doing at that time, which we thought were good and continue to be good. There are also a lot of interstate examples there. I hope that will be of some benefit to the committee, so you can see where the association comes from and what principles it does look for in planning. If you want extra copies, we could arrange it. I only brought the one with me today, but give us a call if you need extra copies.

THE CHAIR: Perhaps we could have some copies of this for our own personal edification.

Mr Morschel: No worries. Okay, another three copies.

THE CHAIR: Yes.

Mr Morschel: Sure.

THE CHAIR: Okay, thank you very much for your assistance and time this morning.

Mr Morschel: Thank you.

DONALD KENNETH HARE was called.

THE CHAIR: This is one of our formalities. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections, but also certain responsibilities. It means that you are protected from certain legal actions, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

Thank you. Mr Hare, would you introduce yourself for the record?

Mr Hare: Certainly. I am Don Hare. I occupy the position of estate manager with the Planning and Land Management Group. I am not here in an official capacity for my employer, but I am representing a private submission, which has since been endorsed by the Association of Professional Engineers, Scientists and Managers, Australia. Essentially, I suppose I am representing—

THE CHAIR: APESMA.

Mr Hare: APESMA.

THE CHAIR: Okay. I will not go back to what your position is in PALM, because that is irrelevant. Do you want to make an opening statement?

Mr Hare: Yes. I put in a formal submission on this. As I said originally, it was put in as a private submission, but it was based on my work with APESMA, dealing with the task force at the planning commission. Essentially, we support the Planning and Land Bill as presented, except for a couple of elements within the bill that we see as dysfunctional, to tell you the truth. However, overall we find it quite a refreshing document, which I think brings a level of clarity into the whole land development cycle in the ACT.

The two concerns that APESMA had with the bill as presented relate to sections 27 and 58 of the bill, which deal with the membership of the council and the land agency board. We at APESMA were particular disappointed that the engineering profession did not receive specific mention within those sections. It actually details the various disciplines that the minister must draw on. Given that the engineering profession is an absolute core discipline in land development, right from the macro planning stage of the early determination of land use, through to design, construction and delivery of the actual land, and then moving on for the next 100 years, in the maintenance of the assets that are returned to the territory, we felt that having someone from the profession on both the council and the land agency board should be mandatory.

I did mention this to the task force earlier on, and they claimed that membership was anticipated, but that it was under the heading of what they call "land development" in there. However, we feel that is a little bit too broad. "Land development" could mean real estate agents or anything, really.

The second area that we are particularly concerned with is section 17, which covers the delegations by the authority to the land agency to issue leases.

THE CHAIR: Sorry, section?

Mr Hare: Section 17 (2).

MS DUNDAS: Page 9.

THE CHAIR Yes.

Mr Hare: From our point of view, this represents a considerable dysfunction of the whole delivery mechanism of land development, or for serviced land. There are some other good reasons for not delegating that authority to the agency, but I will leave that to others. I think Planning and Land Management will be presenting those themselves. We are primarily concerned about the quality of the infrastructure that is delivered back to the territory by the development agency.

Essentially, there is a conflict of interest between the land developer and the maintenance authorities that eventually take over the assets of the land, the services. These cover the roads, the stormwater drainage, the sewer systems and the water supply systems. Essentially, the land developer's whole aim is to minimise the actual servicing costs, or the development costs of the land, to maximise his return for the lease. The maintenance authority, of course, has the absolute opposite approach. They want—

THE CHAIR: Want it gold plated all the way.

Mr Hare: They want a Rolls Royce in the ground. The mechanism that, in the past, has ensured a balance between these is having a relatively arm's length body between the two, in this case PALM, which administers a deed of agreement between the land developer and the territory. When the developer has delivered the services to a certain standard, which is set out in codes of practice and so forth, the maintenance authority accepts them and then, as a consideration for that, PALM issues the leases to the land developer.

In other words, the issue of the leases is a leverage to ensure that a certain standard of infrastructure is achieved. If we delegate the issue of leases to the developer, we short-circuit the whole system and collapse the entire structure of the contract. It is essentially similar, I would say, to contracting a builder to build a home and handing him not only the right of certification that he has done the job properly, but giving him the cheque book to write his own cheque. It just collapses the whole thing.

THE CHAIR: Would you just explain that again, Mr Hare? The way it currently works is that—if I am getting it wrong, interrupt me—a building company has a holding lease essentially.

Mr Hare: That is correct.

THE CHAIR: It does the development, putting in the sewers and the trenching and the—

Mr Hare: Roads.

THE CHAIR: —the kerbs and guttering and all that sort of thing.

Mr Hare: That's correct.

THE CHAIR: And when stormwater and traffic and all of those people sign off to say that it has been done to the right standard, the developer actually gets a lease over the property.

Mr Hare: That's correct. They sign off to say that.

THE CHAIR: That is when they can actually sell the land on to a home owner or to somebody else.

Mr Hare: The developer has to seek operational acceptance from each of the receiving authorities: ACT Roads, stormwater, Actew and those sorts of people. These are all collated by my staff actually and, once all the boxes are ticked off and the infrastructure is accepted by the main authorities, then my staff issue a certificate of practical completion to the developer, and they issue leases to the developer that can be sold to the public.

THE CHAIR: You are saying that this, although it is not mandated, gives the person who is the developer, that is the land development agency, the capacity to issue its own leases?

Mr Hare: This is right. It is not mandatory but, if they could issue their own leases, it means that the one leverage that the territory has over the developer to ensure the quality infrastructure is delivered has gone. We are relying on the good graces of the developer to do the right thing, which is a dangerous dysfunction in the cycle, I believe.

MS DUNDAS: Obviously, the solution that you are seeking is the removal of that power, that delegation, from the bill.

Mr Hare: That is correct.

MS DUNDAS: Do you think that there is another solution in enforcement procedures that the land agency must follow?

Mr Hare: That is a solution, but the point is you still come back to the fact that you have to enforce it. The fact that they cannot issue their own leases, that they have to perform to a certain standard to receive those leases, means that it is automatically achieved without having someone physically go out and force the situation.

MS GALLAGHER: Do you have, or does APESMA have, a view about where the ability to issue leases should rest?

Mr Hare: I would say with the authority. Apart from anything else—

MS GALLAGHER: Which is where it does rest, except that 17 (2) gives the ability to—

Mr Hare: That's right, yes. We are recommending that it be made more rigid, so that the authority doesn't have the option of delegating to the agency. We can't see that there is any situation in which having this ability delegated to the agency could possibly be of benefit to the territory, to the community or anyone. Essentially, those are the only two issues that we were really concerned with in the bill. Apart from that, we applaud it.

THE CHAIR: Does APESMA have a particular view about the functioning of the land agency as a monopoly? Do you have a view one way or the other?

Mr Hare: Not really. APESMA wouldn't, no.

THE CHAIR: APESMA doesn't have a view.

Mr Hare: No. I might have some personal ones, but—

THE CHAIR: Yes, okay. Perhaps we can have those over a cup of coffee.

The HIA did express views about the overall desirability of having the planning authority in some sense removed from government, and having its status elevated. As a representative of APESMA, do you see that there is value in that analysis?

Mr Hare: Most definitely. It is a bit theoretical, but an "independent" planning authority can never be truly independent, in that it is operating on behalf of all the territory. However, I suppose the current proposal, as it stands, primarily giving the delegation to the chief planner of the planning authority, certainly puts it more at arm's length from the normal political day-to-day administration, which I think is necessary for planning.

THE CHAIR: One of the comments that the HIA made, and you may not have been here at the time, was that it felt that there was a lot of interplay between the agencies in DUS, such as the people dealing with stormwater, roads, heritage and environment and, in that process, PALM was just another equal. Do you see that as a problem?

Mr Hare: I am talking on the basis of my experience within the service, of course, at the moment. They are right to a certain extent, except they forgot the fact that there is actually a pecking order, an order of importance of the actual agencies. The strongest would be Urban Services and PALM. They are the main players in the game. It is not really PALM in total: it is really the development management branch of PALM. These are the planning regulators in the development assessment branch.

In my role as primarily deed manager or estate manager, I coordinate all these agencies and developers and the interaction between them. I work for PALM, so my role is a bit different as well. I am not sure quite what they were getting at there, but there is certainly a lot of interaction between the agencies and between the developers and the agencies directly.

THE CHAIR: I think what they were saying is that, in a sense, pure planning may have been subverted in some way because other people have aims, such as extra tricky stormwater channels, or whether you can cross verges with road easements and things like that.

Mr Hare: Okay.

THE CHAIR: I think that there is an interplay between the pure theory of planning and the practical application on the ground, and sometimes the practical application on the ground gets in the way.

Mr Hare: I'm not sure. I would say—

THE CHAIR: Is that a reasonable exposition?

Mr Hare: I think I know what you mean.

MS DUNDAS: It also involves the frustrations of having to meet with seven people to deal with one issue and being not quite sure who has the final say. I think that produces a lot of their frustration as well, and they are looking for one person.

THE CHAIR: The one-stop shop, I suppose.

Mr Hare: Yes. I think I know the problems they are alluding to, but I think it applies more to redevelopments than actual greenfields land developments. To date, the greenfields land developments are very systematic and procedural. They are run under a deed of agreement between the developer and the territory. The deed of agreement basically sets out all the procedures, the rights and responsibilities, and the specific project requirements, so it is pretty well laid down.

Redevelopments—which I know the previous witness here, Alan Morschel, was actually intimately involved in at one stage in PALM, when he was an employee there—can get very messy.

They tend to get very mixed up. There are a lot of players involved. There are no set rules and everyone is reaching a compromise all the way through. Probably a good example of that would be the section 56 or section 84 processes—wince, wince.

MS GALLAGHER: You have survived it.

Mr Hare: In those situations, although developments are controlled by the deeds of agreement, those deeds of agreement were the outcome of the negotiations, rather than the rule book at the start.

THE CHAIR: Yes, I see. Okay, is there anything else?

MS GALLAGHER: No.

THE CHAIR: Thank you very much, Mr Hare.

ROMILLY MADEW and

ANTHONY TALBOT ADAMS

were called.

THE CHAIR: You should understand these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action such as being sued for defamation for what you say at the public hearings. It also means you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

Would you like to identify yourselves for Hansard?

Ms Madew: I'm Romilly Madew, Executive Director, Property Council.

Mr Adams: I'm Tony Adams. I'm a consultant with a firm of consultants in Canberra, McCann and Associates. I appear today as a member of the planning committee of the Property Council.

THE CHAIR: Romilly, would you or Tony like to make an opening statement?

Mr Adams: I was proposing to do that. I have some notes here. We've prepared a written submission. I'd like to go through these notes and highlight all of key points we'd like to make. Then we'd be quite happy to respond to questions and discussion that might arise from that.

Firstly, I understand we're talking about the Land and Planning Bill and the bill to amend the operation of the Administrative Appeals Tribunal. Are both subjects under discussion in this inquiry?

THE CHAIR: And the consequential amendments.

Mr Adams: The majority of our comments are on the Land and Planning Bill.

A number of consequential matters arising from the Land and Planning Bill have not yet been released. Quite often the devil is in the detail. That detail is not yet available, and it's difficult to comment on the whole bill when the detail of the consequential provisions is not available.

For example, we do not know what class of matters would be referred as a matter of course to the proposed Planning and Land Council. Some development applications seem to be going to go there and others, presumably the more complex ones, not. But where the line is drawn will be quite important. This submission can only be preliminary in that respect. Quite important matters are still not yet available for comment.

Currently a development application in the ACT has the potential to go through three separate agencies: PALM, the Commissioner for Land and Planning, and the Administrative Appeals Tribunal. The three-stage process, in the view of the Property Council, needs to be addressed.

The normal process is that there is a decision, and then there is a review of the decision. Someone makes a decision and then there is an opportunity for that decision to be reviewed. PALM used to make the decision and the AAT was the review tribunal. The commissioner was inserted in between, so there are now three. That's fairly unnecessary. I'll come back to that. We would be looking for the bill to set up a two-stage process. That should be sufficient. It is in most jurisdictions.

We're also looking for a framework that provides for a rational planning administration system that works effectively. There is currently an absolute plethora of guidelines, master plans, territory plans, draft territory plans and tree legislation. We've prepared a diagram. The diagram gives you some idea of the scope and breadth of things the average person needs to be across if they're to understand how a development application may move through the system in the ACT.

It is very complicated. As a consultant, I deal with it regularly. One of my skills is in attempting to understand this complexity. It shouldn't be necessary for the average citizen interested in commenting on an application or for the average applicant interested in having something approved or moved through the system to try to understand this whole thing.

Because there are so many different points, different stages and different bits of legislation, it is quite common for things to be in conflict with each other. The planning authority and an applicant can spend a lot of time going through the development of an application and formulating a set of recommendations and a agreed position, and the commissioner can then do something quite contrary. The commissioner can also do things that are contrary to PALM's interpretation of the Territory Plan. It's not possible to go down a single path or through a logical sequence of steps to reach a single conclusion.

Separate pieces of legislation can work in conflict with each other. The Tree Protection (Interim Scheme) Act, which I'll call the tree act, is highly valued, and trees are obviously highly valued, but the act is quite separate. It is administered, and decisions are made under it, by a separate party, the conservator. The conservator can make a decision on a tree, and that decision can be quite different to the decision PALM or the commissioner might have made about that tree, or to the decision ultimately made by the AAT about that tree. They come in at different times, and they come in at different places, and they can contradict each other. The Heritage Council can make its decisions under quite a different set of rules.

Because they have separate legislation, the conservator and the Heritage Council have their own statutory obligations. They have to move in the direction that their legislation tells them to move. So it can be quite legitimate for the conservator to have regard to what is required of her under the tree act in making a decision about a certain tree. The planning authority—having regard to what is required of it under the land act, the

Territory Plan and various other guidelines—could quite legitimately come to a different decision.

The conservator's consideration is limited to things to do with conserving trees. That's fine. The Territory Plan requires the planning authority to look at the social outcomes of, say, knocking down a tree to build a hospital or an orphanage. The tree act simply requires the preservation of trees. They are equal and have the potential to be opposite. The individuals administering this legislation are between a rock and a hard place. We have these different streams moving forward.

In the Planning and Land Bill we are looking to a system that resolves the conflicts, but at the moment it's adding another layer. We're quite concerned that another layer and another process are being inserted.

The land act has three principal arms: leasing matters, the Territory Plan and preliminary assessments, and the environmental part, part 5. Within the land act there is potential for a lot of conflict.

Leasing matters include rural lease policy which is being administered at the moment, policies on concessional leases and the change of use charge. Those things change and an applicant needs to be on top of them and needs to be aware of what is happening. Those things have the potential to conflict with other elements of the Territory Plan. For example, draft variations quite often have instantaneous effect. It's quite hard for the average citizen. The Property Council is looking for clear and straightforward systems of administration that allow third parties to have their say, to be satisfied they have been heard and to move on.

At the moment it's quite difficult for someone reading the Territory Plan to realise that a draft variation that came in last week or last month has changed the rules and has interim effect. The interim effect goes for 12 months. Variation 200 is a good example. It made very substantial change overnight without any forewarning. The changes are many and various. They're in place definitely for 12 months or until the thing becomes a final variation, but they're likely to be modified again as the thing moves from a draft to a final, or in some cases they might evaporate completely.

In the previous legislation a draft variation was on what we call the 5 per cent rule. Dual occupancies were allowed to be one in 20 per section. That is still in force. It's apparently going to be allowed to evaporate, because it's been taken over by variation 200.

There's the Territory Plan. Draft variation 192 was put in place in December last year and will have interim effect until December this year. In May this year variation 200 came in. It added a layer on top. In December this year, variation 192, the 5 per cent rule, will evaporate. Variation 200 will no doubt evolve and there'll be some changes to it before it's either confirmed or forgotten about completely. One presumes it'll be confirmed in some form or other and then become part of the Territory Plan. There's ACTCode, which a lot of work went into over recent years and which variation 200, in part, is going to replace. It's very hard for anyone to comprehend all of this.

The Planning and Land Bill inserts a Planning and Land Council into this mix somewhere. An overriding concern of the Property Council is that the complexity and the room for conflict within the system are already huge. We would prefer a review of the system to rationalise and simplify what we have rather than the addition of another layer, which is what this bill is doing.

The third tier of the land act is the environmental assessment part, part 5. We have a preliminary assessment process which parallels the DA process. It is just an extra layer. I write preliminary assessments. I write a stand-alone document that goes through a separate assessment process in PALM and other agencies. It sits beside the development application, which contains exactly the same information, for all intents and purposes. That goes through another assessment process.

It's quite possible for an application, containing the same information to be assessed by different people in one area of PALM or another agency who come up with different answers to another area of PALM and different agencies processing exactly the same information. That's pretty weird. Environment is over here and planning is over there. They're two separate things. They're not actually separate.

It's instructive to note that New South Wales, whose system is far from perfect, has a version of the Territory Plan in what they call local environment plans. They roll environment and planning in together. It's sensible to do that. You can't really consider planning issues without considering environmental impacts. The Territory Plan—no doubt you've read it—all the way through talks about environmental issues. That's what it's about. It's about preserving the social and the biological environment.

THE CHAIR: You've pre-empted one of my questions, but I will ask for some clarification. You're saying that in New South Wales the planning assessment and the environment assessment are inextricably linked and done together by the same people?

Mr Adams: Yes. It's a far from perfect system as well. The name gives it away. The intention is that there be a proposal which is assessed in its totality. I've been a town planner for many years. In the last 10 or 20 years environmental assessment has come to the fore as something that's necessarily separate, or it's set up as a separate thing. I don't know why there is a need for that.

THE CHAIR: Is the New South Wales model emulated elsewhere?

Mr Adams: There has been a lot of change in the Australian states, and I haven't caught up with what has been happening in most of them in the last 10 years. It used to be a mixture of both. In Western Australia, where I worked immediately before I came to Canberra, there were two separate systems and you needed separate approvals. People there acknowledge that that was pretty silly, because you did two sets of documentation—

THE CHAIR: Which had the same information.

Mr Adams: Which had the same information, essentially. This particularly applies to inner city buildings. You write a report to provide the reasons why a 10-storey apartment building on Northbourne Avenue should be approved. The people giving the

development approval under the planning part of the Territory Plan want exactly the same information, and rightly so, as the environmental people. That's true everywhere. There may be scope for something called an environmental assessment if you're going to build a nuclear power plant or something really big. But for day-to-day development the issues are the same.

Even with a nuclear power plant you need a development approval, and that development approval should be given by the person who has the stamp in PALM only when they're cognisant of the full environmental impact. The environmental impact is a subset of the development approval process for anything. They could well be rolled into one. They're an unnecessary cost and nuisance.

There is also Commonwealth legislation. A client of mine was unable to avail themselves of the AAT appeal processes because their proposed development in Civic crossed over some National Capital Authority boundaries, and there was considerable doubt about whether it was possible to the AAT in a matter that was under the auspices of the NCA. There are anomalies, and there needs to be a review of the relationship between the Commonwealth legislation and so on.

THE CHAIR: This is an instructive chart. You have all the rule books adumbrated here, but surely the National Capital Authority has its own set of rule books to inform it.

Mr Adams: It does. They're less well documented.

THE CHAIR: It could be said that this list of rules makes it look quite complex, whereas a nice neat straight line for the National Capital Authority process might belie the fact that there is an equal number of or a similar number of rule books that inform the way they make their decisions.

Mr Adams: I wasn't intending to indicate that they were simpler than us. It's just where it fell on the diagram. They don't have a lot of written rules, because they don't have to justify themselves so much in the AAT. It's much more on day-to-day interpretation. They also deal with a much smaller number and variety of development applications, so they don't need so much.

In the ACT you need to be across all that. There are decision-makers, people, rules and so on in all of those bits of that diagram that one needs to understand for an individual development application. It probably makes it more lucrative for consultants than it ought to be.

THE CHAIR: I was just thinking that if it were made rational, transparent and coherent there would be less business for you.

Mr Adams: Sadly. I believe that the energy of consultants could be devoted more to making good things better, rather than getting average things across the line. I think there's a lot of scope for improvement.

THE CHAIR: We might move on.

Mr Adams: Yes, I should move on. We support the position of the commissioner being dissolved. It is an unnecessary tier of approval. We're going to have a Planning and Land Authority and it's going to be advised by a Planning and Land Council. We wonder why we therefore need a separate Heritage Council and a separate conservator. That's following the same theme. There is a Heritage Council that makes its own decisions. But we're going to have a Planning and Land Council which will be an expert body advising on what's right and what's wrong to do on bits of land around the territory. That body probably will have heritage expertise and could easily have heritage expertise. It could be advised by experts in heritage. Why do we need a separate agency? The ACT Planning and Land Council is ostensibly making decisions about land use around the ACT. Then there's another body called the Heritage Council making decisions about land use around the ACT. It seems silly to have two. Why not role them into one and call it the Planning, Land and Heritage Council or something similar?

THE CHAIR: If you look at section 27, there isn't specific mention of heritage.

Mr Adams: I've noted that. We're also suggesting there could be heritage. The Planning and Land Council is making decisions and providing advice to the planning decision-maker without the benefit of heritage or after the heritage decision has been handed down to them or handed across to them, whereas the heritage decision should be made in the context of the whole sociopolitical environment. The heritage decision is very important, but the final decision should be made in a complete context, as should all our planning decisions. We end up having the heritage decision made and set in concrete, and then everything else follows from that.

THE CHAIR: Having to work around it in some way?

Mr Adams: Yes. It might be the most important element. That's quite possible but not necessarily.

THE CHAIR: In your model there would be no Heritage Council that does the heritage listing?

Mr Adams: I would see the heritage listing being done here. Once a heritage listing is done, it's done. At the moment it's done wholly on the basis of heritage interest. I'll take the worst case. We list this thing for heritage and that means the orphanage cost 10 times as much to build, or something similar. That's a silly example, but any land use decision, as much as possible, should be made in the holistic context of our biological, societal, financial needs—all of our needs. Once something is listed on the Heritage Register, it's set in concrete, and it's done in isolation from all other matters.

Just as it's valid to say that a development approval should not be done in isolation and without consideration of environmental matters, so an environmental or a heritage decision or whatever shouldn't be made in isolation from social, financial, development and growth issues. There should be a single decision-making framework.

We're setting up inevitable conflicts. We're also setting up a very unfortunate position for the average citizen who wants to be engaged. They read the heritage act and they see that it's all stitched up on the heritage. Then they can't understand why the planners

object to it or someone else objects to it. There isn't a framework for resolving those positions.

In the end, the decision about what gets up and what doesn't is a political decision. That happens, but it happens at different places and at different levels. It should come together and the government and politicians should be able to say, "These are all the facts. What's the decision?" They're being asked to decide on a heritage matter and you get a decision on that, and then something contrary to that pops up. The government is asked to make a decision when the other decision is already in place. It's quite hard. From an industry perspective, it's quite confusing and difficult.

We are interested in the chief planning executive. Our understanding is that the Planning and Land Authority and the chief planning executive are a person and are one and the same thing. It's drawn as two boxes on the diagram, but it's one and the same thing, and it's a single person. That person should be appropriately qualified and experienced as a town planner. We believe that that's quite important. We need in that position someone who has an understanding. They should have confidence and be able to make hard decisions in the face of inevitable conflicts.

THE CHAIR: So you want them to be qualified and courageous?

Mr Adams: Qualified and courageous.

MS GALLAGHER: You want that spelled out, though?

Mr Adams: We'd like it spelled out, yes. They should be qualified.

MS GALLAGHER: Presumably it would go on their job application.

Mr Adams: Yes. At the moment it just says, "Appoint someone."

MS GALLAGHER: You want that spelled out in the bill.

Mr Adams: Yes. There is a belief that we can reach consensus on planning and environmental questions and that there's always a win/win situation. That's simply not true. We have to make tough decisions.

The town planning laws would not exist if everybody agreed that you could get the right answer. The laws are there to provide a framework for arbitration, and we need someone who can make decisions confidently and robustly. Therefore, the person obviously has to be independent. That's the intention. We have had an independent chief planner in the past. You can read the land act in such a way that the chief planner is an independently operating person.

MS GALLAGHER: The commissioner?

Mr Adams: No, the chief planner—the planning authority, as it's called now. It used to be the chief planner and now it's the planning authority. It's possible to read the land act and say that it is a pretty independent sort of bod.

The planner will need the support of a robust and well-qualified staff, legislation that works and a policy development framework that works. The legislation is partly what I've been alluding to. It's very complicated; it's very difficult. We will have a chief planner, but over there there'll be a conservator. I haven't yet mentioned the Commission for the Environment, who also has a decision-making function, the Heritage Council and so on. The chief planner is in a legislative framework that hamstrings them a fair bit.

MS GALLAGHER: Considering issues like environment and heritage, which are contentious, isn't there some argument not to rest all those powers within one authority? You're calling it duplication. It could be argued that it's further scrutiny and accountability in respect of decisions pertaining to environment and heritage.

Mr Adams: And that's the way things have evolved. But it's not scrutiny if we have equals and opposites. It's scrutiny if we have a process that leads to a decision. The ultimate decisions are Territory Plan decisions. Heritage Register listings are all Territory Plan decisions. They're all made by the Assembly. The Assembly gets equal and opposite advice, and at the level below that applicants don't know where they stand.

It doesn't matter if you call the chief planning executive—or what will be the Planning and Land Authority—the conservator, the environment and planning authority or the planning, land, environment and heritage council. But to have them in separate camps is counterproductive. We have a whole lot of people beavering away unproductively. They go down their own track too far. They get all the way to the top before they bump up against each other, if you know what I mean.

At one time there was a single department of environment, land and planning. They were all together. I think that had a fair bit of merit but wasn't allowed to explore its possibilities. It was seen around Australia as world-breaking. You got it all together. Things didn't work brilliantly, so things were hived off, and you end up with conflict.

THE CHAIR: The Property Council seems to be saying that before we do anything about what you see as a bit of a curate's egg there should be a full review of the land act.

Mr Adams: Yes. We're looking for an inquiry into planning administration, the land act.

THE CHAIR: Who do you see should do the review of the land act?

Mr Adams: Presumably this committee could inquire into it. I think we put that view before. There have been reviews in the past by experts, and nothing much has happened. The Stein inquiry and so on were substantial reviews of how things were done, but—

THE CHAIR: But there was no rewrite?

Mr Adams: No, none of them rewrote the land act. The land act came into being and was amended, I understand, 50 times as it passed through the Assembly. No legislation is going to work well in that context. Since then it has grown like topsy and we have ended up with something that's pretty poor. The government should be reviewing it. It's the government's job to review legislation. The Property Council has put the view that this committee could inquire into it, but they would no doubt have a role in a government-sponsored and more comprehensive review. It needs to happen at that level.

The Planning and Land Council, as the bill is written at the moment, looks like it could well be staffed by a bunch of academics. No offence to academics. There need to be some there. We believe that it should have people who have experience in commercial property development.

The landscape element seems to be missing. In the bush capital, the garden city, landscape architecture seems to be an element that ought to be there. We believe that industry representation on that council would be valuable. At the moment it doesn't have industry representation. I should change that to "stakeholder representation". There's perhaps a role for the conservation council. There's also a role perhaps for the Property Council.

MS GALLAGHER: You don't see yourselves as fitting under those headings—land development, environment management, urban planning, and community and social planning?

Mr Adams: Could do, but they're not officially there as their organisations. It could be people.

MS GALLAGHER: But it's not specifying anybody?

Mr Adams: No, it's not.

MS GALLAGHER: And it's not meant to be a delegate.

Mr Adams: They're not intended to be formally represented.

THE CHAIR: I think what's envisaged is that the minister might appoint, say, Romilly Madew, but Romilly Madew would be there in an independent capacity rather than as a delegate of the Property Council.

Mr Adams: At the moment preliminary assessments under the land act are referred as a requirement of the act to the conservation council. So there's scope in the ACT legislation to embrace stakeholder groups—it's an advisory council; it's not a decision-making council—with representation particularly from industry and, as I've said before, heritage. If you gave it a robust heritage representation, possibly even a heritage subcommittee, then you could subsume within that the functions of the Heritage Council.

MS GALLAGHER: Not for the Heritage Council. It simplifies it. From the Property Council point of view, there are too many different and parallel courses that your development application has to run through. You can watch it going up that path and you can see them coming to a decision that's going to be opposite to the ones these guys are making, and you can't see a resolution mechanism other than the courts. That's what's difficult.

Similarly with the tree legislation. If we need separate tree legislation, why is the conservator making a decision about a tree? Why can't the tree decision be run through this? You need on that an expert on trees, heritage, landscape or all of the other elements

that are preserved by the tree legislation. But it's a separate application now. It's a separate appeal process. It's quite crazy.

THE CHAIR: So you're saying that tree orders should be dealt with as a DA?

Mr Adams: Yes, within the DA process, and therefore within this process, not a separate application through a separate agency. We don't have any comments about the tree legislation per se. We'd be happy to provide a submission on that separately. But it exists and it is a land use decision. Essentially it's a tree or no-tree decision. Do we keep this land for the tree or do we build something on it? It's a land use decision, and all of these land use decisions are being made by different agencies and are in conflict.

Land is sold by the territory with development requirements, and at the moment someone buys it and they separately have to apply to get the trees removed so they can comply with the compulsory development requirements. That's crazy. There are examples of that out there today. People have bought land in respect of which they are told, "Thou shalt build a building on this part of the block," and there's a tree there. Separately, they have to get the tree removed, if possible.

The Planning and Land Council will apparently be advising on individual development applications. If they are to have that role, it's quite important that they be accessible to the applicants.

MS GALLAGHER: That the council be accessible?

Mr Adams: Yes. Applicants should be able to make representations and appear before the council. It's due process if someone is making a decision or providing advice on your application. This is very high-level advice on what presumably will be high-level applications. The council needs to be accessible to the applicants. They need to be able to appear before it and argue their case.

MS DUNDAS: But you don't think the internal negotiation process being set up is a different term for the appeals process? If there is a problem, it can be reviewed and doesn't have to start again. There can be space for negotiation. You don't think that will cover that issue?

Mr Adams: If the application is being bounced back by the council—there will be individuals on this council who have their views—the applicant would be best served by being able to put their case to the council rather than second-hand through PALM officials or whoever.

MS GALLAGHER: But isn't that making the council a bit more like a tribunal and arbitrating a little, when it is being established to provide advice to the authority and the minister, not to individual applicants?

Mr Adams: It's a two-edged sword. We don't want it to be another approving agency. I noted that earlier. There are too many agencies. I guess we would prefer that it didn't have a role in individual development applications, but the legislation says it's going to.

MS GALLAGHER: About six have been distributed to the committee by the minister. Can they be distributed or are they private?

THE CHAIR: A press release went out about this, didn't it?

MS GALLAGHER: It was about the AAT.

Mr Adams: When it gets to the AAT, there's a mediation process. But before it ever gets to the AAT, we're in this negotiation with the planning authority before you get an approval or a refusal. You put in a development application. It's referred to the Planning and Land Council. It comes back from them with a "this is no good", and you then have to start again, do something different or provide more information. If they're going to be looking at your application, then the applicant needs to be able to have access to that body.

Our preferred position would be that the application be dealt with wholly within the planning authority and not referred. The role of the Planning and Land Council, which is an important role, is to provide high-level advice on plan variations or whatever. That's quite sensible and potentially quite useful. They're only going to meet monthly or whatever, so there's a further delay for applications referred to them. They'll be busy, and if your application is not on the agenda, you've lost two months straightaway.

THE CHAIR: So how would that fit with the current timing process for dealing with DAs, for instance?

Mr Adams: At the moment the apparent timeframe for DAs is 30 working days for one that doesn't require notification and 45 for one that does require notification. A substantial application takes up to 12 months. There's a compulsory high-quality sustainable design process to go through beforehand, which for a substantial application can take six months. A development application, if any objections are received, inevitably goes to the Commissioner for Land and Planning. It goes to him on the 45th day or the 42nd day, so there's another 2½ months.

Rather than having the function which was understood at the beginning of an auditor making sure that PALM follow due process, the commissioner opens the subject up all over again and starts a new assessment. If you hit the wrong point for your public notification, over Christmas you lose two months and over school holidays you lose a couple of weeks. A substantial application takes about 12 months.

This may replace some of those steps, but it doesn't look to be improving the situation. One of our major points I have not got to yet is timing, timing, timing. That's part of the complexity. This means time. Every one of those things is time.

Ms Madew: And cost.

Mr Adams: And cost. Simplifying it will cut the time and the cost. It will cut the cost for everybody concerned, not just the applicant. A development application that's before government for up to 12 months, going through several different agencies, has a lot of public servants spending time on it and duplicating time on it, looking again at something they looked at three months ago. There's a lot of time.

The Gungahlin Development Authority and the Kingston Foreshore Authority remain as separate planning authorities in the ACT. We wonder why. They both have independent powers to make decisions about land use. They both have independent powers to issue leases, which is ultimately the power to make land use decisions. Why we need those two authorities in addition to—

THE CHAIR: Especially when they can't make planning decisions.

Mr Adams: No comment. It seems strange.

THE CHAIR: In fairness, the minister has foreshadowed that they will eventually be subsumed.

Mr Adams: We're reinforcing that. I think he has made some such statement. We don't have too much to say on the Land and Development Agency. The proposal seems fine. There should probably be a commercial development expert on that board of seven people. We talk about greenfields development, but the territory owns substantial city/commercial land. That seems to be a skill that is lacking.

We'd like to make a comment on governance. The Auditor has a role in all of this, particularly in the Land Development Agency. It could be written more into the scheme of things. It seems that the Auditor is having an increasing role in all sorts of administrative matters, and the public is recognising the Auditor's role and demanding a greater role. We haven't put any flesh on this, but perhaps there needs to be a greater role for the Auditor written into these organisations, particularly the Land Development Agency, to ensure probity, performance, benchmarks and so on. Rather than wait till the end of a year or for two years of operation and then have the Auditor come in and find problems, write it in at the start and get some sort of proactive auditing, governance, administration process in the mix of things.

THE CHAIR: You said that the Property Council doesn't have a particular problem or view about the Land Development Agency.

Mr Adams: As it is structured, it seems okay. The Property Council has had a view that government-only land development is not our preferred model. The Land Development Agency, as far as we can tell, is not much different to what happens at the moment with land and property, except that it has an agency administering it, which is probably an improvement, with some additional skills.

MS GALLAGHER: You're focusing your comments on the bill?

Mr Adams: Yes. Our opening comment was that there's a lot of detail we haven't seen.

Timing is a key issue. The compulsory front-end high-quality sustainable design process is a problem. It's very problematic for many of our members. The fact that you cannot just go to the counter and put in a development application and have it considered is a problem.

THE CHAIR: How does HQSD stop that being accepted?

Mr Adams: If you don't have a signed-off HQSD documentation, PALM officers at the counter won't accept your application.

THE CHAIR: Instead of saying that this is what the planning guidelines are, that they have to take these things into account and then build a DA around it, you're saying that the HQSD thing is a pre-consultation?

Mr Adams: It's a pre-approval. It involves public consultation as well, so it's a substantial pre-approval process. You then go to your formal application, which has another round of formal consultation and formal assessment. It's a compulsory pre-approval process. The application doesn't get across the counter until it's—

THE CHAIR: Sorry, I must have been under a rock. I didn't realise that.

Mr Adams: It won't be accepted until your site analysis and design response report, which is essentially about how your design meets the requirements of the site and the plan—

THE CHAIR: But isn't that an integral part of a DA?

Mr Adams: Yes.

THE CHAIR: Excuse me for being naive.

Mr Adams: However, to achieve those things there are processes and approvals. You should be able to write those documents to what you consider to be your satisfaction, put them across the counter and have them refused if they are that bad.

THE CHAIR: Be told, "Sorry, it's not good enough. Go back and do it again."

Mr Adams: Yes, but you can't even put it in. The clock on the 45 days doesn't start ticking until you get it across the counter.

It's sensible, reasonable and normal that Territory Plan variations should be in the hands of the Assembly, come through this committee and so forth. However, for a series of reasons, a lot of the Territory Plan is reflective of what happened to be on the ground on the day it was written.

Individual bits of land here and there legitimately come up for review, essentially as part of a DA, because someone owns them and they want to change them. Normally the Territory Plan sets the large-scale policy, but there are lots of cases around Canberra where it's spot zoning because that's what was there on the day.

Therefore, private interests are often to the fore rather than the big picture. Leaving that aside, when a plan variation is proposed by, say, a private interest or even by a community group or someone, there should be a process that requires it to be considered and a decision to be made within a timeframe. At the moment you write a letter and say, "Please vary the plan to achieve such-and-such," and that's the end of it. It waits until the fullness of time.

We believe—and this may be a role for the Planning and Land Council or something similar—that a person should be entitled to a response of: "Yes, we think it's a good idea" or "No, we think it's a bad idea and this is why it's a bad idea." That is just a normal course of events.

The cost of the appeals process is always a concern. The cost of the process at the moment is all on the side of the developer. We are looking for a mechanism whereby costs can be awarded not to the citizen who has a legitimate concern and wants to have a legitimate say about something that's happening next door to them but to the people who make an objection that can be seen to be fairly frivolous at the front end and going to fail or have a very marginal impact on what's going to happen.

There is scope for costs to be awarded, but it's strangely worded and it seems that costs can be awarded only if participants in an appeal do things contrary to a direction. That is something that should be penalised today. If you're in an appeal and the president directs you to do something and you don't do it, then that should be penalised already.

You can have a development proposal delayed for six months. With a multi-million dollar proposal, a delay of six months is very costly. At the moment scope exists for such delays to be imposed on very frivolous, minor matters. The fact that it costs only $138 to initiate such an appeal is a problem.

THE CHAIR: And you now have the prospect of getting it back.

Ms Madew: I was talking to Dorte about 49E.1 not being plain English. You have to read it about five times to understand it. If we can't understand it, someone reading it would have real difficulty understanding what it means. It needs to be reviewed by a plain English expert to try to get the wording to make sense. You read it five times and you still don't understand it.

Mr Adams: The mediator is welcomed. That may well speed processes up. The mediation process needs to deliver consistent results and outcomes. It would be difficult if a mediated outcome on a particular application delivered such and such a result and some time later, in similar circumstances, we got a different result. It wouldn't set up a process of certainty. We're looking for certainty in the processes. We get that to some degree with the AAT and a reasonably legalistic approach to interpretation of the plan. The danger exists that if lots of things go to mediation we will start getting outcomes that presumably will suit applicants.

THE CHAIR: But won't be consistent?

Mr Adams: But they won't give confidence in the system.

THE CHAIR: And create precedents perhaps.

Mr Adams: They create some level of precedent. Confidence in the system, particularly on the part of the community, is vitally important. The average citizen has to have confidence that the system is working for him or her as well as for the development industry and everybody else. Outcomes that are pepper and salt don't engender that.

THE CHAIR: That has been pretty comprehensive. Have you seen the consequential amendments?

Mr Adams: No.

THE CHAIR: The consequential amendments were tabled in the Assembly on 26 September. I got the impression from what you said that you hadn't seen them. With the indulgence of the committee, we should give you some time to obtain, absorb and perhaps put in a written submission on the consequential amendments. Whether we need to come back again, I don't know.

Ms Madew: We would appreciate that.

THE CHAIR: It was foreshadowed in the advertisement for public submissions that the consequential amendments would be available later in the piece. They became available on the 29th. They're probably on the web.

Mr Adams: I'll have a look.

THE CHAIR: At the end of the day we might have a chat about some times, and then I'll get Derek to write setting out a formal process to allow you to get back to us.

Ms Madew: That would be great. Thanks.

ALFONSO del RIO was called.

THE CHAIR: Now, Alfonso, there is a form of words that we are supposed to read. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. For the purpose of the *Hansard*, would you like to introduce yourself, Alfonso.

Mr del Rio: Yes. My name is Alfonso del Rio. I'm the chairman of the Law Society of the ACT planning and environmental law committee, and it's in that capacity that I give evidence today.

THE CHAIR: Okay. Do you want to make an opening statement of any sort?

Mr del Rio: Yes, perhaps just by way of explanation, the Law Society represents obviously lawyers in the Australian Capital Territory, and as such the planning and environmental law committee consists of both representative people whose major elements of practice are to represent the development industry but also to represent the resident groups. As such, the society, in all its submissions to any committee—in particular, this committee—has always been focused on the substance of the legislation rather than the policy intent, and policy is something on which the Law Society does not intrude.

THE CHAIR: So you're concerned about the substance.

Mr del Rio: That's right, and the impacts on rights of individuals, and access and clarity. So in every submission that has been made by the Law Society to this committee and its predecessors the Law Society has emphasised the importance of the need for planning law to be accessible, transparent and clear. it comes as no surprise that, as time has gone on, those ideals, which are also enshrined in various policy documents prepared by successive governments, have moved further and further from the truth.

The ideal, as it's seen by the Law Society, is for an individual that says, "I would like to find out what I can do on my block." They access the web. They identify their block on our wonderful block and section plans. They click on their block and they can then access the policies that apply to that block. That would be nice. I think that when we claim to be leaders in technology and at the forefront of electronic delivery of services—and I note that there was a previous report with respect to electronic delivery of services in this area—we just seem to get further and further away from it.

The introduction of layers and additional policies and additional plans just complicates things. This bill, in as much as it doesn't really add to that layer of complexity, does confuse things by separating and creating new pieces of legislation, with uncertain linkages.

I heard you mention before that the consequential amendments were tabled on 26 September. I looked on the web as of Thursday night and they weren't there on Thursday. I wasn't here on Friday. They might be posted now, of course; there's been an additional period of time. So the Law Society obviously hasn't seen the consequential amendments and therefore, to some extent, some of the concerns that have been outlined in the submission which relate to the fact that the consequential amendments aren't available for comment may in fact be addressed already.

THE CHAIR: Yes. So you checked on the web. When was that?

Mr del Rio: Thursday.

THE CHAIR: Thursday. What was that, the 3rd?

Mr del Rio: Yes, I think so.

THE CHAIR: On the basis of the information you have before you, which is the Planning and Land Bill, you said that it confuses things because it creates a new piece of legislation with uncertain linkages. Would you like to elaborate on that in particular?

Mr del Rio: Sure. The current position as set out in the land act is that the land act creates an authority. In section 33, it establishes the ACT Capital Planning Authority and it's got some sections which then deal with its functions, the right of the executive to give policy directions to it, the powers, delegation and staff. So, from the Law Society perspective, what we would have preferred to see is amendments to those provisions, if the government thought it necessary, to delete those provisions and insert the new form of authority. Realistically—

THE CHAIR: So you wouldn't have created a new piece of legislation? You would have amended the land act?

Mr del Rio: Correct. The creation of the new piece of legislation, I think, is important, because the authority has as one of its responsibilities dealing with variations in the territory plan and to administer that process. Why you would set out a separate piece of legislation to incorporate that authority is beyond me. I can understand the need to have a separate act to deal with the Land Development Agency. The development agency's functions are quite separate; it's a commercial agency—no different to setting up the Kingston Foreshore Development Authority.

But for the planning authority it should sit within the land act and there shouldn't be a separate piece of legislation because, when you're looking at the definition of the authority and what it does, it's already there now. So presumably all the consequential amendments do is remove division 4, which then leaves a blank in the act, so to speak. We've got sections 33 to 41 which deal with the land authority, and the ideal would have been to simply amend those sections and insert the regulatory body in the piece of legislation which it administers. I mean, that's the sensible and logical thing.

Similarly, you've got a reference to the planning council. In the act at the moment there's a reference to the heritage council. And it seems to me that, where you've got a body which is there to administer and give advice with respect to a piece of legislation, that

body should be created as part of that piece of legislation. It just seems that that is the logical place for it to sit. It also means that it's much more difficult for an individual to access the law, because they see there's an authority. Where is that found? So they go to another piece of legislation and they come back again. It just creates, I think, an additional layer of complexity which I don't think needs to be there. I can understand if we're putting layers of complexity in because they need to be there, but I thought we were here to simplify the process and achieve those ideals which I spoke about earlier.

THE CHAIR: That's accessibility, transparency and clarity.

Mr del Rio: Correct.

THE CHAIR: If you were doing it—if the planning and environment law committee of the Law Society was sitting down to set up a new planning and land authority—you would do it by way of amending the current land act?

Mr del Rio: Correct. There is a provision in there at the moment and you're just dropping in the authority. The provisions are, funnily enough, quite similar. The first thing that you do when you create an authority is name it. It says here in the current land act that the authority shall be the public servant for the time being. Similarly, in the provisions that are now before us, it's an individual that is the authority. It talks about the agency in its capacity to bind the Crown. It talks about its functions. It's all here now. There is no need to put in place a new piece of legislation which establishes the authority.

MS DUNDAS: Do you think that the independence aspect of the new legislation and the idea that it's an independent planning authority could be covered by slipping it into the land act or by having a new bill where—

Mr del Rio: As I've indicated before, this is not an independent authority.

THE CHAIR: Actually, I don't think you have indicated that yet.

Mr del Rio: Sorry—in our submission.

MS GALLAGHER: I knew you had, just not in this room.

Mr del Rio: No, in the submission. The reality is that the body that is established by the land act is independent from the executive, but it is subject to ministerial direction. The bill proposes an authority which is subject to direction and which must comply additionally with the statement of planning intent. It reports to the minister. So, for it to be a genuine independent authority, it would sit outside the reporting process. It isn't independent of the executive. I mean, it is hard to have a body which is independent because, if they're independent, then who are they accountable to? So it's very difficult to have a body which is independent of a person and yet accountable to that person. I mean, I understand the concept from a policy point of view. Reality is such that, if they're accountable, they can't be independent.

MS GALLAGHER: But this legislation proposes not just the authority but also the agency and the council. So where would you see the council fitting in—under the land act as well? And what you want to see is the agency separated right out of this piece of legislation.

Mr del Rio: Well, the Land Development Agency has a function which is a commercial function.

MS GALLAGHER: Yes, I understand that.

Mr del Rio: There is no difference between it and the Kingston Foreshore Development Authority or the Gungahlin Development Authority. Those bodies were set up by a separate piece of legislation to carry out those functions. Where the sole reason for being of the planning authority is to administer the Territory Plan, and the process whereby you vary the Territory Plan is set out in the piece of legislation, then the logical place to put the authority is in that same piece of legislation. Similarly with the council, if its role is to advise the minister with respect—

MS GALLAGHER: The authority and the minister.

Mr del Rio: And the minister, with respect to the Territory Plan, then logically it would seem to sit within that. At this point in time the land act has, for example, heritage responsibilities. That's why the heritage council sits within the land act—because it's the most logical place to put it.

So what we've actually done is this: a body which should be very independent of government, being the land development agency, which is there to churn money and make money and do all that sort of thing and should have a separate piece of legislation, doesn't; yet a body that should be part of the land act is roped into these other things. So I think there should be two separate pieces of legislation.

THE CHAIR: The land amendment bill and authority.

Mr del Rio: That's right.

MS GALLAGHER: And an agency.

THE CHAIR: An agency, yes.

Mr del Rio: Effectively it's unclipping the staples and putting in place two acts and one amends the land act. We're not talking about significant substantive changes to it. But what it would mean is that if somebody wants to understand planning in the ACT—

THE CHAIR: They've only got one piece of substantive legislation to go to.

Mr del Rio: That's right. The land act, I must admit, is not the easiest legislation to understand and it could do with a significant rewrite to clarify its motives and all that.

THE CHAIR: That's it, note that. He says it could do with a significant re-write.

Mr del Rio: I don't have a problem with making those comments on behalf of the Law Society because we've mentioned them previously. But the concept of creating a separate stand-alone piece of legislation, when its sole function predominantly is to deal with planning issues and plan variations, just is nuts when you've got the plan variation process—and "nuts" is not a legal term.

MS DUNDAS: In your written submission you spoke about the concept of sustainable development and how it is differently defined. Do you see that that has the potential for serious legal conflict?

Mr del Rio: Where you have a concept such as sustainable development, it's always important to ensure that that concept, wherever it appears, is expressed in a consistent manner, simply because you wish to avoid interpreting the concept for one purpose and then having to apply your mind differently if the words are different.

The law presumes generally that, if you use one form of words when you have the option of using a different form of words, you choose to do so for a reason. So it's important that there is consistency in all the definitions. I think that's just important from any policy point of view. When we talk about sustainable development, what is it that we talk about? Let's ensure that the definitions are consistent across the board. If there is a reason why they need to be different, then in that case perhaps what we should do is amend the existing definition, to bring it up to date with what we want it to be today. But let's not have a position where you've got two definitions sitting side by side which vary slightly.

MS DUNDAS: What are your comments on the relationship of the Territory Plan to this Planning and Land Bill?

Mr del Rio: I don't think that there is any at this point in time. The authority is set up to administer the plan and to propose plan variations, after seeking advice from the council, and then the process for the plan variations is set out in the land act, so there's no linkage as such. There just isn't a linkage. I don't think there needs to be because you don't need there to be links within the act about what it means, but what I think is important is that the sustainable development concept needs to be the same as it is in the Territory Plan—and remember that, to be amended, the Territory Plan needs to go through a fairly long and laborious process.

I think it's important that, if we are going to come up with a new definition of sustainable development, we debate that in the public domain first and we decide on what sustainable development means in the ACT, we agree on that position, and the Legislative Assembly agrees with it and then we go through and we amend every piece of legislation that refers to the concept.

There are similar comments that can be made, for example, with respect to the precautionary principle, where there are slightly different interpretations or definitions that exist throughout the legislation. Conceptually, if we've got a concept we need to ensure that it's defined consistently.

THE CHAIR: Alfonso, you've given a view about what sort of legislation should underpin the Land Development Agency. Has the Law Society views on the merit of the proposal—or you're looking at the substance of it as you said?

Mr del Rio: There are some things, from a more operational point of view, where there seem to be some strange inconsistencies which haven't been spelt out in any great detail, because there was the concept, "Well, is this intended?". Perhaps if I could indulge it for a moment—

THE CHAIR: Yes, sure.

Mr del Rio: In the functions of the authority—and this is the Planning and Land Authority—the only thing which would cut across what I've said to you before is that there's a reference in there to regulating the building industry. I'm not sure, it seems to suggest that the authority is responsible for the regulation of the building industry. The actual regulation of the building industry, as far as builders go, is normally set out in the Building Act, so there is a process to deal with builders and non-compliance and stop-work notices. So power 8 (1) (j) is to regulate the building industry.

THE CHAIR: Sorry, where's that?

Mr del Rio: This is in section 8 of the bill.

THE CHAIR: Section 8, yes. I see.

Mr del Rio: So if the intent was for the authority to become this you-beaut, super regulatory agency that was actually regulating a number of different pieces of legislation and the consequential amendments dealt with removing powers from where they sit at the moment, which is with the building controller, and putting them into the authority, then you could intellectually perhaps justify the creation of an authority and putting it outside the land act.

But, similarly, it's not the role of the society to make comment on the intent, but it is surprising that there is this reference to regulating the building industry when there is already legislation which deals with that in some detail.

As for the specific concerns that the authority had, the statement of planning intent is obviously an extremely significant document. You can effectively override the entire operation of the Territory Plan by saying, "Here is the planning intent that I have". That then creates conflict about: "Well, what's the Territory Plan there for?". The territory isn't allowed to do anything inconsistent with the Territory Plan, so I'm not sure how the statement of planning intent is meant to operate.

I would have thought that the plan was the statement of planning intent for the territory, so I do not understand what the statement of planning intent is meant to be. I can understand the concept of ministerial direction. That's something that has obviously been used previously, the HQSD example being the most recent topical one of interest. That gives a significant amount of power potentially to the minister, and that's why I'm querying the sort of concept of the independence. There is arguably less independence under the current framework than there will be under this framework because of that

statement of planning intent. It could well be that the statement of planning intent isn't intended to do that, but it's not clear from the legislation.

THE CHAIR: It could be as simple as: the planning intent is to implement the Territory Plan as it is written, but then, in a sense, that's a redundancy.

Mr del Rio: That's right, because the territory cannot do anything inconsistent with the Territory Plan so how can you get to that position in the first place?

MS GALLAGHER: When we had Simon Corbell come before us—and other committee members can correct me if I'm wrong—I certainly got the feeling the statement of planning intent was spelling out the government policy in relation to planning, which governments always have. So essentially it is a political document. The role of the authority was to implement that policy, and that was the separation. I guess it always has happened that way, but the idea of the statement was to put it down clearly and to have it publicly known.

Mr del Rio: The society would have a concern with that concept if, for example, the statement of planning intent was "No more dual occupancies", when there is a process in the Territory Plan to do that. The statement of planning intent should be, in that sort of case, the draft variation which has interim effect which says, "This is the way it's going to be".

The Territory Plan is an interesting document because it's a statutory thing which gives people rights, arguably. So the statement of planning intent must not do anything which detracts from that. There is a process to vary the plan if the government of the day isn't happy with what is in it, but the statement of planning intent should not be used, effectively, as a quick means of overcoming concerns with the Territory Plan.

MS GALLAGHER: Yes, I understand your point. But in terms of it being more of a policy statement, would that lessen your concerns? I mean, if it was prescriptive in terms of "You cannot do this; you can do that" rather than, "This is the government's idea about how we'd like to see planning"—

Mr del Rio: Sure. I can understand the concept, but that's what the Territory Plan is. The Territory Plan is there to set out a strategic view of where we want to go. That's what the spatial planning concept is going to be. This gets to the layers concern that this society has articulated over years. It is yet another bit of paper that somebody has got to have regard to—and what value is it? What weight do you put on it? If the Territory Plan sets out our strategic vision for the next 20 years, is the statement of planning intent merely a re-statement of that, or is it meant to do something different?

MS GALLAGHER: The point I'm trying to get my head around is that you would guess that different flavours of government operate under the Territory Plan, yet they have different ideas about planning and we've seen that. We operate under the same Territory Plan but with very different ideas about how that should happen, so I guess it can happen. I see your point. My thought about it was—and I'm sure the committee will follow this up—that it was about clearly outlining for everybody what the policy of the government of the day is, and that the reason it's there is that, when governments

change, the statement of planning intent will be able to be changed as well, because no doubt they'll be different.

Mr del Rio: My point is that if, for example, the government of the day doesn't want dual occupancies, it should vary the Territory Plan. If the government of the day wants to have high density along our traffic corridors, let's vary the Territory Plan. That is the mechanism by which you achieve the policy objectives of the day. What has happened with all the governments to date is that, when they haven't liked something that's in the plan, they've sought to vary it.

MS GALLAGHER: And that would continue, surely, under this arrangement.

Mr del Rio: That's right. So the issue is that it's yet another layer. It's yet another document that you've got to have regard to, which makes understanding what you can and can't do—because I'll go back to the concept: every individual that purchases a block of land should be able to log on to the PALM website, identify their block and identify the planning restrictions that apply to that block and what they can and cannot do.

If the government of the day wants to change that, that's fine. But the process it changes it by is by reference to that document. What is happening is that we're throwing policies up. HQSD is a policy. There are various policies that get thrown up which apply irrespective of what those particular zoning controls are. We've got neighbourhood master plans, we've got section master plans. Well, what's the impact on it?

The real question is: "When I buy a block of land, what can I do?" Most people don't really care what they can and cannot do. All they want is to know what they can and cannot do. At this point in time it is effectively impossible for any individual to understand clearly what they can and cannot do. And if the statement of planning intent detracts from that, then the Law Society believes it should not be there.

Just quickly on some of the policies: there are some inconsistencies, and this gets down to technical things, for example, where probably just some clarification is required. In section 21 of the bill it says that the executive may suspend the chief planning executive from duty for doing certain things, and it's got a list of activities. Those activities are different from those for which you can dismiss a member of the council under section 28. For example, if a member becomes bankrupt, then they can be dismissed but it seems to suggest that if the chief executive becomes bankrupt he cannot be suspended. So there are just some minor drafting issues which potentially need to be clarified and there are some slight inconsistencies.

Roslyn, you raised the issue before about independence. There is no prohibition, for example, on a member of the land agency also being a member of the authority and vice versa. Now, that may not be a problem, but if there is—

THE CHAIR: Either way it needs to be specifically stated, because as it's currently drafted they are sort of interlocking organisations.

MS GALLAGHER: Was that between the—

MS DUNDAS: The authority and the agency.

Mr del Rio: That's right. There are prohibitions on members of the authority being—

MS DUNDAS: On the council.

Mr del Rio: And on the agency, but it's the membership issue. Ultimately it may be appropriate for you to draw upon a common pool of members because the number of members that won't have conflicts is likely to be a relatively small pool.

THE CHAIR: In this town.

Mr del Rio: Maybe that is an appropriate thing to do. I just raise that as a potential issue. The society doesn't have a view about the existence of a Land Development Agency as such. However, the Law Society notes that the intent, from what we could gather, is to roll both the Kingston Foreshore Development Authority and the Gungahlin Development Authority into the same agency. That, I think, is an important objective, because otherwise what we have is three separate land agencies undertaking land development in the ACT. So you've got a significant replication of resources and, ideally, what the society would like to see happen is the establishment of one planning authority. Say, for example, the Kingston Foreshore Development Authority has got significant powers to approve its own development. Is it effectively a mini planning authority?

THE CHAIR: But the Gungahlin Development Authority doesn't have that power.

Mr del Rio: That's right. So, ideally, you'd want to make sure that you're there to develop the land, and you'd go away and do your stuff. This agency over here is there to administer the plan and be focused on planning and that's what they should do. At the moment we also have another body which sits in the middle which does a little bit of both. It's that importance of separation because that ensures clarity.

THE CHAIR: Alfonso, does the Law Society have a view about the fact that by 2004-05 the government will retain all greenfields development for itself?

Mr del Rio: No. The Law Society doesn't have a view on policy issues such as that.

THE CHAIR: You've pointed out some inconsistencies that need to be sort of tweaked in the legislation. Are there things in the legislation, or do you envisage there should be things in the legislation, that specifically curtail the powers of the minister? For instance, should the minister have the power to give directions in relation to a specific development application?

Mr del Rio: The society doesn't have a view on that, and it's not unusual. In fact, it is common for the minister to retain some power to direct the planning agency in various jurisdictions to do things.

THE CHAIR: Down to the level of individual applications?

Mr del Rio: Most jurisdictions reserve to the minister the right to call in, to adopt the ACT terminology, applications. In a lot of jurisdictions "the minister can approve" is the terminology that's used. So that's not an unusual position.

THE CHAIR: But there it is a specific power exercised by the minister in all cases—or is there the capacity for the minister to say, "I would like X to happen", but somebody else actually exercises the power?

Mr del Rio: The giving of directions is not unusual. Usually, if the minister gave a direction to, for example, approve a development—I cannot envisage a situation where that would happen. The reality is that the minister would say, "I will approve this development", because ultimately, because the direction needs to be published in the Assembly, it's pretty obvious what is happening. And I assume that the various very diligent members of the committee would be picking up the minister on that type of direction.

THE CHAIR: You said earlier, Alfonso, that you thought you couldn't envisage—and correct me if I've misinterpreted this—how you would structure an organisation that was independent of the minister but at the same time answerable to the minister. Wouldn't the alternative perhaps be that, if it were truly independent, it would be answerable to the Assembly?

Mr del Rio: Absolutely. If you had an independent land agency, or any independent agency, it wouldn't be responsible to the minister from time to time; it would be responsible to the constituents. And the only way that that can happen, effectively, is via the Assembly.

THE CHAIR: Going back to what was said when the minister and his officers came, there seemed to be a certain tension and some inconsistency where, for instance, the council advises the authority and the minister, but at the same time it is independent. When pressed on the question of whether an individual member could seek advice from the council about something that was going on, I think the shorthand answer was: "No, not until the minister had been advised." Would you see that as an exercise of an independent authority?

Mr del Rio: That comment was made with respect to the council?

THE CHAIR: It was with respect to the council.

Mr del Rio: That if a member of the council wanted to know?

THE CHAIR: No, if a member of the Assembly wanted advice from the council, there was essentially a queuing system—the council couldn't advise a member until they'd advised the minister.

MS DUNDAS: Yes. To provide an example, if there was something going on that would have a major planning impact and the council was therefore considering it to provide advice to the authority and the minister for debate in the Assembly, we asked whether or not the members of the Assembly, before it becomes a debate in the Assembly, can gather information from the council to help, I guess, better informed decision-making.

The answer was: "Well, if something is being considered by the council for the minister, then no, it would have to wait until afterwards".

MS GALLAGHER: The minister would have to be advised.

MS DUNDAS: Well, after a decision had already been made.

MS GALLAGHER: I don't know about that. I think you just have to be informed that members were seeking that information.

MS DUNDAS: But we wouldn't get information, if the debate was still ongoing, before the minister had reached resolution himself. That was my understanding.

Mr del Rio: I can only refer to section 26 of the Bill, which says:

> The council must give advice on matters arising under this Act if asked by the Minister or the authority.

That to me clearly doesn't contemplate a range of other Assembly members, but the normal process would be that that information would be sought via the minister through the minister's office.

A real question relates to what it is that the land council is achieving. It's there in an advisory role, it doesn't have any decision-making power, and one has to question whether or not an independent planning authority, where it was the authority rather than the council and they were the people that made the decisions, would be an alternative. But that becomes difficult because then you've got a body of people to meet and consider development approvals. But normally they'd handle that by saying approvals worth less than a particular dollar value were delegated down to this person, and things like that.

But the whole council issue, I think, is a significant point because you do have this concept where it is clearly an important body, but one which gives advice and the advice can be ignored. Interestingly, as far as the appointment of the chief planning executive is concerned, I presume that the council will be appointed first and then the chief planning executive because—

MS DUNDAS: It advises the executive.

Mr del Rio: Yes, because section 18 clearly says:

> The Executive must, after consulting with the council, appoint a person to be the Chief Planning Executive.

So it seems to me that what you've got is a position where you appoint the less important people, if I can call them that, to be members of the council, and then you consult with them about who the planner is going to be—whereas I would have thought that, ideally, in a perfect world, you would choose the person that was going to be the chief planner and then consult with the chief planner about who the members of the council would be. But that's just a policy issue once again about which one comes first.

MS GALLAGHER: Wouldn't that just be a problem in the first instance, seeing that their terms aren't concurrent? So it would be a problem in the establishment, not necessarily ongoing.

Mr del Rio: Sure, but, just speaking generally, you would generally pick the person to be your chief planner as the person of vision. Why would you consult with the members about who they want to be the chief planner, or is it the other way around? The provisions don't read in an identical way. But, once again, I don't think that's a huge issue.

THE CHAIR: Yes, but it is an issue in the first instance at least. Are there any other matters? Is there anything else that you need to cover, Alfonso?

Mr del Rio: You also need to report on the amendments to the AAT; is that right? Is that covered as part of this or is this going to be done differently? I notice you've got the same reporting time frame; that's all.

THE CHAIR: Yes, the reporting time frame does give one cause for pause. So do you have views on the new planning structure?

Mr del Rio: The committee hasn't met since those amendments have come out, so I'm not in a position to give you advice on that. I believe that the society may wish to make some submissions with respect to those amendments, and I assume I can do that—

THE CHAIR: Yes. Just by way of helping to inform us about setting a timetable, when is your committee scheduled to meet again?

Mr del Rio: I think it is next Tuesday.

THE CHAIR: Right—because, as I said to the property council, we'll write to people and inform them of the existence of these documents so that we know that everybody's singing from the one hymn sheet and give people who are interested an opportunity to respond to those things.

Mr del Rio: Thank you.

PAUL DION COHEN was called.

THE CHAIR: You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections, but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you may say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Please introduce yourself for the purposes of Hansard?

Mr Cohen: My name is Paul Dion Cohen. My address is 25 Somerset Street, Duffy, ACT, and I am a town planner and a town planning consultant by profession. I am here as a member of the Planning Institute of Australia, ACT division, for which I am the policy convenor.

THE CHAIR: Do you want to make an opening statement, Paul?

Mr Cohen: There are a couple of things. One is that there is an error on the second page in the third paragraph, where I refer to the description of the bill and I say that the bill provides for a chief planning officer and that parts 2 and 3 both refer to a chief executive officer. That should be parts 2 and 4. Part 3 deals with the council.

As an opening statement, I didn't want to traverse the information that is in the written statement. A number of issues arise out of the written statement. One is that the committee, I guess, needs to be aware of the connection between this legislation and the Land (Planning and Environment) Act because the chief planner will be required to administer the Land (Planning and Environment) Act. At the present time, that legislation is an omnibus act, so it deals with planning, the environment, land administration, and development control. The establishment of a planning authority is being taken out of that act, but the person who is exercising the powers as the planning authority will essentially be administering the land act.

However, the land act is itself in a situation of some foment at the moment. There is also a heritage bill which is currently in circulation and which I assume is a new heritage act which removes part 3 of the land act entirely. One wonders whether the land act is actually being broken up into a series of acts, and what would be the effect of that. The second issue is that what the institute wishes to say today is really heavily conditioned by the fact that there should be read concurrently and commented on concurrently a Land (Planning and Environment) (Consequential Provisions) Bill. I understand that that bill was issued late last week.

THE CHAIR: It was tabled on 26 September, but I gather that as recently as last Thursday it wasn't on the web, so that you, like the Law Society, haven't had a chance to comment on it.

Mr Cohen: And my experience is that when the Land (Planning and Environment) Act was put together in 1991 there was a Land (Planning and Environment) (Consequential Provisions) Act. At that time I was the chief statutory planner in whatever the authority was at the time. We had four authorities in a quite quick range of time, so I can't

remember which one it was. It was either the Interim Territory Planning Authority or the Interim Planning Authority, one or the other, but I was a member of it and exercised those functions.

People did not realise that the consequential provisions act had a considerable amount of consequences for the way in which the land act was going to be administered. Everybody went and read the land act, but they weren't aware of what subtle changes were in the consequential provisions act. For instance, the old design and siting act had been incorporated into the land act through the consequential provisions act. Prior to 1991, government agencies didn't have to get approval for development; they did it as they did in the Commonwealth. They got approval in the budget to do works and they just carried out the works and no-one was responsible to make sure that those works were consistent with any design or siting requirements.

In 1991, government instrumentalities came under the ambit of the new legislation. But not only that: prior to 1991, the design and siting legislation related largely to the metropolitan area, so people did things out in rural areas without getting design and siting approval. That had been gradually changing, but certainly the 1991 legislation tightened all that up. So the consequential provisions legislation was very, very important. In this particular case, we have not seen the consequential provisions legislation, but we do know that it is 96 pages long and the act that it affects is only 44 pages long, so I started to worry straightaway about what is actually in there and the implications of those changes.

A lot of them will be just machinery changes. It will just show great lists of legislation that are being impacted upon. There will be schedules of legislation where you will no longer read particular words and you will read words in their place and they won't make any difference, but there will be a few little gems hidden away in there. Therefore, we would really like the opportunity to come back and speak again on it, because the consequential provisions legislation will be extinguished over time and it will just fade out. There will be some transitional provisions in it and there will be some permanent changes, but after a while it will all be integrated in the way that these things are. But there will be a period of time when it will have some consequences that we would really like to ensure that we talk about.

The next issue which is very important is that we believe that the planning legislation as it is set out is not bland, but it is fairly general in nature, such that it is very hard to understand what it is that this planning authority is going to do. In the Labor Party policy statement we were to have an independent planning authority, but that is not the way in which the legislation has come out. In practical terms, we didn't expect that and we have said in here that we didn't anticipate legislation that would provide for an independent planning authority, because it is not really practical in a democratic society such as ours to have a situation where a planning authority exercises all its roles independent of the parliament that sets it up.

It is possible to do it. You set up the planning authority, you give it its funding, you tell them that it is going to run the territory and then when they muck it up you sack the chief. We have done that in the past. We did that in 1930 when Sir John Butters got on the wrong side of the parliament and they just withdrew his act and the Federal Capital Commission disappeared just like that. We have done it previously to the Solomon

committee, we have done it previously to Griffin and we have done it previously to Miller, so there is a precedence for planners getting on everyone's goat and then getting shoved off from time to time.

But within the understanding that the chief planner is not going to be an independent person, that chief planner still needs to be a person of great vision and a person who is a leader. That is really what the territory needs, a visionary, but a visionary who has leadership qualities. There is nothing in the legislation that stops that person from actually being appointed and exercising the functions. Under clause 8 there is a whole range of things that the planner will do, and there is enough in there for someone with imagination to stretch and pull clause 8 to the point where you can act in a very innovative way and use a lot of initiative.

However, the institute has some concern about the way in which that initiative is being pre-empted at the present moment, because at the present moment we have three pieces of legislation, including the act that establishes the authority, before the Assembly and the community—the heritage legislation, the amendments to the AAT act and the Planning and Land Bill, which has a lot of other consequences of it. But we have also got lots of planning policies—DVP 200, the spatial plan, the Canberra Plan—a whole range of things which are moving along with their own dynamic and which may, if one is not careful, pre-empt the new chief planner from exercising any level of vision because the new chief planner may simply be handed a pile of policy and told to execute it.

It is my view that the sort of person that we all envisage as a new chief planner for the territory is a person that is of national, possibly international, recognition, but a person who is of a very high quality as a planner. Those sorts of people are not sitting around on chairs waiting for someone to come along and say, "Would you like a job in Canberra?" If they do come and take an interview and they are told by an enthusiastic interviewing committee, "We've got a whole heap of stuff that we've already put together for you to save you a bit of time, to get you moving and on your way," I don't think we would see that person again after the interview, because no-one would want to take something handed to them that they have got no part in the birth of.

Although there are commitments that the government has made and we are sympathetic to those commitments, I think we have to be tender and sensitive to what we are trying to set up with this new planning authority in the way in which we go about the period before the authority is established, to ensure that we don't overly fetter the person at the beginning of their reign. If the person starts off as the new chief planner with having to decide whether to say that something is rubbish and push it away or compromise their own ideas and ideals in order to pick up something that has already been done for them, that would be an unfortunate start. I really think that it is important that those issues are thought through.

I listened to the discussion previously about the statement of planning intent and I think that the institute's view is that the statement of planning intent is a statement of government principle and that, if one looks at the Territory Plan, although it contains a strategic part in part A, in fact part B, which is the operational part of the Territory Plan, really isn't very much about strategy at all; it is really about stuff that could be in a regulation for development control. There are a few objectives there, but most of the stuff is about particular projects.

It seems to me that getting from where this government or any other government says to the community, within the meaning of the Territory Plan, what the government proposes to do within its period in office in terms of planning, the statement of planning intent transfers those principles from the government's platform into a statement about how it wants the planning authority to interpret the Territory Plan. I think that is perfectly proper. If that statement is up front and everyone sees it, then everybody knows.

For instance, the present government has said that, as a principle, it wants to reinforce and enhance the garden city nature of Canberra. That is the sort of thing that might flow into a statement of planning intent, leaving the authority to determine from that statement how you actually use the Territory Plan and the policies on the planning register and master plans and so on, to bring that to fruition. If the community doesn't like the statement of planning intent, it is there to be seen and for something to be done about. That is the way we saw that that would happen.

The institute really didn't have much to say on the establishment of the planning advisory council. I think the one caution that we would like to make is that the bill says that the minister should do the best that he can to select people with a range of talents. We would want to urge on the government that they do take people from that range of talents, rather than taking people who may be influential in the town from one time to another and who may seem like an attractive candidate, rather than those who really know what they are talking about.

If you look at the list of people set out in part 3, jumping back a moment to the planning authority, that same range of skills needs to be in the authority staff. You need to have a range of design skills, statutory skills, strategic planning skills, technical skills and administrative skills. The worrying thing, I guess, is that, the way that the act is set out, it would appear that the chief planner is actually the chief planning executive, who is a person appointed under the Public Service Management Act, and that the staff are a group of people who are an administrative unit in accordance with the Public Service Management Act.

If that is the case, a problem is going to arise in relation to the way in which the planning authority tackles its task. From time to time there will be a need for concentrations of skills. You are going to need social planners, you are going to need spatial planners, you are going to need engineers and you are going to need economists, but you will need them in different mixes at different times during the life of the authority. Sometimes you are going to need a lot more development control people than you are people of other natures.

If you are in a public service framework where people come in to a lifetime career and you have to die or turn 55 before you leave, then you are going to find that the nature of the authority is being determined by career patterns and by the public service administration requirements, rather than by the altruistic intentions of the Planning and Land Bill. I think that is an issue. The chief planner really needs the capacity to pick his staff, bring on board the people that he or she needs, and, when the time comes for a change of staff, there is a way of having people going and other people taking their place. If you can't do that, then we will get some sort of planning thrombosis from time to time and that won't be good.

Our other concern is the relationship between the planning authority and the Land Development Agency. The Land Development Agency is a very dynamic body in terms of the legislation and I have pointed out in the submission that we have made that, while the planning authority is a body corporate and is capable of doing certain things, the legislation has made a distinction between the planning authority as a body corporate and the Land Development Agency as a corporation.

The corporation is able to raise money and it can put money in its own bank account. The government can come and take it out from time to time, but it has got that capacity to act as a commercial body, and so it should, because it is going to be working in the town with a very dynamic housing and development industry and it has to be able to meet those people, not as a bunch of bureaucrats with a role in land development, but on the same level, on the same par. "We are here to make money. We are a commercial enterprise. Government is funding us, but we are here to make money. We are going to get land to people, we think, at a cost which will be less than private enterprise can do it, but we have got to talk the same language."

It seems to me that the Land Development Agency and the housing and development industry will probably be able to talk together fairly easily; they will have the same sort of language and they will be communicating on the same wave length. That seems to me to create a nice set of tensions between the Land Development Agency and the planning authority if the planning authority determines that it has a settlement strategy and a location strategy for settlement which is consistent with its spatial plan. It will be taking into consideration the land use requirements, how you move people from place to place, the economic requirements, how they work, where they work, whether they work in contained towns, like the Y plan originally intended, or they keep moving backwards and forwards, and, if they are going to live in one town and work in another, how those people will get from one town to another. All of those things are planning issues that have to be resolved.

The Land Development Agency is going to say, "We don't have the time for that. We just want to build houses." And then they will go to the government and say, "We have got a great deal with the industry and we will make a lot of money and can put a lot of money in Treasury. The guys over there are going to take years before they are in a position to tell you where we can actually do that." So there is going to be a lot of tension in there.

THE CHAIR: Creative or otherwise?

Mr Cohen: A lot of nice, healthy, creative tension. Everyone should have a nice film of sweat on their brow all through the day and most of the evening. But it puts the minister in a difficult position. As I understand the way in which the minister acts as a minister in a department, he uses a departmental liaison officer and he uses his ministerial staff to do all the functions that he needs to do in relation to his ministry. But in this particular case he is going to have a great deal of tension, a great deal of dynamic, and the institute believes that he will have to form a formal ministry to administer the functions that he has got.

He is going to be looking at submissions from the planning authority, he is going to be looking at submissions from the agency and he will be being fed advice from the council constantly. His decisions have to be transparent and they have to be certain, if there is going to be confidence in the way in which this whole thing is going to be done, because the structure of the legislation has put the minister on top as an active, operational part of the whole scheme. He fits into that as part of the whole scheme. He certainly cannot do it with part-time staff.

Therefore, it seems to me that the government has to think about just how the ministry will operate, and that will make for a different sort of climate entirely to what one might read if one simply read the act and said, "Oh, yes, all of these people will sit down and have discussions with each other about how things are going to go and they will work it all out while the minister sits benignly at the top of it and counts the money when it comes in from the Land Development Agency once every year."

We believe that we don't have, as an institute, an answer to all of these problems, partly because not all of the plan has been revealed to us, because we have not seen all of the legislation. The institute understands that the government is trying to bring a regularity into the nature of planning and land development and has no problems with that. The aim today has really been to raise some issues with the committee in the hope that those issues will throw some light on various parts of the bill as we have seen it. We have heard, in part, what the Law Society have to say, and I think that we are generally in agreement with much of what was said there.

But the general intention is not to say that this can't be done or that this oughtn't to be done, but to say that there are a number of issues which ought not be left to chance. We shouldn't say that that stuff is there in the act with the goodwill of the authority, the agency and the council and that with them all acting in good will everything will be okay and all the detail will be picked up. Our submission is that there is a deal of detail that ought to be revealed, either in an explanatory statement or in legislation, before the legislation goes further. I note that the Law Society believes that there ought not to be a separate act, but it seems to be that the land act is fragmenting; it seems to be that way.

THE CHAIR: You do raise an interesting question there, because it has been sitting at the back of my mind all the time that a heritage bill and an exposure draft are being circulated, which does raise whether we are fragmenting the land act when we haven't asked before that whether we should fragment the land act. The question that goes before that, and it is a hobbyhorse, is: what should the land act look like in the future or what should the land administration structure look like in the future? It seems to me from what you are actually saying, Paul, and what the Law Society said before you, that there are bits being addressed without a holistic approach. It might be perfectly reasonable to say that we will treat land or heritage as something separate and over here. It hasn't been our practice in the past and other people who have spoken here today advocated quite the contrary, that it should be more integrated rather than less integrated. Does the Planning Institute have a view about the status and the future of the land act irrespective of the Planning and Land Bill?

Mr Cohen: The institute hasn't debated that, but I would draw your attention to the fact that in Queensland there is an integrated act which brings the whole thing together. There is great value in having a single act. When we drafted the land act in 1990—

THE CHAIR: So it was your fault!

Mr Cohen: No. I just brought the sandwiches and the tea in from time to time. But when we did that it started out as five separate acts and there were five separate acts until it was well and truly in the form of readable legislation. It was brought together as a single act quite late in the development of the legislation and a decision was made. There is a theme that runs through it, because part 6 and part 4 link together, and part 2 links to part 3, and there is a linkage in it.

But I would say that there are parts of the land act and parts of the Territory Plan which don't really relate either to statutory law in the sense that it is act-type law that could be taken out because it has a limited life span and its use-by-date comes up quickly. For a thing like appendix 3, the design and siting codes, the use-by-date is quite short and changing the Territory Plan is quite difficult.

I have said before to committees that it would be a good idea to take out of the Territory Plan and the land act that part of it that could be put into regulations, for two reasons. If someone was interested in development control, say, they can read the development control regulation—read all the bits and pieces that are in there—and if they say that this legislation doesn't work, that the sorts of things that are in appendix 3 just don't work any more when you are trying to build houses and the industry can't live with them, the minister can change a regulation quite simply under the Subordinate Laws Act. You can do that and have a more dynamic piece of legislation and something that responds to contemporary demands.

I think the answer might be that the omnibus act is best from the community's point of view because it gives them a single reference point to go to. But it needs to be edited and that stuff which has a limited lifespan and which is not fundamental but is operational should be taken out and put into regulation, where it can be dealt with.

THE CHAIR: Even if it were a schedule, it could be still amended by regulation.

Mr Cohen: A schedule to the act?

THE CHAIR: Yes. Either way, you are saying that it should be separated.

Mr Cohen: It should be separated.

THE CHAIR: It should be separated into the bits that need to be graven in stone and the bits that need to be flexible.

Mr Cohen: Yes.

THE CHAIR: Is there anything else?

MS GALLAGHER: I don't have anything.

THE CHAIR: Okay. Thank you very much, Paul.

JAMES MacGREGOR DICKINS,

ROBIN BROWN and

GORDON SOAMES

were called.

THE CHAIR: I will commence by reading a formal set of words, which some of you probably already know. You should understand these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Would you in turn like, for the purposes of *Hansard*, to introduce yourselves. Perhaps we will start with you, Mack.

Dr Dickins: I am James MacGregor Dickins and I am here as convenor of PACTT, which is Planning the ACT Together.

Mr Brown: Robin Brown and I am a member of the committee of PACTT.

Mr Soames: My name is Gordon Soames. I am an inaugural committee member of PACTT and I live in Curtin.

THE CHAIR: Does anyone wish to make an opening statement?

Dr Dickins: As the convenor, perhaps I will make an opening statement. Robin will be speaking first and then Gordon. I will speak if I feel there is something that I can add. That is the form it will take. Perhaps Robin can explain.

Mr Brown: I am not sure that I want to add a great deal to what we put in the written submission. Gordon is going to add a few things to what we put in the written submission. I might just go through some of the main points in the written submission.

The way we see the bill is that it would deliver some of the reforms that we think are desirable to planning decision making in the territory, in that it would allow for, in our view, a more strategic approach and some increased measure of independence from the government of the day and some greater transparency in processes. But—and I think Gordon will elaborate a bit on this—we are concerned that the role of the Assembly may be too limited if this bill becomes law as it is. We feel that we continue to be in some difficulty in that we have not yet seen regulations.

THE CHAIR: Neither have we.

Mr Brown: Right.

THE CHAIR: Have you seen the consequential amendments?

Mr Brown: No, we haven't seen those.

THE CHAIR: The consequential amendments were tabled in this form by the minister on 26 September, but the previous witness said that as recently as last Thursday they weren't on the web, and we will have to pursue that. In addition, there was a statement made last week by the minister about the planning appeals system. And there is an exposure draft of the new planning appeals system bill. Have you seen that?

Mr Brown: We know about it; we haven't looked at that yet.

THE CHAIR: Okay. And in addition, you are right: there are regulations, but we haven't seen them either.

Mr Brown: Right. The consequential amendments are—

THE CHAIR: Important.

Mr Brown: Very important.

THE CHAIR: You wouldn't have heard what we said previously, that it was foreshadowed in the advertisement calling for expressions of interest that subsequent pieces of information would become available and that people who made submissions would have the opportunity to put in supplementary submissions. What we will do after the public hearings today is confer and set up some sort of timetable. Derek, the secretary of the committee, will be in contact with all of the people who have made submissions, inviting them to make supplementary submissions.

Mr Brown: That will be good, okay.

THE CHAIR: We haven't, as yet, decided whether or not we are going to have to have extra hearings but we will play that a bit by ear.

Mr Brown: Okay. We will watch that space.

THE CHAIR: Unfortunately, it's a bit piecemeal but there is a time constraint imposed upon us, and we are trying to work to that time frame.

Mr Brown: Okay. Then probably some of what we were thinking about saying in relation to that—

Mr Soames: I can leave now.

THE CHAIR: No, I think we should hear it.

Mr Brown: But some general points would still be relevant.

Dr Dickins: I think you should say what you were going to say.

Mr Brown: I guess the next point we make is that this bill is clearly only part of the picture. Those consequential amendments and what happens to the appeal system are significant parts of the overall model for planning that is being put together, as are the neighbourhood planning process, the Canberra spatial plan process and specific things like the ACTcode 3 advisory committee. So it is all coming together in bits and pieces. That is not to say we don't think that in the long term, or let's hope perhaps in the slightly less than long term, it will come together satisfactorily but it is a bit difficult to know exactly what is going on with so much going on, if you like.

One of the particular concerns, though, that we have about this bill is that it doesn't, in our view, connect the authority significantly better to the Canberra community than the current bureaucratic arrangements. It proposes a planning and land council, but that is very much an expert body. That may well be a good idea in terms of getting a range of expert professional input into the planning process but what we think is an essential additional element is some kind of body to synthesise views from the community on planning. That is sort of, if you like, atop of the hierarchy, sitting above all these other processes, neighbourhood planning processes, and so on.

We have been making this point for some time and it seems as though the government is moving in this direction with the proposal to establish a—I think it is to be called—land and planning forum. We have been asked to consider persons that might be appointed to the land and planning forum, if I have got the name correct. We welcome that move but we think that that body should be pretty formally built into the process. So, in the way that the Planning and Land Council will have particular responsibilities and there will be particular requirements on the authority to seek advice from the Planning and Land Council, we think that similar requirements should operate in relation to the land and planning forum.

We think it is important to make the point that this new body, the land and planning forum, should not only be focused on advising the authority but rather the government as a whole, the Assembly and so on. It should be a facility that is available for the whole community to make use of, so it wouldn't only be concerned with actions of the authority.

The forum should be constituted to reflect the range of community interests in planning, the interests of citizens as residents but interests of citizens in terms of people concerned with their environment generally, the heritage of their community and, of course, their interests in continuing the economic development of the city and its environs. We think, though, that on that body people in their capacity as members of the community should be in the majority because we think that they should have the first say in terms of what happens to the place that they live in, as against those that might want to change in some way the place that they live in.

The submission finishes up with an argument that to really get full value out of community participation in planning, some resources need to be made available to the community. It sets out an argument there and gives precedents for doing that kind of thing. We suggest a grant-in-aid system for community organisations so that they don't just have to resort to ill-informed noisy protests but rather can analyse and understand what is being proposed, better themselves and make more constructive input into

planning processes. That is the submission. Mr Soames, would you like to say something?

Mr Soames: At the risk of being sort of a little behind current developments, given the appearance of the consequential provisions bill, I just wanted to make a couple of points on behalf of PACTT. Independence of the authority: although that has a number of potential advantages, I think it can't be really construed to mean unaccountability. In particular, on the role of the Assembly in relation to the authority: the bill alone—and I have to emphasise that, given the other legislation that is flying around—would seem to give the minister virtually unlimited power over the authority and the Assembly virtually none.

Currently, for example, the Assembly can reject a variation of the Territory Plan. I am not sure how that could occur under the bill, given the minister's power to direct the authority and given the lack of provisions for the Assembly to reject a proposed variation. That is perhaps just one example. So let us make a distinction, perhaps, between independence and unaccountability, and the Assembly members may wish to think about that. From the community point of view, obviously maintenance of a role for the Assembly is important, given that the Assembly is an elected body.

Just to reinforce a point that Robin made: the representation of the community on the council, or the lack of it, may be corrected by the proposed forum. But we feel that some more direct representation of the community is a very necessary part of the whole process and we are looking for where it is going to be.

THE CHAIR: My understanding—and it is only a sort of third-hand understanding, so correct me if I am wrong—is that the land and planning forum, or whatever its name is, is entirely an informal kitchen cabinet sort of advisory structure.

Mr Brown: I don't think we are any better informed than you are.

THE CHAIR: I see, okay. We are all groping here.

Mr Brown: We haven't seen any written description of what it is intended to be and what it is intended to do.

Dr Dickins: I have some verbal information. I attended the initial meeting and from the community the chairs of LAPACs were invited—which is why I was there—but not all of LAPACs. There were, again, community councils but not all the community councils and there was ACOSS and the conservation council. At that meeting the minister indicated some further elaboration of the ACTcode advisory. He was speaking about having some 12 members, with probably six from the community. There seems to be already some industry and professional groups formed—in this case architects, planners and landscape architects—

THE CHAIR: So the government has done this—

Dr Dickins: Not geologists.

THE CHAIR: Okay, we will do geologists another day. So are you saying that the government has done this or that this is some sort of informal grouping?

Dr Dickins: Well, no, the government has done it.

MS GALLAGHER: Industry has done it.

Dr Dickins: No. My understanding was that he was saying that he would join the two together anyway. He was speaking about 12 members, six of whom would be from the community and six from, I suppose, industry and the professions. But there was no suggestion that it would be a formal organisation.

Mr Brown: That it would be legislated.

Dr Dickins: So that is what I know.

THE CHAIR: Okay. But that is sort of apart from and, at this stage, without connection to, the authority?

Mr Brown: That is right, as we understand.

MS GALLAGHER: Or the bill.

THE CHAIR: Or the bill, yes.

MS GALLAGHER: So in terms of the bill that we are looking into, your major issue with it is that it doesn't involve community representation enough, or prescribes that representation enough?

Mr Brown: Well, it is the two things. We are worried about the role of the Assembly in relation to the authority, and maybe that is answered in—

THE CHAIR: In the consequential amendments.

Mr Brown: Yes. And we haven't got, as we can see it, an authority that we think will necessarily be required to be more responsive to the community than present or past structures. Without casting aspersions on people involved in present or past structures, we think that the law that is passed should deliver a bit more certainty as far as that goes.

We had previously suggested that the authority be not one person but a board, and that connection with the community be achieved through appointment of appropriate people to the board. In the event the bill proposes that the authority be a single person and that there be this group of experts, the Planning and Land Council. One option would be to open that up and have community representatives on that body. I guess we are fairly agnostic about that. I guess we can see that there would be merit in having a group of experts that can sit around and do their expert thing and have a separate body which can be set up to be accountable to interest groups in the community, and thus, we would argue, to the community at large.

If there are to be two groups like that then there would clearly be great merit in having good communication between the two—perhaps joint meetings of the two on a regular basis. But yes, as it stands, we don't—

MS GALLAGHER: They are the two main concerns?

Dr Dickins: No, we have a third one, and that is the question of independence. The bill as it stands, and with the wording being a bit vague, in fact virtually allows the minister to instruct the authority on anything. You would be aware of paragraphs (a) and (b) of part 2.3 of the bill.

MS GALLAGHER: Yes—that he or she, as the case may be, can give directions to the authority.

Dr Dickins: The words "general policies" and "main principles" appear under "13—Statement of planning intent". Under that wording, really the minister could override any independence of the authority from government, I guess. It is not from the Assembly really. It would be from the minister and the government. That would be the independence that we are talking about I think, wouldn't it?

THE CHAIR: Yes, but there is no role for the Assembly in the statement of planning intent.

MS GALLAGHER: Why would there? It is a government policy document.

THE CHAIR: Yes.

MS GALLAGHER: You wouldn't want—

THE CHAIR: The point that Mack is making, I assume—correct me if I am wrong—and it is a little, I think, like the point that the Law Society made, is that there is a possibility that the statement of planning intent may in fact subvert or override the Territory Plan. I will put it to you this way: the Law Society put to us that the statement of planning intent had the capacity to override or subvert the intent of the Territory Plan. Would you see that as a possibility, and if it were a possibility is it something that you would be concerned about?

Mr Brown: Well, it is not defined, is it?

Dr Dickins: The answer is yes, I think; I would say the answer is yes. At least it would be a contradictory situation. I would say, from my experience and involvement, there have been situations in the past where there has been a direction from the executive. This is a change from the previous situation. The executive had to do this whereas now it is just the minister. There have been situations where a direction from the minister has actually overridden the Territory Plan.

THE CHAIR: Could you give an example?

Dr Dickins: Yes, in relation to the urban housing code.

THE CHAIR: Sorry, the?

Dr Dickins: Between master plans and the urban housing code. There are various changes. B11 and B12 are controlled by the urban housing code, and then master plans were set up which were authorised by the minister and which actually overrode the provisions of the urban housing code.

THE CHAIR: I see.

Mr Brown: Presumably these principles that could be set out in a statement of planning intent could only constrain what was permitted under other legislation in the Territory Plan or whatever. It couldn't presumably expand what was permitted. But it's unclear.

THE CHAIR: The example that was given before you arrived today by the Law Society was that—and this might be something that is dear to your hearts personally—the statement of planning intent could, for instance, say that there will be no future dual occupancy development permitted under whatever circumstances under the Territory Plan, but there would be a question if the statement of intent was written in such way that that could be construed as overriding that. Which instrument then has supremacy? Is there an internal inconsistency in whether it is dual occupancies or plot ratios or whatever? Somebody could come along and say, "Look, all the plot ratios should be 75 per cent."

MS GALLAGHER: I think we are getting a bit carried away with the statement of planning intent, I have to say. Maybe it needs to be made clearer, but we should certainly note what the minister said and to some extent what the previous witness just said in terms of having a clear direction or a policy statement from the government of the day about what they would like to see in terms of planning. The example that the Planning Institute just gave was that this government, for example, is using the idea of a garden city. We would like to see a garden city and that sort of stuff is the statement of planning intent.

My view from the evidence that we have been given—and maybe we need to re-question the minister and get some further advice on this—is that that is what it's about. Even if it said "no more dual occupancy", there is nothing to say that that wouldn't still have to be a draft variation. So I think we are just getting a little carried away with that. It is a government policy statement.

Dr Dickins: I would like to say, though, that I think you would need to look at the present Land Act because, just from memory, it is very much the same as what is in the Land Act already. I don't want to offend anyone or any particular group but it did result in the previous minister pretty much directing the day-to-day operations of the planning authority.

MS DUNDAS: You keep stating that you have this fear that the role of the Assembly will be limited, and you have used the example of the Territory Plan. Can you elaborate on this point more because it seems that these are similar provisions to what already exist in the Land Act. So do you see the role of the Assembly being maintaining as it is and the role of the minister increasing, or do you see the role of the Assembly being pared back?

Mr Soames: It is difficult to say in the absence of a further bill which Madam Chair has alluded to. But I have made a little list, a rough guide I call it, of current powers of the Assembly which is attached to a couple of other things which I would be happy to hand up to the committee if the committee is interested. The committee can form its own view on whether the Assembly's powers are liable to be augmented, left the same or reduced. It is necessary to have in one place, I guess, a list of what your powers are at the moment before you can make a decision like that.

While I am talking, can I make one further point and that is on the issue of legislation providing for consultation, for objection procedures and for appeals. This is basically not treated in the bill. The existing act has quite a lot to say about, and makes a lot provisions for, public notification, public consultation, objections and appeals. I guess the view of PACTT is that we would like to see a structure not inferior to the structure that is in place now, and possibly improved. But the bill, as I say, really doesn't refer to, what is to us, that whole, large and important issue of public notification and consultation and objection and appeal.

We take as our baseline, I guess, the existing provisions. We would welcome improvements and we would be very sad to see reductions or removal of current rights for those things. The piece of paper that I have just handed up also includes a rough guide to existing provisions on those fronts as well. I can only apologise for the informality of that document. I haven't referenced it, it's got nobody's name on it and I can only ask the committee support personnel to mark clearly where it came from.

THE CHAIR: Yes, I think we can manage that.

MS DUNDAS: That is basically a list of what you see the Assembly's powers currently as being. You are not saying that all of those will be eroded by this bill?

Mr Soames: It is difficult to say now. Looking at the bill by itself, without having looked at the consequential amendments papers, all one can say is that the powers and role of the Assembly appear to be drastically curtailed. But we now know that the bill is only part of the story and so, in the whole wash-up, maybe they won't be. But it is something that is of concern which we wanted to raise with the committee.

THE CHAIR: Okay.

Dr Dickins: Could I make the comment that what is important is not what the minister says, and forgive me for saying that. What is important is what he can do and what he does. That seems to me to be important in legislation: not what someone says they're going to do but it's what they can do and what in the course of time they do, and you can't predict that, of course.

Mr Brown: Without suggesting that the present minister is necessarily going to—

Dr Dickins: No, I would say that about any minister or any member of the Assembly, or even any one of us.

Mr Brown: Yes.

Dr Dickins: It's not what we say; it's what we do that matters, isn't it?

THE CHAIR: Yes.

Dr Dickins: I am not saying that it is not important what you say, but in the end how you've got to judge what happens is what does happen.

THE CHAIR: It is by the results, yes. Does anyone have any further questions?

Mr Brown: We haven't said anything about the other part of the bill.

THE CHAIR: Sorry, yes.

Mr Brown: I think I should just say that we are fairly agnostic about that. PACTT hasn't discussed it in any great detail and we don't have a strong view that land development is something that the government should do or what part of it should be up to the private sector. I think I might express the concern that it perhaps is a market that may have some drawbacks because of what possibly is an oligopsonistic structure, a small group of—

THE CHAIR: Sorry?

Mr Brown: Oligopsonistic. It is the opposite of oligopoly—a small group of buyers as against a small group of suppliers. Therefore, you may not get the full benefit of a freely operating market if you have got a small group of buyers, as may be the case in relation to land development. We don't have a strong view on whether this is the way to correct any problems that may exist because of that structure. There may be other ways of correcting any problems that may exist. But I suppose we think that there may well be problems and there may well need to be a solution, but we don't have a strong view that this is necessarily the answer.

THE CHAIR: Thank you very much.

The committee adjourned at 1.26 pm.