

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON PLANNING AND ENVIRONMENT**

**(Reference: draft variation 173)**

**Members:**

**MRS V DUNNE (The Chair)  
MR J HARGREAVES (The Deputy Chair)  
MRS H CROSS  
MS R DUNDAS**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 28 MARCH 2003**

**Secretary to the committee:  
Ms L Atkinson (Ph: 6205 0142)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

**The committee met at 11.09 am.**

**GARRICK CALNAN** was called.

**THE CHAIR:** Garrick, we are here to talk to you about draft variation 173, but I'd like to flag with you that at the end of that we might touch on a couple of issues in relation to other outstanding variations, 175 and 200.

**Mr Calnan:** That's okay.

**THE CHAIR:** And we're going to be out of here by midday.

**Mr Calnan:** That's fine.

**THE CHAIR:** We want to talk about 173 and some of the issues that have arisen about, not so much the content, but how it's put together and how we came up with draft variation 173. Issues arose about the consultation process and we would like to explore those just a little and there are some specific issues that we would like to discuss as well. Ros, do you have questions about consultation?

**MS DUNDAS:** It is a generic question. You provided us with a number of submissions that went through PALM and we had lots of people express to us that they had felt that they were being consulted, but they were people who were in the industry, as it were, and there were other people who felt that they didn't have enough information about how 173 was developed, why it was developed and what it was trying to do. I was wondering if you could explain the consultation process that 173 went through and whether you felt it was adequate in bringing in a small number of residents across Canberra, which is actually a small area.

**Mr Calnan:** DV 173 was built on work that was done primarily by the Heritage Council in reviewing the existing heritage registers that were in the plan relating to these nine sites. That work flowed out of a seminar—I can't recall the date—held at Olims Hotel where this issue of the policies applying to our residential heritage precincts was discussed.

Flowing out of that was a program of work which involved the Heritage Council convening meetings in the areas that were affected to discuss issues and that led to proposals being developed by the Heritage Council relating to those policies. They were then referred to PALM, because of the legislative process under which we operate. PALM essentially prepared the draft variation based on the recommendations of the Heritage Council. It released those for public comment. It distributed them throughout the areas that were affected; there was a letterbox drop to all affected areas.

**MS DUNDAS:** And PALM did that letterbox drop?

**Mr Calnan:** PALM did the letterbox drop, yes.

**MS DUNDAS:** And that was after the public meetings?

**Mr Calnan:** That was in conjunction with the release of the draft variation. The draft variation was notified, advertised. As I said, the letterbox drop was undertaken. I think we engage distributors to do those letterbox drops.

**THE CHAIR:** It's becoming a perennial chorus in these meetings that people are saying they didn't know. You must be hearing the same message. What are you doing to address your getting out to people processes—not so much the message that you're taking out to them, but how you actually get to them in the first place, because it was very much with 173 and exceedingly the case with 175? The message seems to be, "Things are happening that I am interested in, but I just don't know about them."

**Mr Calnan:** I'd be happy to hear any suggestions the committee's got in that regard; but, in relation to 173, as I said, we've distributed the documents to all affected residents, we've notified in the media that these documents are available for their comments and their inspection. In relation to 175, we engaged the Chamber of Commerce to distribute the document on our behalf to all lessees in the industrial areas because they—

**THE CHAIR:** Surely, you would have better information as to who are the lessees? I mean, you've got access to the titles office. You should be able to find out who owns the land.

**Mr Calnan:** We don't have easy access to names and addresses. There's a whole range of issues around name and address data in relation to privacy and all those sorts of things and it's very difficult, in fact, to get comprehensive listings of names and addresses of lessees. That's been an ongoing issue.

**THE CHAIR:** But is it an ongoing issue where people say, "This is an ongoing issue and we can't do anything about it, so we live with it?" Has there been an active attempt to try and find a solution to the problem?

**Mr Calnan:** We take the best options available to us and we thought that using the Chamber of Commerce was very appropriate.

**THE CHAIR:** The Chamber of Commerce is representative of—

**MRS CROSS:** Five per cent of businesses in the ACT.

**Mr Calnan:** They indicated to us that they had a mailing list of all lessees in those industrial areas.

**MRS CROSS:** The problem we have here—nothing against the chamber—is that we have a government department relying on a business association that represents less than 5 per cent of businesses in the ACT to letterbox drop. PALM's been down this route before and we've had trouble before with relying on one association to do this with Callam Street, so I don't think that's appropriate. In fact, you're giving the responsibility to advise stakeholders to one association, which is inappropriate.

**THE CHAIR:** In a sense, you are abdicating your responsibility to notify people. Why I asked specifically about 175 is that I've had two people through my office, two different groups of people who have leases in Hume, who in the course of only the last couple of weeks have found out about draft variation 175 and the impacts it will have. That is a problem for something that has been out for public consultation since May last year.

**Mr Calnan:** Well, that's unfortunate.

**THE CHAIR:** Is it the tip of the iceberg or are they just two unlucky people?

**Mr Calnan:** What I can assure this committee is that we've fulfilled all of our statutory obligations. The letterbox dropping that we have undertaken is in addition to the statutory requirements. It's an attempt, as best we can with the resources that are available to us, to get this material out to as many people as possible. In the case of 173, we've distributed it to every household in the affected areas. I can't ensure that people read it. I can't ensure that people don't just take it from their letterbox and put it into—

**MRS CROSS:** And you can't ensure that all the people got it because you weren't responsible for them all getting it.

**THE CHAIR:** DV 173 is probably the one we should concentrate on today.

**MS DUNDAS:** Could we go back a step on 173? That was the draft variation that a letter was letterboxed when the draft variation was made available. But the process for informing residents about the planning meetings, the heritage meetings that happened that led to the development of 173, how were residents informed about that? Just going back over the evidence we got, people said, "Yes, we got the draft variation, but we didn't know about the meetings," so they didn't feel that their participation was informed because they missed out on that first information step.

**Mr Calnan:** That's probably a question you should ask the Heritage Council or the Heritage Unit because they convened those meetings. That work was undertaken by them. As mentioned earlier, the responsibility for heritage listings and the development of heritage policy sits essentially with the Heritage Council. So those meetings were undertaken by that body.

**MR HARGREAVES:** It seems that perhaps the Assembly actually needs to have a bit of a think about the statutory requirements for consultation, rather than criticising elements of PALM, the Heritage Council and everybody else for not doing enough, as people seem to be saying to us. I'm getting a feeling that we're seeing more than the statutory requirement being done, but not enough on behalf of the other people, but how that could be managed is a real problem.

**Mr Calnan:** What does the Legislative Assembly do in relation to legislation? Does it letterbox drop every resident of the ACT to advise them of a new piece of legislation? It does the same sort of thing we do. It makes that information available through the media

to let people know that these things are happening, particularly when we're talking about very large scale issues, as we've got with DV 200, certainly with DV 175. With 173 we had, I think, something like 1,000 residents. In that situation, we felt that it was a reasonable thing to letterbox drop each resident, but you've got to draw the line somewhere. You've got to balance the resources. You need to make judgments about the extent to which you're wasting resources by distributing huge amounts of paper to people who are not necessarily going to read it all.

**MR HARGREAVES:** You've mentioned the Legislative Assembly letterboxing everybody when some change in legislation is effected. It's usually done on the basis of known stakeholders, which is exactly what PALM does and what other people do.

**Mr Calnan:** That's right.

**MR HARGREAVES:** ActewAGL, PALM, DUS and all of the other municipal services have exactly the same difficulties. The question for us, I guess, is whether the original consultation under the statutory rules is sufficient to enable people to engage and then whether they're interested in engaging at all. We've seen comments on both of those issues coming through the DVs we've had lately.

**THE CHAIR:** I think it's probably incumbent upon us collectively as a service to the community. It's obvious that somewhere along the line on particular issues, and 173 is one, people do want to engage and we probably have to find a better way of communicating with people. It's just not good enough to say that we meet our statutory requirements if, at the eleventh hour, people are still coming along and saying, "Hang on, I want to have my say." It's hard for people to have a thoughtful input at the eleventh hour and it's better that they have more input up front.

I think we've got to find a better way of doing this so that we cut back on the number of people who are saying at the eleventh hour that they have only just found out by word of mouth or something like that. With 173, they did know about the draft variation, but they just didn't know about what happened before, so we should perhaps move on from that. Is there anything else in this area?

**MS DUNDAS:** Just one quick question, if I may. Can you again elaborate on how the consultations turned into the draft variation? Was that Heritage work or was that PALM work? We can read the report of the public consultation workshops where everybody said, "Everything is fine. We really like what's going on in our suburb. Why do you need to change it?" and then see a draft variation out the other end. What was the process that turned this report into this draft variation?

**Mr Calnan:** The Heritage Council prepared the recommended revised registers and then referred them to PALM and PALM then prepared the draft variation.

**MS DUNDAS:** Based on?

**Mr Calnan:** Based on the material that we'd received from the Heritage Council.

**MS DUNDAS:** Which was? Did it include this report from the public consultation workshops?

**Mr Calnan:** It essentially includes the content of the draft variation.

**MR HARGREAVES:** It's a direct result of the review that the Heritage Council has put forward; so, in fact, it's genesis is within the Heritage Council's imperatives, such as, "We think you ought to do X. To further our particular charter you ought to do X." So you provided a DV to do that.

**Mr Calnan:** That's right. I guess the adjustments that we've made to it are really just flowing from our role in terms of being the custodian of the Territory Plan to make sure that these policies are not in conflict with other policies of the Territory Plan and what was happening with regard to DV 200. We have, we believe, some expertise in terms of the drafting of the way these things are actually drafted and the way that we can assist the Heritage Council. But in terms of the policy content, it's essentially the material that came from the Heritage Council.

**MR HARGREAVES:** So that we could actually say that 173 is, in fact, provided to us by PALM as agents of the thinking of the Heritage Council, making sure that there's nothing in conflict with the Territory Plan, and, given that the Heritage Council has expertise in deciding when things are old, PALM has expertise in drafting it in legislative language, so that when we're talking about people understanding what we're talking about, in this particular instance one ought to read DV 173 and the Heritage Council's report together, otherwise you may run the risk of not understanding what's going on.

**Mr Calnan:** When you say the Heritage Council?

**MR HARGREAVES:** The report. The report of the public consultation meetings. If you read that in concert with DV 173, you will get an idea of what's going on. If you don't read them in concert, you're likely not to understand.

**THE CHAIR:** But one of the questions that you ask when you read those things in concert is: why have we got a draft variation? Perhaps Garrick and PALM are not the people to answer the question why we have a draft variation. I mean, there's a general murmur in the thing that says, "It's all right, really, so why do we need a draft variation?"

Are you from the Heritage Council? Are you here to take notes or to observe?

**Ms Brock:** To observe.

**THE CHAIR:** Okay. We might just address them in writing for a start. It might be an issue that we say, "How do we get from here to a draft variation?"

**MICHELLE BROCK** was called.

**Ms Brock:** I am Michelle Brock from PALM. I went to several of the workshops that the Heritage Council ran and some people were happy with the way things were, but there

was a huge diversity of views expressed at the public workshops. I'm not quite sure how that was all synthesised into the report on consultation, but Heritage also consulted with stakeholder groups, the building industry—a wide range of community representatives—and there was a wide range of views expressed.

**MR HARGREAVES:** Because I'm a simple bloke, I will just put my thing very simply. There will be a request for us to consider a draft variation with respect to the Burns Club development. It hasn't come forward yet, but it will because of a change to a block of land the size of a nature strip. The Burns Club is saying, "We want X to happen. Please, can we do that?" Therefore, PALM are saying, "We've had a request for a draft variation. We'll now do it in the format, in the language, that we do." The next thing you know, there'll be a draft variation produced and provided to the committee, provided the government of the day is happy with that.

But that example, a very simple thing, had its genesis, or will have, in a request from the club to do X. What I'm not sure about is who it was that actually said, "What I need is a draft variation to achieve this end result." Who was it that actually put that question? Was it anybody?

**Ms Brock:** I think it was the Heritage Council. It was based on a perception that the policies as they were in the heritage register weren't achieving the desired outcomes, and that message came from members of the community, from the Heritage Council—

**MRS CROSS:** What are the desired outcomes?

**Ms Brock:** To protect the heritage precincts. There was development happening in the precincts that wasn't respecting or achieving heritage values.

**MR HARGREAVES:** If I had the answer to the question of who started it, I could go back to them and ask them what it was that they were concerned about.

**MRS CROSS:** Can I have a practical example?

**Ms Brock:** I think you'd have to ask someone from Heritage about that.

**MS DUNDAS:** To put that in a question for PALM, was that an issue of compliance more than what the Territory Plan was saying?

**Mr Calnan:** No. No, it was a question of the way the policies were framed and some of the uncertainty that surrounded the interpretation of those policies.

**MS DUNDAS:** Even though we've had issues raised in other areas about compliance, the Territory Plan is quite clear in what it's trying to do but it's just not being complied with out there on the ground. You're saying that it was being complied with; it was just that it was so vague.

**Mr Calnan:** Yes. To give you an example, there are provisions in the existing registers that say something like multiunit housing may be permitted providing it's in accordance with the heritage values of the precinct. The question is: what does that mean? So, when

somebody puts forward a multiunit housing proposal, there needs to be an assessment of whether it's in accordance with the heritage values. Of course, there are different views on just what that means. Part of what was driving this was to make that clearer, to try to put policies into the Territory Plan where it's not so open to interpretation and there's more certainty so that the people who live in the areas know what's possible and what's not possible and the people who want to do development know what's possible and what's not possible and are not faced with this uncertainty.

**MS DUNDAS:** That leads to the next question, which is that lots of people had concerns about the “should” versus “shall” in the draft variation before us, saying that that doesn't actually clear up those problems because so many of the things that might need to be tightened up are sitting there as “shall” as opposed to “should”.

**MR HARGREAVES:** “Shall” is absolutely definitive and “should” gives an exit.

**MS DUNDAS:** Doesn't that just leave scope for having more arguments in the AAT about whether it's been complied with? I'm arguing both sides of the coin for you here.

**Mr Calnan:** Yes. It becomes a fine line. Obviously, if you make it a “shall”, there's no discretion and it must be complied with. But with certain things, like heights of hedges and certain other things, people didn't think that it was appropriate to be so definitive. Whilst the Heritage Council wanted to get the message across about what it was trying to achieve, it's not the sort of thing that it believed it was appropriate that it should be so prescriptive.

**MRS CROSS:** I suppose that's what leads the community to great frustration. They don't know where they stand on anything because it leaves it open to someone else's discretion to say what really happens at the end of the day. I think that's why people are so frustrated and come forward to us and say, “Look, we really don't know what we can and can't do because this says we could do this, but then at the end of the day someone's got the right to come to us and say that we really can't.” That's the biggest complaint we get on planning issues overall.

**Mr Calnan:** That's planning, I'm afraid.

**MRS CROSS:** Uncertainty.

**Mr Calnan:** Certainly, this committee has a role if it thinks things have been defined in prescriptive terms, as “shall”. If it thinks it should not be prescriptive, then it's open to this committee to make recommendations that it should be changed to “should”. Conversely, if things are expressed in discretionary terms and the committee thinks there should not be any discretion, then this committee can make recommendations about that. I guess what you would have before you was a document that was based on the professional judgments of people in the Heritage Unit and the Heritage Council. as prepared by PALM with what we think is appropriate balance in terms of the issues that are before us.

**THE CHAIR:** On, I think, the second day of hearings people raised the issue that, although there was a general injunction against dual driveways, turning circles or things



like that, people in Flinders Way had been given in the past some leeway to have turning circles. You could come in on this side of your block and go out on the other side of the block and have a semicircular drive across your block, which doesn't fit in with the heritage look of the place. How did that come about? Do you consider that it's something that, firstly, should be discouraged and, secondly, retrospectively rectified? Also, why is Flinders Way different?

**Ms Brock:** There's also an example along Limestone Avenue of the same control. Based on my knowledge of the advice from Heritage, it was put in for safety issues. There was a whole lot of submissions from people on the Limestone Avenue issue. They expressed concern about backing out and problems with having to back out onto a busy street.

**THE CHAIR:** But is there anything in 173 that's on Limestone Avenue?

**Ms Brock:** Yes, there is, and the consultation report raises the issue of Limestone Avenue.

**THE CHAIR:** There's Corroboree Park, and it doesn't back onto Limestone Avenue, and there's Alt Crescent, and it's off Limestone.

**MRS CROSS:** Reid, page 70.

**THE CHAIR:** Sorry, say that again?

**MRS CROSS:** That's where it has to be if it's anywhere, page 70 of this document.

**THE CHAIR:** Not the draft variation.

**Mr Calnan:** Yes, the Reid precinct.

**THE CHAIR:** The Reid precinct backs on to Limestone Avenue, does it? Okay. I've got another question. When this is actually made part of the Territory Plan, is it going to be easier to navigate than it is now? I know why it is essentially the way it is, so that you'll say, "You're a Reid person. You need to read this bit. You're an Ainslie person. You need to read this bit." At the moment it is nigh on impossible to navigate. It's hard to find anything because you put out a draft variation that goes pages 1 to 20, pages 1 to 20, pages 1 to 20, and if it had an (a) or a (b) or if it was Reid 1 to 20 and then Corroboree Park 1 to 20 it would be a lot easier.

**MS DUNDAS:** That leads to another comment that was raised with us about how these were all done together. There are some general controls at the front, but then the individual controls for each precinct sometimes run contrary to those general controls or are difficult to match up with those general controls. That was a concern that was raised with us, even in your own precinct, even with your separate draft variations, about which bits were actually applying and how did they fit in with the other heritage areas.

**Mr Calnan:** Sorry, I'm not—

**Ms Brock:** I know that there were a few controls put in specific to precincts. For example, Blandfordia has duplexes, so there were specific controls, different controls, required for plot ratio for the duplexes, I think. It's something that the Heritage Council decided was important and, where specific controls were required, I think they put them in.

**Mr Calnan:** Essentially, each of these registers stands on its own and the intention is that they will go into appendix 5 of the Territory Plan written statement.

**THE CHAIR:** So that when it goes into the Territory Plan it will actually have tabs and things and you can find your way.

**Mr Calnan:** Appendix 5 is tabbed.

**MRS CROSS:** It's more complicated than a Russian salad.

**THE CHAIR:** It is actually difficult to navigate.

**Mr Calnan:** The majority of people will access it via the website because most people don't carry a copy of this around in their back pocket. Certainly, all of the individual registers are hotlinked through the website.

**THE CHAIR:** It's actually a transitional problem: once it's created, you'll say, "This is the Corroboree Park one and that's the one you're interested in."

**Mr Calnan:** We have to have a document that is tableable in the Legislative Assembly.

**MRS CROSS:** It might be tableable, but it's not navigational.

**THE CHAIR:** That's our problem and it's resolvable in the long term.

**Mr Calnan:** Certainly, there is an index to the heritage register, which looks like that. It's got 70 separate listings on it at the moment. It's all page numbered. I'll show you what it looks like. As I said, on the Territory Plan website each individual register is linked, so it's just a matter of going to the index, clicking on the one that you're interested in, and there it is. You can print it out and what you'll get is that.

**THE CHAIR:** Right. I suppose it's for future reference. If another draft variation comes out which is an omnibus thing like this, it would be easier for us and other people who are accessing it to be able to have some more navigation and page 21 of Blandfordia could say, "Blandfordia page 21," something simple like that.

But that's a complete distraction from the issue of dual driveways which, generally speaking, are prohibited. It was raised as an issue with Flinders Way, but Michelle is now saying that it's also an issue on Limestone. I'd forgotten that Corroboree Park actually backed onto Limestone.

**Mr Calnan:** Reid.

**THE CHAIR:** There's a small section in Reid. You have said that there are heritage values and there are safety values and you weighed them up and thought that the safety values won out on this. Is that basically the issue?

**Ms Brock:** I believe that's where it was coming from.

**Mr Calnan:** Part of the heritage consideration was the protection of the streetscape and the pattern of driveways is seen to contribute to the quality of the streetscape, the even distribution of driveways. If that is not controlled, then the concern is that—

**THE CHAIR:** You've actually said that it's now not controllable if there's a certain amount of traffic on a particular road. Let's mount the thin edge of the wedge argument. It's all right on Limestone Avenue and it's all right on Flinders Way. Would it be all right on Melbourne Avenue? Where do you draw the line?

**Mr Calnan:** I understand that in those particular cases the Heritage Council's view, after consulting with the stakeholders, was that it was appropriate to make provision on those particular streets.

**MRS CROSS:** Who were the stakeholders that you consulted?

**Mr Calnan:** That the Heritage Council consulted.

**THE CHAIR:** It is a question for the Heritage Council.

**MRS CROSS:** They did, so we'd have to check with them who they talked to so as to find out if it was comprehensive enough.

**MS DUNDAS:** DV 173 doesn't pick up all the areas that are listed in PPN 6 as areas of territorial significance and, with PPN 6 being overtaken by draft variation 200, do you see any scope to expand 173 to cover the places that are falling through those gaps, from territorial significance to heritage?

**Mr Calnan:** Again, that's a question you'll have to ask the Heritage Council. The Heritage Council is the body that has responsibility for identifying the places that are regarded as having heritage significance; it's not the Planning Authority's responsibility.

**MS DUNDAS:** But does the Planning Authority have any views on areas of territorial significance as opposed to heritage-listed areas in the ACT? Yarralumla is the main area.

**MRS CROSS:** Doesn't the buck stop with planning, anyway?

**Mr Calnan:** Moving on to DV 200, our view is that all of our areas are significant and should have an equal level of protection. The provisions that have been built into DV 200 in terms of the requirements to undergo the high quality sustainable design process in relation to all residential redevelopment, regardless of whether it's in an area of territorial significance or elsewhere, essentially pick up the provisions of PPN 6. I don't have the DV 200 material with me, but I can certainly provide copies of that material to the committee.

If you read the policy content in PPN 6 in relation to the areas of territorial significance, I believe what we're doing in DV 200 is essentially applying that to all areas. We're saying that you need to consider the streetscape, you need to consider the context in which residential redevelopment is occurring, regardless of—

**MS DUNDAS:** For suburban areas.

**Mr Calnan:** For all areas.

**MS DUNDAS:** Including the residential core?

**Mr Calnan:** Yes. The HQSD processes will apply to all residential redevelopment, not just in suburban areas.

**THE CHAIR:** I go back to the question that Mr Hargreaves asked about whose idea it was anyhow. It's been pointed out to me that in annex F of all this stuff here we've actually got a report on the consultation with the Heritage Council which says, in part, "The Heritage Council advised on 6 June 2001 that the council supports the proposed changes outlined in draft variation 190. However, the council recommended the inclusion of the following minor amendments." Those things are then listed and there are things to do with an explanatory statement about Blandfordia, Braddon, Corroboree Park and Wakefield Gardens.

I have a question. It might be a question on notice to which the answer might have to be cobbled together by both PALM and Heritage. First of all, just to set a bit of context, what's in 190, to refresh my memory? Okay, take that one on notice.

**Mr Calnan:** I might need to refresh my memory as well.

**THE CHAIR:** Okay. A quick reading of this seems to indicate to me and to Mr Hargreaves that what has happened is that someone has said, "190 is okay, but how about these things?" Is 173 really a list of the other things?

**MS DUNDAS:** Then how has 190 happened before 173?

**THE CHAIR:** What is 190?

**Mr Calnan:** I don't recall what 190 is. We can check that for you.

**THE CHAIR:** Okay. Can we have some chronology here because it actually raises some questions.

**Mr Calnan:** What happens is that variations are given a sequential number when they start. Some variations are processed very quickly, others take a long time. We are working on draft variation 130 at the moment in relation to the north Gungahlin structure review.

**MRS CROSS:** So they're out of kilter?

**MS DUNDAS:** But you've been working on 130 for a really long time. Just to pick up on the point Vicki made, 173 can't be a response to 190; 173 would have had to have been in the pipeline before 190 was ever allocated.

**Mr Calnan:** They're not related.

**MR HARGREAVES:** They have to be related.

**MS DUNDAS:** They have to be in some way if the report on consultation for 173 talks about 190.

**Mr Calnan:** The only relation is that the two variations would have been—

**MR HARGREAVES:** I suggest to you that we're talking about one large issue, part of which was addressed by 190 and another part was still being considered, and the council has said, "Let's go with it."

**THE CHAIR:** Or is it a typo?

**Ms Brock:** It could just be a typo, I think.

**Mr Calnan:** It could well be that the two variations were referred to the Heritage Council at the same time and they have responded to both in the one letter.

**THE CHAIR:** Okay. Can we clarify that?

**MR HARGREAVES:** It's either the genesis or a massive coincidence.

**Mr Calnan:** There is no other variation dealing with the residential heritage precincts.

**THE CHAIR:** That is why I'm confused. I'm sitting here and wondering what 190 is about.

**Ms Brock:** Over the page, annexure G shows the letter from the Heritage Council. That should be a replication, so I think 190 is probably just a typo.

**MRS CROSS:** Where does yours say 190?

**THE CHAIR:** In annexure F.

**Mr Calnan:** We can check up on what 190 is and we'll certainly let the committee know.

**THE CHAIR:** Because it creates confusion. The other question is another 173 meets 200 question. There seem to be issues about building heights and floor heights. There seem to be some differences between what's in 173 and what's in 200. Is what's in 173, "This is how we built buildings when the FCC built buildings and we keep them like that and there will always be a lack of consistency across heritage building codes and general residential building codes?" There do seem to be some inconsistencies.

**Mr Calnan:** There are specific restrictions in the heritage registers relating to building height, as recommended by the Heritage Council. They are there because the Heritage Council believes that controlling the building height is an important component of protecting the heritage values of those areas. So the provisions in the heritage registers tend to be more specific. In some cases, they limit new buildings to being single storey in height and in other cases they say you can only be two storeys where the original building was of a two-storey construction. They are all focused on protecting the heritage values, but they are specific to the areas to which they apply and they will override the more general provisions in the residential land use policy.

**THE CHAIR:** Anything else?

**MR HARGREAVES:** I reckon that's pretty well all right.

**THE CHAIR:** I wanted to talk about consultation and 175, but we've probably done that in the course of things.

**MR HARGREAVES:** I was suggesting to the Chair that we might talk about the timing of the reporting levels of DV 200 because I'm aware there is the imperative of the government response and a date coming up where it just drops off the planet.

**THE CHAIR:** And the same thing happens with 175. The interim effect runs out in May for both of them. What happens if the draft variations are not made and the disallowance periods pass through by the time the interim effect runs out, and that's going to happen?

**Mr Calnan:** In relation to 175?

**THE CHAIR:** Either of them.

**Mr Calnan:** 175 and 200?

**THE CHAIR:** Yes.

**MR HARGREAVES:** Before you start, something that I was not aware of but I'd like you to confirm for me and put on the record is that the time that is imperative is the five sitting days after any revision is put to the Assembly. It's that date which is the critical date. It's not the date that this committee reports to the Assembly.

**Mr Calnan:** No. A variation to the Territory Plan can't come into effect until after it has sat on the table in the Assembly for a total of six days, or five days after—

**MR HARGREAVES:** Or is picked up and disallowed.

**Mr Calnan:** If it's disallowed, it doesn't take effect.

**MRS CROSS:** If the debate is had and the motion is lost, then—

**MR HARGREAVES:** Then it's fine, isn't it?

**THE CHAIR:** Then it's made.

**Mr Calnan:** No, it still can't come into effect until five sitting days, because the legislation, as I recall, still requires us to wait for those five sitting days to elapse.

**THE CHAIR:** Even if we had a debate on disallowance and the disallowance has failed, you still can't make it until the five days expire.

**MR HARGREAVES:** It becomes law the moment the motion is passed by the Assembly, because you cannot pick it up again and debate it.

**THE CHAIR:** Because the Assembly can't come back and debate it.

**MR HARGREAVES:** It cannot, within 12 months, come back and debate it.

**THE CHAIR:** We could suspend standing orders, I suppose.

**MR HARGREAVES:** That is ludicrous if, in fact, the draft variation can be debated and passed or not. Not is easy. If it's passed, then we're saying it's bad. The legislation says that after it has been passed it has to sit on the table for the remaining part of the five sitting days before it can happen.

**Mr Calnan:** My understanding of what the legislation says—

**MR HARGREAVES:** We might have that piece of the law checked.

**THE CHAIR:** Yes.

**Mr Calnan:** Certainly, in the case of DV 174 there was a disallowance motion that was defeated in the Assembly, but the commencement notice wasn't published until after the five sitting days had elapsed.

**MS DUNDAS:** That's a different argument. What we're trying to get at is what would happen when disallowance is moved if the five sitting days are taking place after the interim effect has expired.

**Mr Calnan:** Okay.

**THE CHAIR:** Which is almost certainly going to happen.

**Mr Calnan:** Yes, that appears to be the case. Firstly, in relation to 175, I don't think it will make a significant difference. I can't think of any significant difference it will make. It would just delay decisions that would be possible based on the new policies. Generally speaking, in 175 the policies perhaps are slightly more flexible. Therefore, the existing policies in the Territory Plan, being the most onerous requirement, will continue to be the determining factor.

For instance, you will be aware that one of the proposals in DV 175 is to remove the restriction on the size of bulky goods retailing that can occur in the precinct B areas of Fyshwick. The existing Territory Plan has a 3,000 square metres limit. The 3,000 square metres limit will continue to apply until the variation takes effect, because it is more onerous than what is contained in the new one.

**THE CHAIR:** It continues to apply because there's nothing there.

**Mr Calnan:** It continues to apply.

**THE CHAIR:** There's no interim effect, yes.

**Mr Calnan:** Even when there is interim effect, the interim effect doesn't override the existing policy. You have to comply with both the existing policy and the interim effect of the proposed policy.

In the case of DV 200, it is a much more significant issue because DV 200 is imposing a series of more restrictive requirements. After 29 May, because DV 200 won't have any effect beyond 29 May, those more restrictive requirements do not have any effect. For instance, there will be no 5 per cent limit on dual occupancy after 29 May and the new provisions that were proposed to replace that control will not apply. We've suggested that the suite of provisions that are in DV 200 are a more effective way of controlling dual occupancy—the sliding scale plot ratio control in suburban areas, the—

**THE CHAIR:** No, I don't want to have the argument about whether we think that they are better. We really want to find out what will happen if we get to midnight.

**Mr Calnan:** It depends on how long the hiatus period is.

**MR HARGREAVES:** What if it is two weeks?

**Mr Calnan:** If people lodge an application on 1 June, they're not going to be able to get it approved and through the system by the end of June. On the question of interim effect, the really critical issue will come up if an application is taken to appeal. For instance, if an application was refused on the basis that it didn't comply with the new sliding scale plot ratio control and it went to appeal and the AAT said that that control has no effect, so therefore there was no basis on which to apply, then there's a good chance that the appeal would be won on that basis.

**MS DUNDAS:** Is there any way that there could be another interim draft variation?

**THE CHAIR:** What's to stop you coming out on 30 May and making draft variation 200A?

**Mr Calnan:** We would start all over again and then it would be another 12 months before it's all resolved.

**MS DUNDAS:** If draft variation 200 becomes variation 200, can't you then just withdraw draft variation 200A?



**Mr Calnan:** No. If we release a draft variation, it has to go out for public comment again.

**MS DUNDAS:** You withdrew 192 when 200 was released. Why can't you then just withdraw 200A?

**THE CHAIR:** You've withdrawn draft variations before today; 125 was withdrawn at some stage.

**MS DUNDAS:** We're trying to find solutions.

**THE CHAIR:** Is the world going to come to an end? I think the answer is no, because the approval process is of sufficient length, and this is not to be taken as disparaging, that no decision would be made in that interim period, in that hiatus period.

**Mr Calnan:** There will be one sitting week in May—6, 7 and 8 May—and there will be two sitting weeks in June and then we have the winter recess. Our concern is if it goes beyond the winter recess. If it wasn't tabled on the first day of the first sitting week in June, then it would go beyond the winter recess. The Assembly doesn't sit then till August, so you've got a hiatus then of three months and it's a considerable period of uncertainty.

**MR HARGREAVES:** Your deadline for the revised DV 200, whatever it may be, is the first sitting day in June; that's your deadline.

**Mr Calnan:** Yes. We think that if we were able to get a variation tabled on that first sitting day in June the hiatus would be short enough that it would not create significant uncertainty. I guess the committee needs to appreciate that, depending on what the committee's recommendations are, there are processes that we will have to go through in order to get a variation tabled by that day. If it involves significant changes to the variation—

**MR HARGREAVES:** What we're talking about, to ease your mind just a tad, we're trying to find out the absolute critical date for the community as well as the Assembly and work backwards from that, realising that the tabling of our report actually triggers a process but there is the five sitting days period, which is critical, after which the process has been completed. We need to know that date when the five sitting days kick in; that's the guillotine date.

**THE CHAIR:** So it's the second day in June. If you haven't made it by then, you go into that hiatus.

**MR HARGREAVES:** Then we're in real trouble.

**Mr Calnan:** I think it 17, 18 and 19 June and then 23, 24 and 25 June, something like that. If we table it on the 17th, the tabling period will finish on the Thursday of the second week, which would be the last sitting day before the winter recess. If it's not tabled on that day—if it was tabled on the 18th, for instance—it wouldn't be completed

until August. It's not really a big issue with most variations, but in the case of DV 200 it is a very significant issue. It's not something that we have any control over, because it's the way the legislation is written. We're not doing this just to make everyone's life difficult. It's just the situation we're in.

**THE CHAIR:** Okay. That answers our question. That's clear, I think, and it gives us a timetable to work towards. We have resolved that it was a typo, because draft variation 190 was about Hannah Park.

**The committee adjourned at 12.07 pm.**