



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

**(Reference: Inquiry into draft variation of the territory plan DV256—
Kingston Group Centre part section 22)**

Members:

**MR M GENTLEMAN (The Chair)
MR Z SESELJA (The Deputy Chair)
MS M PORTER**

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 16 MAY 2006

**Secretary to the committee:
Dr H Jaireth (Ph: 6205 0137)**

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).

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The committee met at 11.00 am.

ADAMS, MR ANTHONY TALBOT, town planning consultant, CB Richard Ellis Pty Ltd

JANSEN, MR PETER, property owner, Kingston Traders

THE CHAIR: I declare open this hearing. I welcome you to the planning and environment committee hearing into draft variation 256. I will read out the witnesses' privilege statement for you. 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.

That is a reminder for witnesses that hearings are privileged. I also remind witnesses that we would like to ensure that all witnesses are treated with courtesy and respect.

Mr Adams and Mr Jansen, would you state your names for Hansard and give us a couple of brief opening statements?

Mr Adams: I am Tony Adams from CB Richard Ellis Pty Ltd. I am a town planning consultant. I am here as an adviser to Mr Jansen.

Mr Jansen: Peter Jansen is my name. I am a property owner in Jardine Street, Kingston, one of the businesses in section 22. I used to have a business in that area as well.

THE CHAIR: Would you like to make a statement in regard to the draft variation that is before us at the moment?

Mr Jansen: Yes, if I can. To go back in time a little bit if I can: we, my partners and I, purchased our building in 1994; that is, a year after 1993 when the territory plan came into existence. One of the things we did when we purchased that property was look at the territory plan, look at the potential future uses and look at what the future might hold in terms of what was happening in the area.

It became pretty obvious to us that banks were slowly moving out of the street. The street was, basically and primarily, banks when it was first established. From memory, more than 50 per cent of the premises there were banks. They have all disappeared now. That is basically part of what DVP 158 was all about. That variation went through a few years after the territory plan or in early 2000, I think. That partially looked at group centres across Canberra all together. There was a lot of consultation on 158. We were reasonably happy with that and we could see a potential future for our premises there.

Since 158, 256 has come to the fore. As I understand it, basically that was initiated by residents seeing the then acting planning minister, Ted Quinlan, with some concerns, particularly about noise and nuisance generated from the business premises in Jardine Street—about noise and nuisance generated, not necessarily from Jardine Street. We understand some of those concerns. In some of our submissions we have said things

along the lines that we are quite happy to address the noise problems, as best they can be, bearing in mind that one has to separate the concerns into two different baskets.

The first basket: if nothing were to change in Jardine Street, what would those problems be, irrespective? The rest of the centre is a thriving centre. The car park between section 22 commercial and section 22 residential is used by the whole of the centre. There are some concerns from residents about that. That noise and concern will continue irrespective of what happened to the business side of Jardine Street. So we need to separate any additional problems caused by different sorts of businesses operating on the eastern side of Jardine Street. That is the real concern there.

As I said, we have looked at that and said, “Okay, what are those concerns?” They are basically about noise emanating from within premises. In our submissions we have said that we are quite happy to address those concerns by way of acoustic measures to significantly reduce any particular noise or concerns that develop from that. I think the planning authority has accepted that. In fact, in its final recommendation on 256 it put onto paper some acoustic noise measure controls that would resolve that situation.

We are a little bit concerned that, given that the commercial buildings were there well before any residential, residents are now wishing to change the nature of the street. It is akin to moving next to a railway station and saying, “Now we want to move the railway station because we would like it to be a bit quieter, please.” Most of the people who own property there have in fact purchased those properties since the territory plan came into existence. A very high percentage have purchased them since variation 158 to the territory plan went through.

To move next to a major commercial, vibrant centre and then require that their residence be akin to the quiet end of a cul-de-sac in the suburbs is really not a fair go. They have to expect some sort of lifestyle akin to living next to or within a major centre. However, some of the noise concerns can be addressed, and that is what the department has proposed to do.

I note the ACT Planning and Land Council, in its meeting on 14 December, made some comments on section 22 Kingston and DVP 256. Whilst they supported the propositions put forward by the authority, they made a number of points which I am not too sure this committee is aware of, but I brought a copy with me if you would like me to table that. They have made a number of points and they need to be borne in mind.

The first one is that the proposed restriction, through post-hoc planning changes, is not consistent with the aim of establishing a vibrant centre. They are saying that the restrictions as originally proposed in 256 would cause some problems with establishing a vibrant centre there. It went on to say that the need for some finetuning of the land use arrangements to also sustain residential amenity is recognised. That is where the noise abatement and the noise control measures have come from.

But more importantly, at its concluding paragraph on 256, it said that, as a general comment, the council observed that this proposed restriction was in contrast to the proposed expansion in relation to the Mawson site. That is Woolworths in Mawson, which the minister has just used his calling-in powers on to override residents’ concerns. The council commented that this appeared to be inconsistent in terms of the authority’s

planning processes. Whilst it supported the general thrust of trying to reduce a bit of noise for residents, it has some major concerns about the planning implications of what was being proposed.

Subsequent to that, of course, the planning authority has promulgated its final recommendations in relation to 256, which we have all seen a copy of. We accept in life that one cannot have it all one's way. You are going to have a few wins and a few losses. We are disappointed, for instance, that, in the final recommendation, the drink establishment is no longer possible on the eastern side of Jardine Street in the commercial premises. If I go back to when I purchased my property in 1994, the territory plan in 1993 said we could do that if we applied for a purpose clause change. That limits the use of the premises; so it follows that there is a reduction value of the premises because of that.

I do not think that most Australians would think it a fair go to have laws changed retrospectively which is, effectively, what 256 does on drink establishment. But we are prepared to accept that on the basis that the department has recommended some things that we agree with and are happy with but some things we are not happy with.

The bottom line comes down to this: how can the residents' concerns for residential amenity and noise abatement emanating from premises just on the eastern side of Jardine Street, because that is what we are talking about, be addressed? The recommendations for the acoustic reports and acoustic control measures are appropriate. We cannot have it all our way. That will involve extra expense and costs for property owners there, but the change in nature of the Kingston Group Centre and all group centres in Canberra, particularly with the demise of banks and those sorts of things, means that we need to move forward and keep our centre strong and vibrant and as diverse as possible.

THE CHAIR: Thank you very much. Mr Jansen, can you tell me how many of the traders you represent—the whole group or just one?

Mr Jansen: I have been in touch with most of the owners in Jardine Street, which is the commercial front there, and there are only two or three that I have not been in constant contact with. I have kept the rest informed of what we are doing and they are happy with the way we are going and that I have been representing their views on this. We have a number of them here today as well.

THE CHAIR: You mentioned that there were other recommendations within the draft variation that your group was not happy with. Could you expand on those?

Mr Jansen: Yes. Some of them are in terms of retail. There are limits on the size of retail there, which we do not think are appropriate. One must pull right back from the detail of what has been recommended and look at the broad picture, and the broad picture is that the residents behind are trying to gain some sort of increase in their amenity. We are happy to say, "Let us look at the problems on a one-by-one basis and see how they can be resolved, without taking a sledgehammer to a pin, as it were, in terms of trying to solve a problem. Look at those problems and address them." That is where we will accept the department's recommendations on the acoustic reports and the noise abatement.

MR SESELJA: Mr Jansen, some of the stakeholder comments obviously are in favour of further restrictions to what is contained currently in the final draft variation. One in particular is limiting the businesses to businesses with opening hours from eight till six. You obviously, from what you have said, would not be in favour of that. Are you able to take us through how that would affect—

Mr Jansen: I am in favour of any planning laws which are passed by the Assembly and which apply to the whole of Canberra equally. We have here something that is targeted at a very specific area. In my view, it is because of some fairly strong lobbying and perhaps some political ties—I am not sure—but it is targeted at specific areas. If you want to limit trading hours to eight till six in a group centre, and you can convince the public that it should apply to Canberra across the board, then that is another discussion. But if you are talking about just this one centre, to appease a few residents who purchased knowingly next to a commercial centre and who had, just like I had, the ability to research the territory plan and see what planning was happening in the area, then we are talking about something totally different.

MR SESELJA: I wanted to get a feel for—and I understand your point about the general planning principles—some of those specific recommendations. From your point of view, how would that affect, say, the value of the land or affect your ability to do business?

Mr Jansen: It would affect the value of the land—there is absolutely no doubt about that—and the value of the premises. But more importantly it would affect the amenity of the area to provide for the residents living in that area and the services that they are looking for. But to target specifically trading hours like that: we have the Kingston Foreshore living development close by; we have the new development recently approved at Mawson; we have numbers of developments throughout Canberra where you have mixed uses, where you have commercial cohabiting with residential.

If people are not forced to purchase in those areas, if they do not want to live in that environment, no-one is forcing them to. If they choose, however, to live in that environment, it is a bit rough to then come back and say, “We have chosen to live in this environment, but we really do not like it, so we would like trading hours reduced so that we can improve our amenity.” I do not think it is a fair go.

Mr Adams: It is probably useful to point out that one of the two establishments that were subject to a recent development approval, which was highly contentious, was approved as a drink establishment. Future applications for a drink establishment would not be permitted, but that one is there and is trading. It is trading under conditions that were imposed as part of the development approval with regard to containing the noise.

I was involved in that and have been back several times since in the evening to see how it all worked out. If you go to the rear of the premises, you cannot tell which is its back door. It is 110 per cent successful in containing whatever noise might be coming out of those premises. That is the Belgian beer cafe I am referring to. There are simple ways of controlling noise.

The issue with night-time trading is not night-time trading; it is whether the operations are noisy or not. Quite apart from anything that might be contained in the territory plan variation, there is an EPA. The Environment Protection Act sets out very strict limits on

noise from any premises in Canberra and how it might impact on nearby residential properties. Any leaseholder, regardless of what might or might not be in the territory plan, is obliged to operate within those rules.

To constrain the hours is using a sledgehammer to crack a nut or is the wrong solution and would have serious commercial consequences. The issue is noise, and it is quite possible to run an establishment at 11 o'clock at night and 2 o'clock in the morning and not cause a noise nuisance. In fact, you are legally obliged to do so.

Mr Jansen: I must add to that—and I know I have said it a number of times, but I really wish to reinforce it—irrespective, that car park behind the premises in section 22 receives people there and vehicles from people using the rest of the centre. You must separate it. If there were blanket controls like restricted trading hours, the incremental reduction in concerns would be absolutely minimal, almost non-existent, because the car park would still be used by the rest of the centre.

Mr Adams: And noise emanates from the other side of Green Square and travels around the district. There would still be noise.

MS PORTER: You are saying that the car park would be used by the rest of the Kingston Group Centre itself. What kind of traffic are you referring to?

Mr Jansen: I do not understand your question, I am sorry.

MS PORTER: Are we referring to cars or are we referring to trucks?

Mr Jansen: People and cars.

MS PORTER: It would be cars, you would imagine. If the restriction were put on the other businesses, other people would come in and park their cars there.

Mr Jansen: Ninety-nine per cent of use in that area is by cars.

MS PORTER: Ordinary private vehicles?

Mr Jansen: Yes.

MS PORTER: My other question was on other loss of amenity that you may have been aware of. Are you aware of any other loss of amenity, apart from the noise issue?

Mr Jansen: The residents, in their submissions, which no doubt you have seen, expressed a number of concerns, but the noise issue was the predominant one. That, we believe, was their predominant concern.

MS PORTER: You believe that to be the predominant one?

Mr Jansen: I believe that to be the predominant one. The department, in its final recommendations, has taken on that one as a main one and made the noise control measures as its main recommendations.

MS PORTER: You believe the noise that is emanating from within the building is the predominant one, not the noise that is emanating from exterior to the building?

Mr Jansen: Again, we must separate which buildings. There is very little noise that emanates from within the buildings in section 22 that we are talking about, the commercial end. It emanates from the rest of the group centre and from people using the car park. Whatever you do with the purpose clauses and the planning on that side of the street, 95 per cent of it will still occur from the rest of the centre. That is why we say, “Address the concerns and do not use a sledgehammer to solve what is a smaller problem.”

THE CHAIR: Mr Jansen, there were some other issues raised on our site visit. The committee went out and had a look at the site on a very pleasant afternoon. My personal experience was that there did not seem to be a lot of noise at the time. It was about 2.00 to 3.00 pm when we visited. However, there were other issues that were raised at that site meeting.

One was the aspect of the particular cafe, the Belgian beer cafe, and the rear door, which you raised earlier, overlooking directly into one resident’s backyard. The rear door of the cafe was wide open, so the chef or hospitality worker at the time who was standing in the rear door was viewing out into the resident’s backyard. Because of the elevation, it was quite predominant.

Secondly, there was another visual impact of a large rubbish skip that I think was very temporary because there appeared to be building materials in it. It was probably there for some reason of refit or something along those lines. But they were a couple of other issues that were brought up at that visit. Would you like to comment on those at all?

Mr Jansen: Yes. In the instance you are talking about, the Belgian beer cafe, certainly in the proposal we were putting for a purpose clause change to my building, we said that those sorts of concerns could be addressed by alternative measures. For instance, we were quite happy to limit access to the rear of our building to an emergency door only, with a break-glass mechanism so that door could not be used. That is a specific example.

But on a broader basis, how is the chef looking out the back door of a cafe, or whatever you call it, any different from any other premise in the street being used and someone at the back door looking out? The only way you stop that is by introducing a law saying that you cannot look out your back door. That is a nonsense.

THE CHAIR: It was simply a reflection on your comment about the door being closed.

Mr Jansen: If it is a reflection on the door being open and not closed, then we offered, in our purpose clause application, to put a break-glass mechanism on it. That is another way of solving the problem.

Mr Adams: The limitations on the cafe with respect to the door being closed: would it prevent noise? The door is there for a purpose. If there was no noise happening in the cafe at the time—and it is during the daytime; I am sure it opens and closes and is used as a back door—that is not going to, when there is no noise happening in the cafe, cause any noise impact on anyone else. If there is concern with neighbours about overlooking,

the buildings have always been there and, regardless of this variation, with any of the uses that are already permitted, you could have offices there and they could be overlooking. The people who work in banks—

Mr Jansen: In fact, the offices upstairs have a much better view of the back garden. Your point is the noise because the door opens.

THE CHAIR: No, it was specifically the visual.

Mr Jansen: All the offices that are upstairs have a much better view not just into the back garden but into the bedrooms and living areas, the whole lot. They were all there.

THE CHAIR: It is an issue that was raised by residents.

Mr Jansen: The buildings were all there before any of the residences were built. They either buy them or they do not. You look at the urban village concept which is being promoted across Canberra. At Kingston Foreshore, everywhere, you have got a mixing of resident and commercial. I do not see how this is any different.

The second question you asked was in relation to the rubbish. That is a temporary thing, but every now and then you will see a refurbishment of commercial premises, irrespective of the land use, of the planning policy or whatever. That looks at that. You get that on a commercial site, but you can also get it in any residential street as well. Now and then people will renovate. It happens. Where people live, or what planning laws you have, make no difference to that. It will happen.

Mr Adams: It is a commercial laneway and always has been. Again, regardless of this variation, there would be commercial businesses operating in section 22 and they generate rubbish. If, in fact, it was not commercial and was residential, there would be a rubbish function along the rear lane. That is what rear lanes are for. It has always been there.

Mr Jansen: In fact, in one of our submissions, talking about rubbish and rubbish collection and that sort of thing, we suggested that it might be appropriate to have a limit on the hours in which commercial vehicles can make deliveries and collect rubbish. That would lessen any particular concerns.

THE CHAIR: Thank you very much for coming to the committee. We will be deliberating on this for a little while yet, I think. We will let you know how we go.

Mr Jansen: Thank you very much.

ROBINSON, MS DEBORAH GAI, member, owners corporation executive committee
BASIL-JONES, MS ROWAN, member, owners corporation executive committee
MOORE, DR CHRISTOPHER JOHN, member, owners corporation executive committee

THE CHAIR: Good morning and thank you very much for coming along to this committee hearing. We have just had some witnesses from the Kingston Traders and now we have you as representatives and residential owners in the area. I will read out once more the statement for witnesses and then I will ask you to give us your names and state whether you are a resident or a representative of that group.

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 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 begin by giving your names and then your position as either a representative or a residential owner.

Ms Robinson: My name is Debbie Robinson. I own unit 4, which backs onto the car park. It is the closest unit that does. I am the wife of Brian Loftus and we both live in unit 12. I am representing myself and the executive as well.

Ms Basil-Jones: I am Rowan Basil-Jones. I own *[At the direction of the committee, an address was here expunged from the record]* and I am appearing here as a member of the owners corporation executive committee.

Dr Moore: I am Dr Christopher John Moore. I own apartment 10, which would probably have some of the closest bedrooms to block 33. I am appearing on my own behalf and as a member of the executive committee.

THE CHAIR: Would you like to begin with some opening comments?

Dr Moore: I will start with that. Peter Jansen raised a whole bunch of issues and I would like to address some of them as I go through. I actually purchased my property and have lived in it continuously since 1996, well before 158 went through in 2002 or roughly that. When I bought the property, it was quite obvious that there was a car park there. And the commercial buildings that were closest to us, it was obvious to me that they were essentially low-impact commercial buildings—banks, real estate agents and suchlike—at that time. There was very minimal ingress at the back of those premises. There were a few doors, but on the whole there wasn't a large amount of commercial activity associated with that. My judgment was that that was a reasonable, liveable and acceptable situation, which continued for many years.

Mention has been made of commercial activities like waste collection. In fact, there has been very minimal activity at the back, to the point that I am not even aware of any waste pick-ups or anything like that. I think there was a very low level of activity from those sorts of commercial activities. The rooms that are closest to the commercial buildings are

bedrooms, although one of them I now use as a home office. They are just over 20 to 22 metres away from the rear of those commercial buildings.

As to the planning laws, I thought at the time, with the residential area being so close, that the commercial status of those buildings would not be dramatically changed, and on that basis I went ahead and purchased the property. I have been living in it quite happily, with the exception of the sorts of issues that have come up recently on 256 and the current variations.

I would like to speak for a moment of an experience that I have been having since the inception of the beer cafe. A major concern as part of responding to that development, from my point of view particularly, was the noise generated by waste management and noises coming from buildings. It is not true to say that our only concern was noise coming from the internal parts of the buildings. In fact, in practice I think as much noise and annoyance is coming from the external activities—waste collection, deliveries, and at times the noise generated by staff themselves.

I think you made the point that you saw the door was open and staff were sitting at the back. Some of the staff are always taking smokos and having some long and fairly torrid conversations which unfortunately I have had to join—not dramatic, but they are a nuisance, especially when those sorts of noises occur early morning or late at night. I am not sure if it is relevant, but I am the manager of a station up at Mount Stromlo and a lot of my time is spent working at night-time, so I do value sleep very highly and it is often not at the usual sorts of hours that most people have access to.

I want to go back to the fact that my bedroom is 20 metres or so within proximity of the rear wall, 10 metres to the centre of the car park which is used when trucks come in and leave. The larger trucks have the reverse beeping sound, which is very annoying. Often they sit there idling for some time, especially some of the large refrigerated trucks. A diesel engine sitting outside your window idling is a quite significant amount of noise and nuisance.

The other thing that I find annoying is the waste, the dumping of bottles, particularly from the beer cafe. As you can imagine, they deal with large numbers of bottles, whether that is internal to the building, internal skips or whatever they use, and then they move stuff outside. That happens at very frequent periods till quite late. That noise can just go through my house, nothing stops it. It is a noise, in fact, I hear even though the roller doors are down. That is probably the most significant noise that I hear from the internal, but it is the external commercial activities that worry me. The beer cafe is given as an example of what is possible.

If the variation is accepted and the whole street is opened up to having restaurants and premises that have a high turnover of waste and delivery, it will become an untenable situation from the noise point of view. Even if measures are taken to stop internal noises, I am not too sure what controls there will be on the external operations. Some schemes may be mentioned, but over time I can see that those will be ignored and it will become our responsibility to try to police breaches of noise. I don't think that is fair on residents. These impacts sometimes are short lived, sometimes longer lived. It is very hard to get a measure of levels of noise that might meet the regulations. Many of them do not have any regulations at all in terms of controlling the amount of noise; for example, delivery

vehicles and so on. There is some doubt in my mind about that.

Peter mentioned that we are looking to increase our amenity. That is simply not true. I lived for many years in the situation as it was with low-impact commercial activities and the car park, with general comings and goings of cars. I accept that and that has not been of great concern. You sometimes get the odd idiot who makes a bit of noise, but that is very short term and it is to be expected. I am very happy with that situation, but what we really want to do is maintain that level of amenity, no more. We are not out to increase our amenity at all. I am very happy that other types of uses are made of the commercial buildings along there, but my concern is the increase in commercial activity at the back relating to a high turnover of incoming goods and outgoing waste or whatever.

Some discussion was made of waste. I guess that was one of the other concerns that we had, especially if there were going to be waste skips permanently outside the rear of commercial buildings, especially wet waste that you would have associated with restaurants and other establishments like that. They will be, again, within a few metres of bedrooms and residential quarters. Besides being an eyesore, we are concerned about the smells, odours and stuff like that that you certainly get in summertime. The experience with the beer cafe has been, from that point of view, okay. They have not had skips outside, although there has been so much development going on, especially starting at the time of the beer cafe, that there have always been some short-term skips almost permanently there. It has been something like a year or two now and I could see that that could be an ongoing issue if significant change in the use of these commercial buildings were ongoing. We are talking about changes to one particular building but, once it is opened, just where does it stop? I can see that situation deteriorating quite dramatically. I think those are the main concerns that I have as an owner of a premise at the rear there.

THE CHAIR: Ladies, would you like to add comments to that?

Ms Robinson: Firstly, does Peter Jansen have to sit there? I feel quite uncomfortable about it.

THE CHAIR: Mr Jansen has indicated that he has a hearing problem and needs to be in that vicinity to be able to hear the conversation. That is the explanation for him being at the table.

Ms Robinson: I just wasn't aware that he could be there, that's all. Basically, I feel that our enjoyment of life in our own home has been greatly diminished, and also our rights haven't been protected so far, particularly under the 2004 Human Rights Act. I feel quite offended by the fact that Peter Jansen's comments were all assumptions. The last time we saw him was quite a while ago. He presented at a unit. He was rude and offensive, and I have actually been bribed on the phone by him. That's why I did not want him sitting here, because I felt uncomfortable about that.

I rang up one Sunday about a resident that was crying on the phone because she had been abused. I rang him up and said, "You're a terrible, horrible man. I find you offensive." He said, "Well, what do you want out of this? I've got contacts." I just said, "I'm not into that," and I hung up. So that is the reason that I feel uncomfortable about it.

I had a look through No 238, the Macquarie Hotel building that has started up, and I have

here some quotes from statements that have been made by the committee about that area. One of the quotes is about meeting relevant criteria, including environmental protection regulations. It says, “This is an important protection as, under the Human Rights Act 2004, Environment ACT and planning legislation should be interpreted in the same light as the human rights protected in the ACT, including the right to privacy and the right to protection of the family and children. These rights can be asserted against noise pollution in an interpretative, dialogic sense.”

In relation to the beer cafe, it has already been breached. We are always hearing beeping noises, nearly every hour, from trucks reversing in and out, which is a dangerous occurrence. It also says here that families and children are protected. It is assumed that Kingston only has single young people. There are elderly, there are disabled, there are children. The area is surrounded by a diverse population.

Also, it says that Environment ACT cannot practically monitor this area 24/7. It does require constant monitoring and that cannot be done. The huge skip that is in lot 33, in the car park, has been there for over a couple of months, maybe three months, maybe since January. It is still there. About 10 days ago we were all woken up at 3.30 in the morning by an amazing noise. I am sure Rowan felt as though a truck was going to be running into her bedroom. Anyway, my husband and I have written an email asking for advice on that and how it can be monitored. We have heard nothing. So, with Mr Jansen and Tony Adams saying that all this will happen, it does not happen. It does not happen. What happens is we ring up, we discuss what is happening, and we are looked upon as being the residents that are causing problems.

MR SESELJA: When you say that you ring up, do you mean that you ring up the department or you ring up the traders? Whom do you ring?

Ms Robinson: No, I ring up the department. I ring up the people that I was told to ring up and I also email them. My husband does and I know that Rowan does and we never get a reply.

MR SESELJA: You have not had any responses from the department in relation to noise complaints or other complaints?

Ms Robinson: No. Initially they would say, “Yes, we will look into that,” but they never ring back. They say, “Yes, we will write it down and we will look into it,” but they never ring back, in my experience. That dumpster, as I say, is in a car space area and it has been there for months. I went around to the back of our units before I came here and there was a car there with a trailer on the back of it which was reversed into our property. I noticed when I was reading about the Macquarie Hotel that when they are building whatever they are going to build there they have to think of the residents.

That building site in the cafe, my husband was fairly critically ill at this stage, in bed, and there was a dog barking and it did not stop barking from 7 o’clock, and it was about 10 o’clock. We were up in unit 12, a three-bedroom unit like my three-bedroom unit downstairs in No 4. The whole back wall is two bedrooms with sliding doors. There are none of these new walls where you can open a part of a window, like they have in Kingston Foreshore, which I have seen. You cannot open a window unless you open a sliding door fully or partly; it doesn’t matter, the noise will still come in.

I went around there because I was concerned about my partner and I asked could I meet the project manager. There was no one there, and this gentleman came out—I was by myself—with a bouncer guy who was about 6'4" tall and 6'4" wide. He came up to me—I was on my own—very close to me, and I had to keep backing off. I said, "Look, I've got a critically ill partner. That dog, can you please not bring it again? Also, you're on private property." He said, "I'm not on private property." I said, "You're on private property; it belongs to the units." No way did I know what I was talking about or what I had bought into.

The guy was rude to me, he was offensive, he would not listen to what I was saying. I was getting upset, nervous. I thought he was going to punch me. Then the guy that owned the dog came and said, "Look, I'm terribly sorry, I will not bring that dog again," because he could see what the dog was doing. It was just barking. You can't say a dog is not barking when it is barking full time. So that was my experience of going up and asking them to move the truck. My husband said, "Don't go on your own again." Why shouldn't I? Why can't I, as an owner of property next door, go around and say, "Look, do you mind not bringing that dog again, and will you please remove that car from our property?" You wouldn't like it, no-one would like it, if someone parked in the driveway of your house or somewhere else that you wanted to use. So that was them helping us out as they say they will, and they don't.

The other thing was that MEO for the beer cafe assured the residents that waste and delivery would only happen twice, approximately two times, a week. It does not. We get beeping in and out hourly, just about. I can back that up, if you want to. I have members of the Brumbies in my unit downstairs. My unit is the closest unit. We had them around the other night and I said, "How is it going with everything down there? How is the noise, et cetera?"

As I said before, it is a three-bedroom unit. It is bigger than Rowan's, longer. The two bedrooms are at the back, with two sliding doors. Up the very front, near the kitchen, lounge and dining area, is really a study that can be turned into a bedroom, but it is very small; it is the smallest. The gentleman at the very back, in the main bedroom with the ensuite, said that he never opens the windows, so he doesn't get natural ventilation, because of the noise. He gets up very early and trains and then—I don't know—he might go back to bed, but it is annoying him.

The other thing that I found interesting was that the other Brumbies guy that is there is not using the other back bedroom, that he is using the side study as a bedroom, because of the noise issues. That means that only half of my home is being utilised, and that is also diminishing that property as to enjoying it. It is a completely newly done-out property and you cannot enjoy it. So I find that quite interesting. If you remember, Rowan's unit is smaller and it goes further back in the living areas. You can't even say that Rowan can enjoy half of her property for that reason.

The thing with illness is that you cannot stay in that bedroom and be sick. You have to go into the lounge room and lie on the lounge, because you cannot recover from illness in your bedroom. Imagine you are sick with a migraine or a headache. That beep, beep, beeping all the time would be a terrible thing. In particular with *[At the direction of the committee, an address was here expunged from the record]*, because I am more aware of

the person that lives there, she has no privacy. If she wanted to walk around with no clothes on, she could not. People do enjoy doing that. She has loss of amenity and she is also vulnerable to disturbance.

In any conversation—even with Peter Jansen and Tony Adams today—none of them have said that we live within 25 metres. Oh, yes, we live in this area and we bought in there. How many times have I heard that? I bought my property just after Chris did. I bought it in 1996 or 1997. My husband bought two properties in that block before I did, in 1995, so these assumptions that Peter Jansen is making are just so incorrect, and if we weren't here to hear them, we wouldn't know that we could say that they were incorrect.

The other thing is the sliding doors. No one talks today about sliding doors being on the very back, the whole back, of all the units having sliding doors into bedrooms; not lounge rooms, not toilets, not bathrooms, but bedrooms. Also, with the Human Rights Act and the protection of parents, families and children, again I am really concerned about this reversing back and forth. I thought that the transport people said that you could not reverse back a big truck in that car park area.

Obviously, something is going to happen there and the community's rights are not being held up the way they should be. I do not care about my property and how much it gains in value. Peter Jansen has never asked me that, has never asked, "Are you worried about your property going down?" I don't care. I live for today; I don't live for tomorrow. The fact is that I think he is more worried and a lot of the other people in that area are more worried about their properties going down. I've only got a measly little three-bedroom unit that I call home, that I want to keep calling home. I don't like people talking to me or about me or assuming that I am worried about that, because I can tell you honestly that I am not worried about it.

Also, Peter Jansen spoke about the noise within. That it is not true; it is the noise without as well. As to keeping those doors closed in the area that you saw the doors open, that never happens. The only time they are closed is when the restaurant is shut. As to the gym that was put in just behind us, we haven't seen any approval for that. I was under the understanding that gyms weren't allowed in that area. So the gym went in without any approval whatsoever, probably a shake of the hand or money in the pocket, who knows.

The other thing is that there are huge windows being built, like the screen up the top there or whatever it is, which you would have noticed. That is still happening and that is huge. Has there been approval for that? Has there been development approval for that? We don't know. We are not told anything. You can look right down and right across on that; the privacy has gone. Peter talks about all the other windows. They are tiny little windows. They are always closed up. This looks like one of the modern windows that are never going to be closed up, never going to be drawn. So that is another thing.

The other thing is that there is mention here of areas like Kingston Foreshore, Manuka, Civic, these new developmental areas. They are new. You can work around the fact that that you are building a building that, unlike ours, is going to have those windows at the back that you can open little sections of and have ventilation in your bedroom. We have got an old unit. We don't have that. You are in an old, already built area. The Kingston Foreshore area is a new area; it is new architecture. It can accommodate the fact that

there will be residents and businesses close by. Our building doesn't and their building doesn't, and that is why I think it is just not viable for our rights to be protected.

THE CHAIR: Thanks for that, Ms Robinson. I am aware of the fact that we are running short of time and I want to ask a couple of questions. You raised an issue earlier about trucks reversing and you said that it was a dangerous situation.

Ms Robinson: Yes.

THE CHAIR: Can you tell us why you think it is a dangerous situation?

Ms Robinson: Particularly for children. Children don't develop road skills until they are 10. I have noticed in particular that there are more people walking from Kingston Foreshore up to the shops. They have strollers, they have little toddlers. The day that we saw you, just by chance there was a four-year-old boy who had run away from his mother and my husband, Brian, got him and looked for the mother. The mother was running around everywhere looking for the child. If that child, instead of turning right in Jardine Street, going down right and right again, going down Giles Street near our place, had turned left and then turned left again into Eyre Street, it could have easily run across that road. With a car backing out and the beeping going on, the child would be more likely to stop to find out where that beeping was coming from, not say that the beeping meant that a truck was coming. They are mesmerised by trucks, by cars, by lights, by noise.

That is what concerns me. Everything is about tenants, everything is about the assumption that only young people live in that area. That is so untrue. Lots of people park around there and then walk up to Green Square. They have their children running around Green Square while they are having a cup of coffee. I am concerned a child is going to get run over. Even a disabled person is not going to move fast enough to prevent being hit. That really does concern me. This beeping noise and the reversing in or out shouldn't be allowed.

THE CHAIR: Have you been made aware since moving in there in 1996 of any occurrences along those lines?

Ms Robinson: No, I haven't, but then there were no trucks reversing in and out, except there is one that is there all the time with the antique place, and that doesn't move that much that I have noticed. At times it does, and it is usually at about 6 or 7 o'clock in the morning that I have heard it but, generally speaking, it doesn't move that much. All this has happened only in the last two years. I was living down in my unit when I first bought it in 1997 and, yes, a car would park and a door would close at a quarter to 8, at the earliest 7.30, and you would hear nothing until 5.30 or 6 o'clock when they came back to drive home from work.

THE CHAIR: Dr Moore, you raised an issue earlier about the noise of bottles out the back.

Dr Moore: Yes.

THE CHAIR: You said that there was increased frequency in the noise of the bottles.

Were you trying to describe then trucks emptying the skip of bottles or were you trying to describe bottles going into the skip from the premises?

Dr Moore: I am not too sure of their actual operations internally, but they seem to be dumping boxes or large containers of bottles into other containers ready, I guess, to be moved out. That is happening every couple of hours, depending on the patronage, I suppose. But the sound of bottles being dumped carries very dramatically and a large amount of that operation, I think, happens within or behind the roller door.

MS PORTER: Ms Basil-Jones, you have been sitting there quietly. Is there something, even one or two sentences, that you want to say?

Ms Basil-Jones: Yes, in one or two sentences, I would. Much has been made of the fact that there would be a requirement in the recommended final variation for a noise management plan. I think our major concern is that there are noise management guidelines which are supposed to be taken into account when any planning matters are being looked at. Our concern is that in the two instances where there have been approvals that has not happened. We don't find just reliance on the environmental protection legislation and regulations after the event is a satisfactory planning and design response. We expect ACTPLA to do better than that and we would like to see them looking first at separation by distance. If that is not possible, by a solid barrier, which is what the commercial properties used to provide when they were low impact. And then, as an absolutely last resort, noise attenuation measures.

We feel that these issues should be addressed at the planning stage and they are not being addressed. We feel that ACTPLA is just passing the buck to Environment ACT. They have proved totally unsatisfactory with the Belgian beer cafe because the heavy vehicles are exempt, the waste collection vehicles are exempt, all sorts of things. I mean, they are just useless. The other thing is that by the time the noise has occurred, if you can get onto Environment ACT's offices after hours, and you have got to go through Canberra Connect, which is always a bit of a trial, it is all over and there is no point in them coming. Environment ACT officers have said that they can't address ongoing problems. They will respond to specific incidents but they can't really address ongoing problems. They have actually been quite helpful.

Finally, you asked a question of Debbie about whom we had contacted. Certainly, we have contacted ACTPLA's compliance area. Environment ACT offered to do this for us because there were just so many other government agencies that had to be contacted. The only people that got back were the waste management people, who said that the garbage collection arrangements for the bank were the same as for a drink establishment, which we do not accept. I have also rung the Belgian beer cafe's manager directly on many occasions and he can confirm this. His name is Travis. I say, "Can you please shut the roller door as the noise from the kitchen is coming through?" It is open till 10.00 pm every night they are trading, and all day, but up till 10.00 pm every night, and 10.00 pm when you are going to work the next day is late. That is all I really want to say. Thanks.

THE CHAIR: Thank you very much for coming in. As I mentioned earlier, we will be deliberating on this matter for some time yet. I will let you know how it is going.

GILL, MR TONY, Director, Roads, Department of Urban Services

JOSEPH, MR GABRIEL, Manager, Asset Acceptance, Asset Management Services
Department of Urban Services

THOMAS, MR STEVE, Environment Protection Officer, Environment ACT

WALTERS, MR DANIEL, Acting Manager, Environment Protection Unit
Environment ACT

THE CHAIR: Gentlemen, I will read out the Assembly statement for committee hearings first, then if you could state for Hansard your name and the department that you are from. 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.

If you could introduce yourselves for Hansard. Mr Gill, first.

Mr Gill: Tony Gill, director, Roads ACT.

Mr Joseph: Gabriel Joseph, manager, asset acceptance, Asset Management Services, Department of Urban Services.

Mr Thomas: Steve Thomas, environment protection officer, Environment ACT.

Mr Walters: Daniel Walters, Environment Protection Unit, Environment ACT, currently acting manager.

THE CHAIR: Thank you very much. Mr Gill, would you like to begin with some opening comments?

Mr Gill: Probably I am not the best person to begin.

Mr Walters: I am happy to start off on environment protection. As people may or may not be aware, the legislation that deals with environmental noise is the Environment Protection Act. The government body that administers it, you have heard, is the Environment Protection Authority, which is administered through the Environment Protection Unit of Environment ACT, through officers like Steve Thomas, who is sitting next to me, who attend to complaints and other matters in relation to environmental noise.

Within the Environment Protection Act, we have a noise environment protection policy, which essentially sets the framework for how the EPA will deal with environmental noise matters. It also sets out those components of noise which are not administered by the act, which some of the people have raised already: aircraft, animals, people and the noises they make, traffic and other vehicles on roads with relation to garbage trucks reversing and things like that.

There is also one other instrument under the act that deals with noise, and that is the code of practice. There currently is a code of practice in place for the waste collection people,

which sets out time frames for when waste collections can occur. We receive complaints on those and we investigate those and try to resolve those.

One of the very important aspects in dealing with mixed uses such as Kingston, Kingston Foreshore or Civic, which has probably become more highlighted in recent times, is the necessity for noise management plans to be developed. At the end of the day, as has also been raised by other parties, it is critical in the design phase and planning phase that these matters are dealt with.

It is not best that, as a regulator, environment protection comes in, usually unfortunately, at the time when there is a complaint, because the act is based on the authority receiving the complaint. If there is an affected person, we will investigate. Our officers are available 24 hours.

With the more difficult issues, you sometimes get environmental noise in relation to things that are not constant noise sources. Airconditioners you can measure. The act requires us to measure and verify complaints so that it is a fair process between the two parties. But we use other mitigation measures. Our first is always to try to get the parties to discuss the matter, to resolve the issue, and then we move into the more formal aspects of noise regulation.

We will always attempt to resolve the issues amicably between the parties, if we can, or suggest they do. We are happy to assist in that. As always, we are happy to assist other authorities, because we have the noise measuring expertise in the ACT to assist, whether it be the planning authority or other areas like housing that require noise measuring occasionally.

We also, as part of ensuring a good knowledge of noise in the community and business, issue information sheets on noise for venues and for noise in residential areas. So we have a series of information sheets. We have formal complaint-resolution processes that we put in place, which basically ask people to talk to us in the first instance. Then we move forward from there and try to deal with things in the least confrontational way we possibly can, because it is recognised that noise can be potentially a health issue and there are significant concerns sometimes in the community.

THE CHAIR: Mr Thomas, can you advise us of complaints that you have heard about in this area?

Mr Thomas: Yes. We have had several complaints relating to noise from the rear of the Belgian cafe. I was involved personally in the development application and the noise management plan that was required under our conditions. They submitted that plan. It was acceptable to Environment ACT.

Again, our legislation is based on complaints. We receive a complaint. We then investigate that. We do not go in prior to that to ensure that the management plan is in actual fact working. Because our legislation is complaint based, we go in there after the event, when the complaint is received and after the business is operating. If it is a valid complaint, we will investigate it further.

The difficulty we have had in the past in dealing with the noise issues here is that, as was

mentioned earlier, by the time our officers are called, the noise is gone. It could be the noise from bottles dropped into a container, people speaking, generally things outside the legislation that Environment ACT deals with.

There was the issue of music being played in the venue. That was addressed in the noise management plan by having doors installed down the corridor path and the rear doors closed at the time. At that time it was seen that there was not going to be an issue. I do not believe there is any amplified music being played there. I do not think that is an issue. The main issues seem to be the bottles, the vehicles reversing up the side street, things that are outside our legislation.

I can understand the frustration for the complainants when they ring up, but there is sometimes not a lot we can do with that noise issue.

Mr Walters: There is just one thing we would like to reiterate: with the approvals for Belgium, the planning authority put a time frame for the garbage trucks, I believe. I might not be quite accurate, but I think it was 7 o'clock. Under our current code of practice that we administer, which is approved under the act, that is actually 5 am. So it can create a bit of an anomaly there where they would comply with the legislation and we would have to pass it on to the planning authority to look at those complaints.

However, we would be happy once again to assist the authority in verifying the complaint. We are happy to do that sort of thing. That is an actual case in point with this one.

MR SESELJA: Officers of ACTPLA, when we were at the site visit, were talking about the noise management plan and suggested that the noise management plan, because it forms part of the lease, I understand, is technically theirs to enforce. Is that your understanding? Is that correct, or is there some scope for the EPA to be able to enforce the noise management plan?

Mr Walters: It is quite an unusual thing for the AAT to have done this. It was an AAT one. They put in place the law. The lease has the law in it. The noise zone standards and where they are measured are the standards that are in our regulations; so we would respond to a complaint. Unfortunately, it also says, though, in the conditions of that particular approval, that ACTPLA will engage an officer to assess it at the boundary, I believe, of the residence. That has created some confusion. Once again, if we receive a complaint, we will attend.

MR SESELJA: The ACTPLA officers seem to be suggesting they did not really have the capability to enforce it. It sounds like that particular arrangement in this case is not working as well as it might.

Mr Walters: As I said, it said they can engage someone; so yes, they can get the expertise.

MR SESELJA: So they can engage the EPA.

Mr Walters: They can engage us. We have assisted Chief Ministers with concert noise and things like that.

MR SESELJA: Have they done that to date?

Mr Walters: No, because their conditions are fairly clear. It says they will engage us to ensure the management plan is enforced. Unfortunately, it is a condition under their act. Once again, we are happy to assist. But we have not been approached, I believe.

MR SESELJA: In your investigations to date on breaches of the act, you have not found any breaches at this stage?

Mr Walters: We have not been able to verify the breaches essentially, yes. We have had discussions to try to resolve some of the issues in relation to simple things like, even though it may not fall within our bailiwick totally, the bottles. Steve and that have had meetings with them to try to resolve them doing it at more appropriate times or things like that. If we can resolve an issue, it is less time for my officers to attend. We are happy to resolve anything we can. But as Steve said, a lot of it falls outside our act—those areas of roads and people noise.

THE CHAIR: Have you received complaints about garbage trucks?

Mr Walters: A case in point: we received one today, which unfortunately meets our code of practice but not the planning one. We will investigate with ACTPLA. We will have to refer it to them because it is under their lease time that it exceeds the 7 o'clock, yet it meets the 5 o'clock. Once again, we need to put that on to them to have a discussion. But once again, I am happy to verify it and talk to them because we have a relationship with the waste contractors. We are happy to facilitate those discussions if that will help the matter.

THE CHAIR: Mr Joseph, do you have some comments for us?

Mr Joseph: The asset acceptance section of the municipal services network's role is to make sure that all the infrastructure asset constructed in Canberra meets the requirements of the standards in terms of design before it gets handed over to the territory. Also, we represent the three business units in the municipal services network: Roads ACT, Parks and Places and ACT NOWaste in maintaining their interest in looking at the designs.

In terms of waste collection, we enforce the development control code which is owned by ACT NOWaste in assessing the designs. We make sure that a particular development, from the demolition phase to final completion of construction, complies with this code in terms of waste generation, waste disposal and waste maintenance.

In terms of noise-related issues with the waste, the only conditions the waste contractors have with the ACT government is that they have to operate within the hours nominated by the environmental legislation. Apart from that, we do not administer any of the noise-related activities when assessing the submissions. The general agreement ACT NOWaste has with our contractors is that they will comply with the noise regulations in terms of collections within the hours by complying with the code.

In this case, maybe there was an issue of trucks reversing and then the noise created by the waste trucks. In most cases we do not prefer trucks reversing onto the streets as the

option. However, in certain developments we have to weigh up all the risks involved in the development and the viability of the development and assess, on a case-by-case basis, whether a truck can be allowed to reverse onto the road without compromising the safety of pedestrians, cyclists and cars using the street that the truck would be reversing into.

The current trucks have highly sophisticated facilities where they can see the rear of the truck from inside the truck. They have cameras fitted. They are highly sophisticated. They have very good vision to see behind them. The noise is an additional warning to people to say there is something happening—beware of the truck coming or something different happening in the environment—so that people will stop and think before they proceed. They are additional protection measures.

The alternative of not providing that facility is that in most cases that development will not be viable if the trucks have to enter forward and exit forward. Because of the nature of the trucks we have, it takes an awful lot of space for the manoeuvring inside the development. That means some of the units planned could not be developed. It may compromise the viability of the development as a whole.

However, we do not allow it if we feel that it is an unsafe operation to reverse, if it is a busy street. We look into all the other aspects of the development before we agree, yes, it can reverse onto that particular road.

As far as the current issues of the waste that they have raised—I was listening from behind—the only area that is covered is under the noise pollution act. If they do not operate within those hours, then action should be taken. As I understand it, they are complying with the requirements under the act and they have complied with the design requirements that we have asked for this development. As far as we are concerned, they have complied with the design requirements we have requested.

We have received a couple of complaints in the recent past of waste being collected from the car park behind this development. We have explained they were temporary measures because, during the construction, people needed a place to put their construction waste. All the hoppers have been removed now that the construction is finished. They were temporary.

As far as the beer cafe is concerned, they have got a condition that all of the waste should be contained within their property. That is what they are doing. It has been collected from there.

THE CHAIR: Mr Joseph, would you be able to explain to us the regulations regarding the placement of skips, for example, in car parking areas, or should we pass that to Mr Gill?

Mr Joseph: I can try, yes. We are moving towards all the skips, all the waste, being collected within the properties. But in the past, there have been about 400 locations where it was a practice to have the waste outside the premises, the developments or the buildings. We have been progressively addressing that. We have brought about 300 of them already into the development, and there are another 100 still on car parks and other premises. Some of them cannot be addressed; so they will stay there. But we are continuously looking at all the new developments. We have a concern that they should

all be within the development for collection. Tony, do you want to add something?

Mr Gill: As Gabriel described it, that is the general practice. With new developments, we try to encourage, basically, waste collection within the development. But the reality is that, in some of the older locations within Canberra—if you take Manuka, Kingston and some of the older lanes such as Palmerston Lane—basically, the locations of skips to collect garbage and waste have not been part of the original development. But they are located in areas which can be accessed by commercial traffic but do not pose a safety concern to the general public. That is the theory.

The practice is that, unfortunately, bins and skips can be moved quite readily. In practice, it is not unusual for bins not to be in the correct location in a particular area; so we are reliant on officers that inspect these situations to ensure compliance.

THE CHAIR: My understanding is that, if there is a skip, bin or loading vehicle that is going to be using a car park or a loading zone, they have to obtain permission.

Mr Gill: Yes, they get a permit.

THE CHAIR: There are several agencies that are in line to give that permission?

Mr Gill: They would get a permit through urban services, yes.

MS PORTER: I want to get some clarification on the bottle issue. You said that it is not your responsibility to monitor that or, if complaints come in about that—and this is what I thought I heard you say—

Mr Walters: No, that is fine. The bottle one, as I was trying to explain, like the airconditioners, is a constant noise source. The act says noise made by a thing. Arguably if someone is on a premise throwing bottles, that is making an environmental noise that would be considered a nuisance. The difficulty is verifying the complaint.

Obviously, you receive the complaint. As I have said, Steve and one of our other officers have been having, in this particular case—I have been advised—discussions with the owner to try to alleviate that issue. I do not know whether you have seen our noise meters. They are fairly sophisticated looking things. We measure the noise. Under the act, there are certain requirements, to be fair to both parties, that we have to measure for a certain period.

As the residents have explained, by the time our officers would get there to try to verify a complaint, it would be dead quiet. That is not to say it is one word against the other. We have used cases where stat decs are put together. They become very difficult things to administer, as you can understand. We try to resolve them by changing work practices. That is why we are insisting on noise management plans at the planning stage, to try to alleviate that. Unfortunately, we are looking at airconditioners and all those other things. To stop human behaviour is a very difficult aspect of noise, a challenge for all of us.

MS PORTER: I am still trying to clarify this. If, through a noise monitoring machine or something that was left there for a particular period of time, it was noted that it was a problem, then you do have the power to act? I am trying to clarify whether you have

the power to act or not.

Mr Walters: No, that is all right. We would have the power to act. Loggers have been used, but they would be very difficult in this situation. Loggers are normally used for traffic noise and things which are verifiable noise sources. We would not know whether that noise source is from a bottle, from a slamming door, from a car.

MS PORTER: I understand what you are saying.

Mr Walters: It would be impossible to monitor it. That is why we try to look at design options. It is not really our role to do that, because we are looking at it after the fact. They should be looked at in the early stages. But that is for individual developments. This is about a draft variation. Maybe it is a slightly broader issue.

THE CHAIR: Mr Walters, we have had a look at the noise management plan for one of the shops there. It talks about the noise not exceeding 50 decibels between the times of 7.00 am and 10.00 pm, Monday to Saturday, and 40 decibels between 10.00 pm and 7.00 am, Monday to Saturday.

Mr Walters: Yes, I understand that.

THE CHAIR: Can you give the committee an idea of what 50 decibels is? That is above background noise or including background noise?

Mr Walters: I could give you a piece of paper, which is our information sheet, which gives you a general idea. In a busy office, probably we would be starting to approach it if we all started to talk a bit more, around 50 to 60 decibels here. If you and I and a few other people are starting to chat in a busy office, it would start to be around that 50 to 60 mark.

A quiet bedroom is about 20 or 30. It is not zero. The World Health Organisation recognises about 30 decibels as what everyone around the country and internationally is trying to achieve, when your windows are closed, as what you need to go to sleep, essentially.

A lot of other studies have found that at about 55 decibels, around the 55 to 60 mark, is when humans become annoyed by noise if it is a constant source. That is why you will see, in a lot of regulations, the residential is 35 and 45. Because this is next to a commercial zone, it takes on 50. Add the two together and divide by two, for adjoining land uses.

A lawnmower, to give you an out-of-there example, at 15 metres is about 70 decibels. That gives you some idea. As someone mentioned before, you can put noise mitigation measures in place, but they can be very expensive and usually would not achieve, often, the noise reduction that you would be after.

THE CHAIR: In your opinion, what would be the noise generated by a motor vehicle in a parking area?

Mr Walters: Motor vehicles are under the Australian Standards. I was doing a

measurement of the noise from the vehicle of some young hoons once. There is a standard of 65. It is quite a loud noise if you think of a lawnmower at 15 metres.

MS PORTER: I want to ask a question of clarification on constant noise. Constant noise over a certain amount would affect a person. Have there been any studies into intermittent noise, when you have periods of quiet and then sudden noise?

Mr Walters: Intermittent noises can be worse. It is like a gun going off or people slamming doors. They can be the noises that may wake you and are some of the ones that are best dealt with by management or design. They are not controllable in the sense that you can turn down or turn up an airconditioner. We deal with PA systems. We deal with a lot of venues, and we find we can manage them. Usually it is because they leave their doors open and things like that.

People noises are a very difficult one. People get rowdy if they have had a few drinks or whatever and tend to make noise, slam things and all of that. Unfortunately, it is not something that can be dealt with under the act.

THE CHAIR: Thank you very much for coming in and seeing the committee. We will write to you if we need any further information.

Mr Walters: Did you want us to leave any of that with you—the EPP and the general one—so that you have got an idea?

THE CHAIR: That would be great.

BROWN, MR TONY, Registrar of Liquor Licences, Office of Fair Trading, Department of Justice and Community Safety

THE CHAIR: Mr Brown, 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 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. I invite you to make some opening comments after you have told us your name and position for the Hansard record.

Mr Brown: My name is Tony Brown. I am the Registrar of Liquor Licences. I work in the Office of Fair Trading. The Office of Fair Trading has a variety of responsibilities, but I guess of interest to this committee in relation to this matter are the responsibilities which we exercise under the Liquor Act in the ACT. As the Registrar of Liquor Licences, I am responsible for, essentially, the administration of the act. That involves me in decisions related to the grant of liquor licences. It involves me in respect of the consideration of complaints about licensed premises. It involves the office in running an enforcement and compliance program.

We also assist the Liquor Licensing Board, which is the disciplinary body under the act which has powers to discipline licensees where it is found that they have failed to comply with the obligations that they have under the act, the regulations or the licensing standards manual. Matters which are referred to the board might well deal with issues which arise from complaints by members of the public about the conduct of licensed premises. They might arise as a result of inspections that officers of the office have undertaken of the premises or they might arise as a result of matters brought to our attention by the police.

THE CHAIR: Have you received any complaints from the public or the police in this particular area?

Mr Brown: I assume from that question that you want me to confine myself to the block which is part of this application and that side of the developments in Kingston. To the best of my information, the answer is no.

MS PORTER: What kinds of things do people normally complain about? You must have a general range of complaints that you deal with. What are those?

Mr Brown: Generally, the matters which are complained of by the public relate to issues to do with loss of amenity. Under the Liquor Act, complaints can be made to the registrar in relation to any matter that arises out of the conduct of the licensed premises and anything that results in a loss of amenity in the vicinity of the licensed premises arising from that conduct. The general types of complaints which we get from the public are essentially ones to do with loss of amenity, noise, noise generally as a result of the activities of people as opposed to equipment. Sometimes they will relate to issues to do with amplified music and those sorts of matters, but generally the public conduct issues are the ones which come to our attention.

MR SESELJA: Are the loss of amenity issues restricted to things that go on within licensed premises? You have talked about the vicinity. How broadly are you talking there?

Mr Brown: The licensing board has consistently taken the view that there has to be a causal connection between the activities of the licensed premises and the matter which is complained of. You must be able to establish that it has some relationship with the licensed premises. That does not necessarily mean that the conduct which is the subject of the complaint has to take place in the licensed premises. It might, in fact, take place some distance away. The licensing board has dealt with matters in the past where the conduct which is being complained of is tens of metres and, in fact, 100 metres away from the licensed premises. But in those cases it has been able to be established that there is a causal connection between what is complained of and what the licensee is doing.

MR SESELJA: As to the causal connection, just to give an example, if someone were in a particular bar in Kingston and left that bar and was making a lot of noise after hours, perhaps as a result of drunkenness or whatever, would that be the scope of the sorts of things you would look into?

Mr Brown: Yes.

MR SESELJA: Okay. What would be some other examples outside a venue that would be causally connected to a premises in relation to loss of amenity?

Mr Brown: Those are the sorts of examples which we deal with. The board has not at this stage gone so far as to be satisfied in matters that it has dealt with that, just simply because of the fact that the licensed premises is there, there is a causal connection for some problems, but it tends towards that view. It is open to an argument that simply because the licensed premises is trading within that location it might well be an attractant for the sorts of issues that can give rise to a loss of amenity in the vicinity. I hasten to add that it moves in that direction slowly and reluctantly, but where it has been satisfied that there might well be conduct associated with the licensed premises which is resulting in a loss of amenity it is prepared to look widely at those matters.

MR SESELJA: Have there been any recent examples of traders in Green Square having had any action taken against them for such issues in relation to loss of amenity?

Mr Brown: No. I am not sure what this says. You can read into it what you like, I suppose. We have not dealt with many matters in the last 10 years in relation to—

MR SESELJA: Generally, Canberra-wide.

Mr Brown: Canberra-wide. The board has dealt with a handful of complaints over the last 10 years relating to loss of amenity. For some of them I might well have received complaints but, on investigation, I have been satisfied that there has been an established pattern or an adequate causal connection between what is being complained of and the conduct of the licensed premises such that it might give rise to the licensing board using its powers.

We have a number of matters currently under investigation in relation to licensed

premises which essentially could be put into that basket of loss of amenity, but over the last 10 years, say, we have probably only investigated somewhere in the order of six to eight complaints about licensed premises, which is not many when you consider that over that period we have probably averaged in excess of 550 licensed premises, of which 300-odd would have been on-premises drinking establishments—restaurants, taverns, bars, late night entertainment venues.

THE CHAIR: Mr Brown, in regard to regulations on operating hours, can you tell us what the current regulations are in regard to restaurants and, secondly, drinking establishments?

Mr Brown: Okay. The Liquor Act has five categories of licences which can be issued. There are on-premises licences, which permit the consumption of liquor on the premises. There are off-premises ones for, say, retail stores which allow the sale of liquor for consumption away. There are general licences for the classic hotels which generally have accommodation plus bars as well as a drive-through or bottle shop arrangement. The licensed clubs have a separate category of licence. Then there is a special category of licence which permits us to tailor the conditions attaching to licensed premises in a manner which is consistent with their operations. Generally, they are the tourism-type facilities, education facilities, those types of matters, the casino.

Under the legislation, liquor licensees selling liquor for on-premises consumption can, as a matter of right, trade 21 hours a day. They are obliged to cease selling liquor for a period of three hours and it is a matter for them to select those three hours, either between 4.00 am and 7.00 am or between 5.00 am and 8.00 am. It is for them to notify me of their intention. So all licensed premises which are permitted to sell liquor for on-premises consumption can trade until 5 o'clock in the morning, if they wish, but they must cease the sale of liquor, not close the premises but cease the sale of liquor, between 5.00 am and 8.00 am. Off-premises sales can occur between 7.00 am and 11 o'clock at night.

The Liquor Licensing Board specifically has within its disciplinary powers reference to the fact that it is capable of limiting the hours of trade of licensed premises if it considers that that would be an appropriate direction to issue or a condition to place on the licence, so there is that other power existing in the legislation.

THE CHAIR: Does the board, in regard to a licence issue, look at a premises operating within its lease?

Mr Brown: The licensing board rarely considers applications for licences. It does and it has the power to do so, but I would approve 99.9 per cent of the applications and have done so since the early 1990s, when the registrar was granted that power. One of the relevant matters which I am obliged to take into account, and the board is obliged to take into account as well, is the issue of whether the purpose clause of the crown lease permits the activity that is proposed at the premises. So we either inquire of ACTPLA or oblige the licence applicant to inquire of ACTPLA to provide us with certification that the particular proposed activity at the licensed premises is a permitted activity under the lease.

MS PORTER: I am still not clear on the kinds of complaints that you might get. I

understand about the noise from the music and people becoming intoxicated and making noise some distance from the premises and disturbing the amenity of people living in the area. What about other kinds of noise? We have heard from witnesses that sometimes people have noisy conversations, but there is also the bottle issue that keeps coming up. I am still not quite clear as to whether you receive other kinds of complaints. I think somebody mentioned banging doors.

Mr Brown: We receive complaints essentially about everything. As to whether we have the capacity to deal with them is another matter. The licensing board has heard evidence in some of the cases that have gone before it about loss of amenity relating to issues such as all of those that you have mentioned—people talking, car doors closing, people coming and going in cars, leaving noisily, bottles being thrown into hoppers late at night and in the early hours of a morning, music, people fighting, everything that you could name which might well be associated with the conduct of the licensed premises.

It might well stand as testament to the process that not many of the premises which we ultimately deal with are repeat visitors to the licensing board. We have been reasonably successful, it seems to me, in being able to address those concerns. That might not always happen in the time frame that the complainants might well wish and it might well not mean that they do not arise again as a complaint in the future. We received just recently some further complaints about a licensed premises which the board dealt with in 1999.

We lived in hope, I suppose, that that matter, in dealing with it before the licensing board, had been addressed. It has been some seven years. It would seem as though, as a result of complaints arising again, that some issues have slipped back or new ones have emerged. That will just mean that we will go back and do the process again. The licensing board controls the conduct of licensed premises, and the licensees have obligations to ensure that they conduct their premises in a manner which does not result in a loss of amenity. It has to result in an undue disturbance. And what constitutes undue, what might a reasonable person expect by way of noise and at what time might that occur? They take all of those things into account. But at the end of the day, if they are of the view that the licensee has an obligation to do something, they are in a position to impose that upon them.

We are currently heading off to the AAT in respect of a matter where the licensing board has imposed obligations on a licensed premises resulting from allegations of loss of amenity. The board was satisfied that the licensee was failing in his duty. They imposed a direction on the licensee in a manner that they thought would address those concerns. He has appealed that decision and we will see what the AAT says in due course about that. But, in my 16 years as the registrar, that is the first one that has gone on to an appeal.

THE CHAIR: Thank you very much, Mr Brown. It has been very good for us. We reserve the right to write back to you if we need any more information.

JANSEN, MR PETER, property owner, Kingston Traders

THE CHAIR: Members, I have received a request from Mr Jansen to speak to the committee for an extra couple of minutes and I think that it is only fair that we open that up for him and also for other witnesses that have a few more comments that they would like to make to the committee. So we will limit you, Mr Jansen, to a couple of minutes, if you would like to come back to the table. I ask you to remember the privileges statement that I made earlier.

MR SESELJA: Is it still possible for anyone to make additional submissions in writing if they feel they want to clarify something?

THE CHAIR: Yes, the close-off for submissions is Friday.

MR SESELJA: That would be an option open to anyone who, as a result of any of the evidence, wants to put some additional information to the committee.

THE CHAIR: Certainly.

Mr Jansen: Thank you, Mr Gentleman. Three brief points, if I can. Firstly, I feel I must say this: any personal, rude, offensive, defamatory remarks which have been made about me are total fabrications and I will treat them with the attention they deserve, and that is basically none.

Back to the substantive issues, we believe that the need is to address individual concerns with finetuning and not blunt planning instruments which are contradicted in other areas of Canberra. So, if we are going to have rules for one area of Canberra, they should apply equally to all areas of Canberra. But blunt planning instruments certainly don't go very far in addressing specific problems.

Much of the specific problems expressed has occurred and will occur and continue to occur irrespective of the use for commercial premises in section 22 from elsewhere in the Kingston Group Centre and I think we need to be very clear about that. What we do need to do is use measures such as those available under the EPA, even with some changing of some of those measures, to address those concerns. I think that is the way to resolve them.

The example, for instance, of a skip that is currently at the back of the commercial buildings in Kingston causing a problem, I understand that. I make no comment on it, but I understand it. It is not related to me specifically, but those premises are being refurbished for office use, not for anything that isn't allowed under the territory plan, currently or back in 1993. So that sort of thing will take place. So I think what we need to do is look at EPA-type measures that will address the sorts of genuine concerns residents have to reduce, minimise, get rid of those sorts of problems. Thank you.

THE CHAIR: Thanks, Mr Jansen.

BASIL-JONES, MS ROWAN, member, owners corporation executive committee

THE CHAIR: Are there any comments from any of the other groups? Would you like to come forward and make any further comments before we close the committee hearing? Ms Basil-Jones, I ask you to remember the statement I read out earlier regarding privilege.

Ms Basil-Jones: I just wanted to draw the committee's attention to the minister's media release of March 2005, when draft variation 256 was released. That statement says:

A draft variation ... will provide a buffer between residential and commercial entertainment areas in the Kingston Group Centre ...

The draft variation seeks to limit the types of activities and the hours of operation of some commercial uses in close proximity to residential areas surrounding the centre ...

It is a direct response to community concerns regarding the potential for the intensity of some businesses to have an adverse impact on the surrounding neighbourhood.

There is more detail. It makes reference also to the fact that the eastern side of Jardine Street was intended to be used with variation 158 for the establishment of specialty shops. Specialty shops are not pubs. They are not drink establishments. They are not indoor entertainment centres. They are not restaurants. They are not a range of uses that are listed in the territory plan. We are told the consultation was extensive. We don't believe it was.

But that statement that went to the explanatory statement for variation 158 said that was the purpose: specialty shops. We don't have a problem with specialty shops. But what is happening now there is not speciality shops. In fact, we are losing more and more speciality shops from Kingston as the restaurants and drink establishments take over.

Just one other thing that the minister did raise. He said:

Entertainment facilities are now replacing the specialty shops along the eastern side of Jardine Street creating a need to provide buffering for adjoining residential properties, as exists elsewhere in Kingston.

That reference clearly was to the western side of Kennedy Street, where there are residents immediately behind and where a range of uses have been prohibited, I think probably since the territory plan came into effect, and were retained with variation 158. We think that it is quite inequitable that our side of Kingston should be treated differently. That is all.

THE CHAIR: Are you happy with the wording of the draft variation where it talks about the buffer zone specifically for your area?

Ms Basil-Jones: The recommended final variation? They don't even say what a buffer zone is. They talk about a balance between commercial and residential. Our view would be that a balance is not a buffer. Unfortunately, the minister did not provide a definition

of what a buffer is, and clearly ACTPLA needed one. We just cannot accept restaurants in particular, whether they are licensed or not, they might be bring your own or whatever, trading 20 metres from bedrooms. That is not a buffer. And we have got one operating at the moment which has had a huge impact on residential amenity and on the quality of our lives. The idea that the whole street could be full of them is just horrific, which seems to be the way ACTPLA is moving.

THE CHAIR: Thank you very much for your extra comments.

TAPERELL, MS KATHLEEN, member, Kingston Tower body corporate

Ms Taperell: Thanks very much for the opportunity. The reason I asked to speak is that I was about to make the point about a buffer zone. Do you need my name?

THE CHAIR: Yes, and I will just read to you our privileges statement. 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 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 for your time.

Ms Taperell: Thanks very much. My name is Kathleen Taperell. I live in Jardine Street. I am a member of a body corporate which made a submission to the committee. It is the body corporate of Kingston Tower. The submission was made by Pamela Rutland, who is overseas. It might be worth mentioning that a number of other people who would have come are either overseas or detained by work commitments that they could not avoid, including Aldo Giurgola, Margaret Williams and Gillian Bird. But there are others as well, I am sure.

The reason I asked to speak, although I wasn't listed as a witness, was to make the very point that Ms Basil-Jones just made, that a restaurant has no place in a buffer zone. There is no buffer as long as there is a restaurant. It is particularly difficult, in my opinion, where the restaurant has a liquor licence, because it means that any restaurant with a liquor licence can become a de facto drinking establishment.

We are very happy living in Kingston. It is a great place to live at present—at least it certainly was before the Belgian beer cafe—but there are late night disturbances, and have been ever since we moved in five years ago, on summer nights because Kingston has, as you know, 36 restaurants and drinking establishments already and on warm nights people drink later and start wandering back to their cars, many of which are parked near our building, between 11.00 pm and 7.00 am, and very frequently they are obviously highly intoxicated because they are extremely rowdy.

There has been quite a lot of examples of vandalism, damage to property and violence to persons. I can't say, and I don't think anyone in Kingston could say, that this particular incident is associated with any particular drinking establishment, so there is not much point in making a complaint to the Liquor Licensing Board, but there is, nevertheless, a risk that an increase in the number of such establishments will increase the incidence of antisocial behaviour of that kind. Thank you; that is all.

THE CHAIR: Thank you very much, Ms Taperell. Are there any questions, members, of Ms Taperell? Thank you once again for your comments and thanks to everybody present.

The committee adjourned at 12.58 pm.